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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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F.No. 380/147/B/16-RA/2091

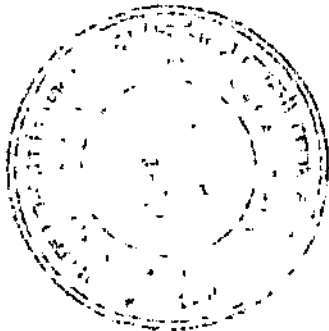
Date of Issue 28.11.2018

ORDER NO. 306/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 11.10.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Principal Commissioner of Customs, C.S.I. Airport, Mumbai.

Respondent: Shri Yogesh Chandrakant Sampat.

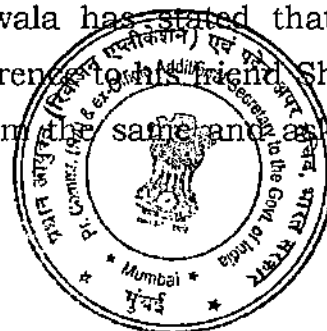
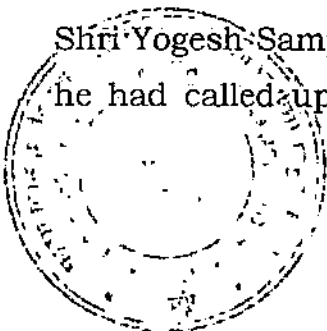
Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No.MUMCUSTM-PAX-APP2016-17 dated 25.05.2016 passed by the Commissioner of Customs (Appeals), MUMBAI-III.



ORDER

The Revision Application is filed by Principal Commissioner of Customs, C.S.I. Airport, Mumbai, against the Order in Appeal No.MUM-CUSTOMS-PAX-APP/59/2016-17 dated 25.05.2016 passed by Commissioner of Customs (Appeals), Mumbai-III in respect of Order in Original No.ADC/RR/ADJN/193/2015-16 dated 03.09.2015 passed by the Additional Commissioner of Customs, C.S.I Airport, Mumbai.

2. The facts of the case in brief are that on 26.03.2014, Air Intelligence Officers of C.S.I. Airport noticed that one passenger by name Mr.Irfan Dawood Fakaria was found conversing with a Custom Officer Mr.Yogesh Sampat in the Red Channel area of arrival Hall and the detailed examination of the baggage resulted in recovery of 210 cartons of cigarettes valued at Rs.2,52,000/- (Rupees Two Lakh Fifty Two Thousand only) and 2 gold bars of 10 tolas each valued at Rs.6,40,804/- (Rupees Six Lakh Forty Thousand Eight Hundred Four only). In his statement before the Customs Authorities, the passenger had stated that he was carrier for one Mr.Zubair who arranged tickets for his travel; he has not made any declaration of goods since Mr.Zubair had told him that he had arranged for clearance of goods through Customs; on reaching Mumbai, he has contacted the Mobile Number 9820582704 which was forwarded by Shri Zubair and he did not know the person whom he contacted in the said mobile number; the reply received from the said mobile is 'I am at counter no.9'; that after clearance he was to hand over the goods to Shri Zubair. The respondent Customs Officer Shri Yogesh Sampath in his statement dated 27.03.2014 had stated that he did not know the passenger but knew one Shri Zubair, who told him about the passenger carrying cigarettes coming by Gulf Air Flight No.GF064; that if he cleared the said passenger, Shri Zubair had promised to give him Rs.20,000/-. However, Shri Yogesh Sampath had filed a retraction of the said statement before the Assistant Commissioner citing that under severe mental stress, owing to domestic crises, he has agreed to the allegations. In his statement, Shri Zubair Yusuf Masalawala has stated that he knew Shri Yogesh Sampath; he had given his reference to his friend Shri Danish; he had called up Shri Santosh and told him the same and asked him to



examine the goods as per Rules; He has denied any link with the passenger. On the basis of the statements, show cause Notices were issued to Shri Irfan Dawood Fakaria, Shri Zubar Yusuf Masalawala and Shri Yogesh Sampath. The adjudicating authority while absolutely confiscating the goods imposed penalties on Shri Irfan Dawood Fakaria, Shri Zubair Yusuf Masalawala and Shri Yogesh Sampath. The said order was challenged before Commissioner (Appeals) by Shri Yogesh Sampath. Commissioner (Appeals) has set aside the penalty on the appellant on grounds of lack of independent corroborative evidence.

3. Aggrieved by the said order, department filed Revision Application on the following grounds:

- i) Although Adjudicating Authority has clearly mentioned the reasons for denial of cross examination with relied upon case laws, Commissioner (Appeals) has erred in drawing the conclusion that denial of cross examination of Co-Notices based on whose statements liability of appellant was fixed has resulted in violation of principles of natural justice.
- ii) The statement of passenger, Shri Irfan Dawood Fakaria, dated 27.03.2014 that somebody would help him on arrival in clearance of the goods and his mobile conversation lasting for 56 seconds was not appreciated as strong evidence by the Commissioner (Appeals).
- iii) The facts that Shri Sampath and Shri Zubair knew each other and were in contact on the day of the incident. The passenger received the mobile number of Shri Sampath through SMS sent by Shri Zubair and the same can't be mere coincidence but shows the involvement of Shri Santosh in the smuggling of the impugned goods. The statement of Shri Santosh recorded on 27.03.2014 was retracted by him citing mental stress and the Adjudicating Authority has rightly held that the contention of Shri Sampath for retraction of the statement were nothing but an afterthought. In view of the aforesaid submissions, the department pleaded that the application be allowed and Order-in-Appeal be set aside.

4. A Personal Hearing was held on 01.10.2018. Shri Rajkumar Kulkarni appeared on behalf of the respondent and reiterated the submission filed in



reply to the Revision Application and pleaded for upholding the Commissioner (Appeal) Order and dismissing the Revision Application. None appeared from the department side.

5. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the applicant's submissions and counter submissions of the respondents.

6. The Government observes that the main issue to be decided in the instant case is whether the Commissioner (Appeals) is justified in setting aside the penalty under Section 112(a) of the Customs Act, 1962 against the respondent Custom Officer Shri Yogesh Sampath.

7. The Commissioner (Appeal) while deciding the appeal against the order of original adjudicating authority in the impugned Order-in-Appeal observed that in the absence of any independent corroborative evidence the statements have lost evidentiary value against the appellant Custom Officer and can't be relied upon and also held that the appellant's involvement in smuggling the impugned goods is nothing but presumption and penalty under Section 112(a) of the Customs Act, 1962 was not justified.

8. The Government notices that evidences cited by the department, in the instant case, are i) a statement of the passenger Shri Irfan Dawood Fakaria that upon instructions of Shri Zakaria, he has contacted the Custom Officer Shri Santosh on his mobile phone and received the reply that he is at counter no.9 and ii) the statement of Shri Sampath dated 27.03.2014 confessing that Shri Zubair had promised to pay Rs.20,000/- in return, if he clears the said passenger.

9. The Government views that mere exchange of telephonic calls among the co accused, although raises a needle of suspicion, can never take the place of legal proof to establish the complicity and involvement of the respondent Custom Officer in smuggling of the impugned goods. It is noticed that Mr.Zubair has denied all the allegation including his offer of Rs 20,000/- to the respondent Custom Officer in return for clearance of the baggage of Mr.Irfan Dawood Fakaria. Therefore, the Government finds that the presumption of conspiracy on the basis of exchange of telephone calls is not supported by details of telephonic conversation nor any other evidence.



11. The statement of the respondent officer and retraction of the said statement has been critically examined by the Commissioner (Appeals) in the impugned order and the government agrees with the said findings that in the absence of any independent corroborative evidence, the statement of the respondent Customs Officer has lost its value as an evidence.

12. The basic requirement for imposition of penalty under section 112(a) of the Customs Act, 1962 is the role of the penalized, by way of acts or omissions in relation to the goods, in rendering the goods liable for confiscation. In the instant case, department has failed to prove the respondent officer's role in abetting the smuggling of the impugned goods. Therefore, the Government observes that the imposition of penalty under Section 112 (a) of the Customs Act, 1962, against the respondent officer, is unwarranted and unjustified.

13. In view of the above discussion and findings, the government do not find any merit in interfering with the order of the Commissioner (Appeal). Hence, Order-In-Appeal No.MUM-CUSTM-PAX-APP/59/2016-17 dated 25.05.2016 is upheld and Revision Application is dismissed.

16. So ordered.

(Signature)
11.10.18

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to the Government of India

ORDER No. 306/2018-CUS (SZ) /ASRA/

DATED 11. 10.2018

To,

Shri.Yogesh Chandrakant Sampat,
Om Building, 7th Floor, Tardeo Road,
Tardeo, Mumbai-400 034.

Copy to:

ATTESTED

(Signature)
28.11.18

S.R. HIRULKAR
Assistant Commissioner (R.A.)

1. The Principal Commissioner of Customs, Terminal-2, C.S.I. Airport, Sahar, Andheri East, Mumbai-400099.
2. The Commissioner of Customs (Appeals) Mumbai-III, Mumbai.
3. The Additional Commissioner of Customs, CSI Airport, Mumbai.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

