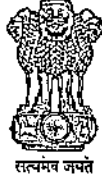


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 380/79-A/B/2016 -RA

Date of Issue 30.11.2018

ORDER NO. 953 /2018-CUS (WZ) / ASRA / MUMBAI/ DATED 19.11.2018
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, Ahmedabad

Respondent : Shri Jay Sudhirbhai Vaidya.

Subject : Revision Application filed, under Section 129DD of
the Customs Act, 1962 against the Order-in-Appeal
No.AHD-CUSTM-OOO-APP-329-15-16 dated
20.01.2016 passed by the Commissioner of
Customs (Appeals), Ahmedabad.

ORDER

This Revision Application has been filed by Principal Commissioner of Customs, Ahmedabad (herein referred to as Applicant) against the Order in Appeal No AHD-CUSTOM-000-APP-329-15-16 dated 20.01.2016 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. The issue in brief are that on the basis of information that a passenger Shri Mayur Keshubhai Kuchhadiya arriving by Air Arabia Flight is carrying Gold Jewellery and Foreign Currency to be handed over to the airline staff at the time of disembarkation from the aircraft. After arrival of aircraft and disembarkation, he opted for green channel, and after crossing it, he was intercepted and it was informed by him that he had brought three packets with him from Sharjah, given to him by one Shri Jagdishbhai, which he handed over to two airline staff. On inquiry, Respondent Shri Jay Sudhirbha Vaidya, Airport Supervisor of Air Arabia, Ahmedabad, informed that he did not receive packets, but had asked Shri Dhaval V. Joshi and Shri Arpit Sinh Raol, Ground Handling Staff to receive the same. Shri Dhaval admitted that he and Arpit had received three packets from the passenger and the appellant told them that there was some problem and they should immediately take the three packets out of airport. Hence, they left the airport and kept the packets at the residence of Shri Arpit. The three packets contained US\$ 10,000.00 and assorted gold jewellery. The jewellery was examined by the Government Approved Valuer, weighing approximately 3073.43 grams valued at Rs. 86,04,987.00. The said goods were seized as same appeared to be liable to confiscation. Investigations revealed that in 2013, Jay Sudhirbha Vaidya and Shri Firoz Sheikh Alam of M/s. Cambata Aviation (P) Limited, SVPI Airport, Ahmedabad had visited Dubai and met Shri Jagdishchandra Pandya, who was a frequent flyer of Air Arabia Airlines, was therefore, known to them and met them at Dubai, proposed a scheme to smuggle gold from Sharjah to Ahmedabad by Air Arabia flight in lieu of monetary benefits, which was to be collected by them from the person carrying it in the flight and to take it out from the airport, for which he



promised them handsome monetary benefits. After returning to Ahmedabad, Shri Firoz Sheikh and Respondent discussed the matter and decided to agree to the proposal of Shri Jagdishchandra Pandya. Shri Dhaval Joshi, Assistant Supervisor of M/s. Cambatta Aviation Private Limited and part of the Ground Handling Staff of Air Arabia, Shri Arpit Singh and Shri Sameer Mansoori, Assistant Supervisor of Cambatta Aviation Private Limited and their Ground Handling Staff, Shri Manvendra Singh Vaghela, Airport Manager of Air Arabia were also included in the criminal conspiracy. For this act, they used to get monetary compensation from Shri Pandya. The goods were not allowed as per Baggage Rules, 1998. All of them were arrested under the provisions of Customs Act, 1962 on 25.07.2013 and were produced before the Additional Chief Metropolitan Magistrate Court, Ahmedabad who remanded them to judicial custody. The Chevrolet Beat car, owned by the Respondent, allegedly used in concealment and transportation of illegally smuggled gold jewellery was also seized under the provisions of the Customs Act, 1962, which was released provisionally by the authority on furnishing of security bond for Rs. 3,41,390.00 along with Bank Guarantee of Rs. 86,000.00. All the accused were helped by Shri Manu Balubhai Khunti @ Kishore Khunti and Shri Pola Bhikhabhai Kadegiya also in the said offence.

3. The Respondent was issued a Show Cause Notice No. DRI/AZU/INV-14/2013 dated 20-01-2014, which was adjudicated by the Additional Commissioner of Customs, Ahmedabad vide Order-in-Original No. 88/ADC-MRM/SVPIA/O&A/2015 dated 20.05.2015 wherein :

- (i) ordered absolute confiscation of the gold jewellery totally weighing 3073.43 gms valued at Rs. 86,04,987/- and USD 10,000/- equivalent to Rs. 5,96,500/- under Section 111(j), (l) and Section 111(m) of the Customs Act, 1962;
- (ii) imposed a penalty on the following persons under Section 112(b) of the Customs Act, 1962 and refrained from imposing penalty under Section 112(a) of the Customs Act, 1962.

Sl.No.	Name of the Person	Penalty Imposed (Rs.)
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1	Shri Jay Sudhirbhai Vaidya	10,00,000
2	Shri Firoz Shaikh Alam	2,50,000
3	Shri Manvendra Singh Vaghella	10,00,000
4	Shri Arpit Sinh Raol	2,50,000
5	Shri Dhaval V Joshi	2,50,000
6	Shri Samir Gulamnabi Mansoori	1,00,000

- (iii) Imposed penalty under Section 112(a) of the Customs Act, 1962 on the following persons as under :

Sl.No.	Name of the Person	Penalty Imposed (Rs.)
1	Shri Mayur Keshubhai Kucchadiya	10,00,000
2	Shri Jagdishchandra Pandya	10,00,000
3	Shri Manu Balubhai Khunti @ Kishore	2,50,000

- (iv) Imposed penalty of Rs. 1,00,000/- under Section 112(b) of the Customs Act, 1962 on Shri Pola Bhikhabhai Kadegiya.
- (v) The proposal to confiscated the Chevrolet Beat Car bearing RTO Registration No. GJ-1-KL-3888 is dropped.

4. Aggrieved by the said order, the Respondent filed appeal before the Commissioner of Customs (Appeals), Ahmedabad who vide Order-In-Appeal No. AHD-CUSTOM-000-APP-329-15-16 dated 20.01.2016 reduced the penalty imposed on the Respondent from 10,00,000/- to 1,00,000/- (Rupees One Lakhs Only) under Section 112(a) of the Customs Act, 1962.

5. Aggrieved with the above order, the Department has filed this Revision Application on the following grounds :

5.1 While deciding the case, the Commissioner (A) had erred in evaluating the facts, circumstances and evidences (Statement recorded under Section 108 of Customs Act, 1962 on record regarding the role of Jay Sudhirbhai Vaidya in the conspiracy and held that neither the goods were recovered from his possession nor did he claim the ownership of the same.

5.2 As per the Hon'ble Supreme Court's judgment in the case of Surjeet Singh Chhabra [1997(89) ELT 646] confession statement



made before Customs officer though retracted is an admission and binding since Customs Officers are not Police Officers. Further in the case of K.P.Abdul Majeed Vs. Commissioner of Customs reported at 2014(309) E.L.T. 671 (Ker) High Court of Kerala has clearly held that

"it is clear that confession statement of co-accused can be treated as evidence, provided sufficient materials are available to corroborate such evidence. As far as retraction statement is concerned, it is for the person who claims that retraction has been made genuinely to prove that the statements were obtained under force, duress, coercion, etc., otherwise the materials indicate that statement were given voluntarily. When the statute permits such statement to be the basis of finding of guilt even as far as co-accused is concerned, there is no reason to depart from the said view."

Hence, statement recorded under Section 108 of the Customs Act, 1962 is considered as valid evidence in the legal proceeding and the detailed statement before Customs officers prima facie merits acceptance. From the above confessional Statement of the Respondent recorded on 24/25.07.2013, the role of his in the conspiracy is clearly established.

5.3 The Appellate authority has observed that for imposition of penalty under Section 112(a), mens rea is required to be proved. The Adjudicating authority, in his findings proved mens rea and found that all these persons including Respondent who were engaged as airline staff or supporting staff, having access to all the areas of the airport, misused the access given to them for their personal enrichment. All these persons were aware that persons authorized to access the areas of the airport are not frisked or checked by the airport security or the Customs. Hence, these persons used their position for their pecuniary gains by abetting and indulging in smuggling of goods which they knew are liable for confiscation. Hence, the Adjudicating authority has correctly imposed penalty under both Section 112(a) and (b) of the Customs Act, 1962.



- 5.4 The Appellate Authority has erred in establishing the offence committed by Respondent and ignored the gravity of offence committed in the conspiracy with other staff. In the conspiracy for smuggling of gold, the Respondent was the key person and master mind who had along with Shri Firoz Shaikh Alam had initiated the conspiracy for smuggling of gold jewellery into India from Sharjah with Shri Jagdishchandra Pandya in Dubai and which was finally hatched in Ahmedabad by roping in Shri Samir Gulamnabi Mansoori, Shri Manvendra Sinoh. Shri Dhaval Joshi and Shri Arpit Sinh. Acting as per the instructions of Shri Jagdishchandra Pandya, Shri Jay Vaidya had called the passengers/carriers who brought the packets of gold jewellery and foreign currency into India and deployed ground handling staff Shri Dhaval Joshi and Shri Arpit Sinh at the aircraft to receive the packets of the contraband goods from the passengers/carriers. He had actively and knowingly aided and abetted in the smuggling of the Gold jewellery and foreign currency by concealing and transporting the packets of the gold jewellery in his car bearing registration number GJ-01-KL-3888. He had accompanied Shri Dhaval Joshi and Arpit Sinh while taking out the packets of gold jewellery and foreign currency from Airport till their concealment in the cars. He was in contact with Shri Pola Bhikhabhai Kadegiya, person of Shri Jagdishchandra Pandya in Ahmedabad and delivered the smuggled packets of gold jewellery to him and collected the money in cash from the person of Shri Jagdishchandra Pandya in Ahmedabad for their role in the smuggling of gold jewellery and distributed the same among the other conspirators.
- 5.5 As Airport Supervisor of Air Arabia Respondent was having access to all areas of airport including the most sensitive areas i.e. the tarmac and the aircraft. The access permitted to the Respondent was for the purpose of providing service to the passengers embarking and disembarking from the aircraft. However, he



misused the access given to him for his personal enrichment by facilitating the smuggling of Gold jewellery. He was aware of the fact that persons authorized to access all areas of the airport are not frisked or checked by the airport security while leaving the airport. He used this knowledge of the airport procedure and facilitated smuggling of gold jewellery through the departure hall of the airport. Misusing his authority as Airport Supervisor of Air Arabia, he ensured that Shri Dhaval Joshi and Shri Arpit Singh were stationed at the rear exit door of the aircraft for receiving the parcels containing gold jewellery from the passenger travelling from Sharjah. The Respondent also mis-used his authority inasmuch as despite using the aerobridge for disembarkation of passengers he ordered disembarkation of passengers from the rear door of the aircraft using the step ladder for facilitating receiving of the parcels containing gold jewellery from the passenger of the flight and taking it out of the airport through the departure hall. Exiting from the aerobridge even by the staff of Air Arabia would have required them to leave the airport through the arrival hall where they risked frisking and checking by the officers of Customs. What makes this grave offence graver is the fact that he as an airline employee having access to all the sensitive areas of the airport chose to indulge in smuggling himself. Since the gravity of offence is very serious in nature and will effect the national economy and national interest. Therefore, the penalty imposed on the Respondent is based on evidence on records.

- 5.6 Here in this case, the contravention of provision of Customs Act / Foreign Trade (Development and Regulation) Act and various Rules as mentioned in Order-in-Original has taken place. The Adjudicating authority has in his Order In Original, established the above contravention of various Act, Rules and Policy and accordingly looking to the above contravention and involvement in



conspiracy in smuggling of gold, the gravity of offence should be considered very serious.

- 5.7 The Commissioner of Customs (A) Ahmedabad has wrongly held that the Call Detail Records do not specify the conversation made between the Jay Shudhirbhai Vaidya and various other persons involved, hence, the extent of involvement of the Jay Sudhirbhai Vaidya is not proved. In this regard, the Adjudicating Authority has clearly held that on going through the call records of mobile number 9824331093, which belonged to Respondent, it was revealed that Shri Jagdish Pandya, the kingpin, had talked to the him prior and post the dates when carriers visited India. Call records also revealed that he had talked to Shri Jagdish Pandya on his Dubai numbers. The call records further reveal that Respondent had also talked to Shri Jagdish Pandya various times when he was in India. This shows that the contention of the Respondent that he had just a passing acquaintance with Shri Jagdish Pandya is not true. There are other evidences which reveal that he was hand in glove with Shri Jagdish Pandya in the smuggling of gold jewellery. A paper slip retrieved from Shri Mayur Kuchhadiya, when he was apprehended by DRI, contained a mobile number which belonged to one Shri Polabhai, The call detail records of the mobile phone of Respondent also revealed that there were frequent conversations between Shri Polabhai and Shri Vaidya. Shri Polabhai was the point man of Shri Jagdish Pandya at Ahmedabad, to whom the gold jewellery was subsequently handed over by the Respondent. Respondent has not explained in his reply as to why the paper retrieved from Shri Mayur Kuchhadiya contained the mobile number of Shri Polabhai, to whom he had frequent conversations. This also negates the contention of the Respondent that Shri Mayur Kuchhadiya had called him for seeking assistance, as he was a responsible person of Air Arabia airlines. Besides, it was also found that Respondent



had at different dates talked to mobile No. 9879130100, which was carried by Shri Mayur Kuchhadiya, even when Shri Kuchhadiya had not arrived in Ahmedabad as a carrier. This shows that this mobile was under the control of Shri Jagdish Pandya, the kingpin, and was used by the carriers to establish contact with the Respondent, whenever they reached India with smuggled goods. Besides, to facilitate Shri Mayur Kuchhadiya, Respondent had allowed passengers to disembark from the rear door of the aircraft though it is a practise that passengers are allowed to disembark only from the front door of the aircraft. Disembarking from the rear door is only permitted when the aircraft is full but in the instant case as admitted by Shri Vaidya in his statement dated 24.07.2013 there were only few passengers and there was no need for allowing the passengers to use the rear door for disembarking other than to identify Shri Kuchhadiya so that the smuggled goods can be exchanged. All these evidences clearly point to the fact that Respondent was a very important player in the whole racket. Hence, the extent of involvement of the Respondent is proved by the Adjudicating Authority.

5.8 Prayed that the Order-in-Appeal be set aside and the Order-in-Original No. 88/ADC-MRM/SVPIA/O&A/2015 dated 20.05.2015 may be restored and upheld.

6. Accordingly a personal hearing in the case was held 04.09.2018 and 01.10.2018. On 01.10.2018, Shri Arvind P Bansode, Asstt. Commissioner of Customs, Airport, Ahmedabad attended the hearing on behalf of the Applicant. The Applicant reiterated the contents of Revision Application and pleaded that in view of the submission made in application, the Order-in-Appeal be set aside and Revision Application be allowed. However, the Respondent did not attend the same. Hence a 3rd Personal Hearing was held on 30.10.2018/06.11.2018 and here also the Respondent nor his representative attended the same.



7. The Government has gone through the facts of the case. The Government observed that the Respondent, as Airport Supervisor of Air Arabia was having access to all areas of airport including the most sensitive areas i.e. the tarmac and the aircraft. The access permitted to him was for the purpose of providing service to the passengers embarking and disembarking from the aircraft. However, he misused the access given to him by facilitating the smuggling of gold jewellery. Also, he was aware of the fact that persons authorized to access all areas of the airport are not frisked or checked by the airport security while leaving the airport. He used this knowledge of the airport procedure and facilitated smuggling of gold jewellery through the departure hall of the airport. Misusing his authority as Airport Supervisor of Air Arabia, he ensured that Shri Dhaval Joshi and Shri Arpit Singh were stationed at the rear exit door of the aircraft for receiving the parcels containing gold jewellery from the passenger travelling from Sharjah. The Respondent also mis-used his authority inasmuch as despite using the aerobridge for disembarkation of passengers he ordered disembarkation of passengers from the rear door of the aircraft using the step ladder for facilitating receiving of the parcels containing gold jewellery from the passenger of the flight and taking it out of the airport through the departure hall. Exiting from the aerobridge even by the staff of Air Arabia would have required them to leave the airport through the arrival hall where they risked frisking and checking by the officers of Customs. What makes this grave offence graver is the fact that he as an airline employee having access to all the sensitive areas of the airport chose to indulge in smuggling himself. Further, the Adjudicating Authority has clearly held that on going through the call records of mobile number 9824331093, which belonged to Respondent, it was revealed that Shri Jagdish Pandya, the kingpin, had talked to him prior and post the dates when carriers visited India. Call records also revealed that he had talked to Shri Jagdish Pandya on his Dubai numbers. The call records further reveal that Respondent had also talked to Shri Jagdish Pandya various times when he was in India. Therefore, the Government holds that the Original Adjudicating Authority has rightly imposed the penalty of Rs.10,00,000/- (Rupees Ten Lakh Only) under Section 112(a) of the Customs Act, 1962.



8. In view of the above, the impugned Order-in-Appeal No. AHD-CUSTOM-000-APP-329-15-16 dated 20.01.2016 is set aside and the Penalty imposed on the Respondent vide Order-In-Original 88/ADC-MRM/SVPIA/O&A/2015 dated 20.05.2015 is upheld as legal and proper.

10. Revision application is partially allowed on above terms.

11. So, ordered.

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ⁹⁵³/2018-CUS (WZ)/ASRA/MUMBAI DATED 19.11.2018

To,

1. The Commissioner of Customs
"Custom House", Navrangpura,
Ahmedbad - 380 009.

ATTESTED

2. Shri Jay Sudhirbhai Vaidya,
4, Keshav Krishna Apartments,
Inklab Society, Gulbai Tekra,
Ambawadi,
Ahmedabad
Gujarat - 380 015.


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

Copy to:

1. The Commissioner(Appeals), Customs, Ahmedabad, 7th floor, Mridul Tower, B/H Times of India, Ashram Road, Ahmedabad - 380 009.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.

