



F. No. 375/23/2013-RA
F. No. 380/86/2013-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 29/4/16

ORDER NO. 37-38/2016 DATED 31.03.2016 OF THE GOVERNMENT OF INDIA,
PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF
INDIA, UNDER SECTION 129 DD OF THE CUSTOMS ACT, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs
Act, 1962 against the Orders-in-Appeal No. CC(A)CUS/218/2013
dated 29.04.2013.

(i) F.No. 375/23/2013-RA

Applicant : Shri Gagan Preet Singh

Respondent : The Commissioner of Customs (I&G), New Customs House,
IGI, Airport, New Delhi

(ii) F.No. 380/86/2013-RA

Applicant : The Commissioner of Customs(I&G), New Customs House,
Airport, New Delhi.

Respondent : Shri Gagan Preet Singh

ORDER

These Revision Applications are filed by the Commissioner of Customs, (I&G), New Delhi (hereinafter referred to as the Department) and Shri Gagan Preet Singh (hereinafter referred to as Applicant) against the Orders-in-Appeal passed by the Commissioner of Customs (Appeals), New Delhi with regard to Orders-in-Original passed by the Additional Commissioner, of Customs, IGI Airport, New Delhi as detailed in table below:

S.No.	R.A.No.	R.A. filed by	O-I-A No./Date	O-I-O No./Date
1	375/23/B/13-R	Shri Gagan Preet Singh	CC(A)Cus/218/2013 Dated 29.04.13	67/2012 Dt.28.09.133
2	380/86/B/13-R	Dy. Commissioner of Customs, NCH, New Delhi		

The two cases are being disposed of by this common order as they are from a common Orders-in-Appeal.

2. Brief facts of the case are that Shri Gagan Preet Singh, r/o 147, Bharat Nagar, Delhi-52 holder of Indian Passport No.F-7683784 dated 17.05.2006 issued at Delhi and Shri Munish Dhir, S/o Shri Tarsem Lal Dhir, resident of N.L. 198, Mohalla Mohindru, Jalandhar holder of Indian Passport No. E-4003707 dated 20.01.2003 issued at Jalandhar, arrived from Hong Kong by flight no. IT-032 on 17.05.2011 at IGI Airport, Terminal-3, New Delhi. On the basis of suspicious movement, the applicant was intercepted at the exit gate while crossing the green channel. On being asked by the Air Customs Officer(Preventive) whether he was carrying any contraband or any dutiable goods or anything to be declared to the Customs in his baggage or on his person, the applicant replied in the negative initially. Not being satisfied with his reply and in the absence of any declaration in the disembarkation slip (Customs portion), he was diverted for scanning of his baggage through the X-ray machine/scanner situated in the Arrival Hall. At this stage two independent witnesses were called to watch the proceedings. The passenger identified as Shri Gagan Preet Singh from his passport, was carrying one checked in baggage i.e. one red and blue bag and one black coloured hand bag. During the scanning of his baggage, nothing suspicious was noticed. However, noticing the abnormal bulge below his waist near the trouser's pockets, the applicant was enquired about the same. Shri Gagan Preet Singh accepted hesitatingly that he was carrying packets of memory cards in the pockets of his trousers and some of his memory cards were in possession of another passenger Shri Munish Dhir, i.e. Pax-II who had also arrived by the same flight. On his identification, Shri Munish Dhir whose identity was verified by his Indian passport was also intercepted at the exit gate of green channel. In the absence of any declaration in the disembarkation

slip (Customs portion), the pax -II was also diverted for scanning of the baggage through the X-Ray machine situated at arrival hall. Shri Munish Dhir was also carrying one black coloured hand bag and one polythene bag of duty free shop. During the scanning, nothing suspicious was noticed in his black coloured hand bag. However, on enquiry Shri Munish Dhir also accepted that he was carrying two packets of memory cards in his pockets and these memory cards belonged to Shri Gagan Preet Singh, i.e. Pax-1. Thereafter written notices under Section 102 of the Customs Act, 1962 were served upon both the passengers and contents of which were also read over and explained to them and to both the witnesses in vernacular. The passengers were informed that if they wished, their baggage/person could be examined before a Magistrate or any Gazetted Officer. The passengers gave their written consent on the body of the notices that any Customs Officer could examine their baggage and person and appended their dated signatures in token of their consent in presence of the witnesses. During the personal search of Shri Gagan Preet Singh the items recovered included two yellow khaki coloured plastic coated envelopes duly sealed with adhesive tape which on examination were found to contain Micro SD 2 GB Memory Cards totalling 3400 pcs, Indian currency Rs. 1650, Hong Kong Dollar-40 and Thai Baht 40, Samsung Mobile Phone Model No. GT-E 1088C with Vodafone sim card, Passport No. F-7683784 dated 17.05.2006 in respect of Shri Gagan Preet Singh and disembarkation slip in which column no. 5 i.e. value of the imported goods was declared as NIL. etc. Detailed examination of baggage of Shri Gagan Preet Singh resulted in the recovery of used clothes and two Chivas Regal Scotch Whiskey (12 Years of one litre each). The entire proceedings were conducted under a panchnama dated 17/18.05.2011 drawn on the spot. The value of impugned goods i.e. memory cards was taken based on the NIDB data and 6800 pcs. of 2GB memory cards were valued at Rs 10,74,000/-.

2.1 Statement of Shri Gagan Preet Singh was recorded on 18.05.2011 under Section 108 of the Customs Act, 1962. He inter alia stated that he was 12th pass from Delhi and was engaged in his own business of mobile phones and their accessories at Karol Bagh, Ghaffar Market, New Delhi outside the shop no. 107 for the last five years; that he went to Hong Kong on 15.05.2011 by Flight No. IT 031 and stayed at Star Guest House, Nanthan Road, Hong Kong; that he returned to India by flight no. IT 032 on 17.05.2011 and was intercepted at exist gate while crossing the green channel; that when he was asked whether he was carrying any contraband or any dutiable goods or anything to be declared to the Customs in his baggage or on his person, he replied in negative; that not being satisfied with his reply and in the absence of any declaration in the disembarkation slip, he was diverted for scanning of his baggage and nothing suspicious was noticed but on noticing abnormal bulge below the waist of his trousers on suspicion, the personal search of his person was conducted which resulted in recovery of 3400 pcs of 2 GB memory cards. He admitted of carrying the impugned goods by concealing in his trousers pocket. He also admitted that another passenger Shri Munish Dhir who had also come by the same flight carrying same

quantity(3400pcs) of 2 GB memory cards on his behalf, concealing the same in his pocket.

2.2 Shri Munish Dhir under Section 108 of the Customs Act, 1962, inter alia stated that Shri Gagan Preet Singh is his family friend and offered him to go to Hong Kong with him and Shri Gagan Preet Singh was ready to bear all his expenditure for Hong Kong visit and he was to get Rs. 5,000/- for carrying these memory cards for Shri Gagan Preet Singh.

2.3 Thereafter, both the passengers were placed under arrest on 18.05.2011 under Section 104 of the Customs Act, 1962 as they had committed an offence punishable under Section 132 and 135 of the Act, ibid and were accordingly produced before the Magistrate on 18.05.2011 and were sent to judicial custody on 18.05.2011. Both the passengers were released on bail on 25.05.2011 by the Learned ACMM, Patiala House Court, New Delhi.

2.4. Subsequent to the investigations, combined Show Cause Notice was issued to both the Pax on 09.11.2011. The Show Cause Notice was adjudicated by Additional Commissioner of Customs (IGI) Airport, New Delhi who vide Orders-in-Original No.67/2012 dated 28.09.2013 ordered:-

- (i) denial of free allowance of Rs. 12,000/- each to Shri Gagan Preet Singh and Shri Munish Dhir on account of various acts of omission and commission as discussed above.
- (ii) confiscation of 6800 pcs of Memory Cards valued at Rs. 10,74,400/- from both the paxs under Section 111 (d), (i), (l) and (m) of the Customs Act, 1962, however option was given to Shri Gagan Preet Singh (who is the owner of the confiscated goods) to redeem the same on payment of redemption fine of Rs.2,50,000/- under Section 125 of the Act, ibid.
- (iii) confiscation of two bottle of scotch whiskey of Chivas Regal values at Rs. 3066/- recovered and seized from Shri Gagan Preet Singh under Section 111 (l) and (m) of the Customs Act, 1962, with an option to redeem the same on payment of redemption fine of Rs.1000/- under Section 125 of the Act, ibid.
- (iv) demand and recovery of Custom duty amounting to Rs. 3,87,321/- involved on the seized/confiscated 6800 pcs of 2 GB Micro SD Cards valued at Rs. 10,74,400/- @ 36.05% ADV. from Shri Gagan Preet Singh under Section 28 of the Customs Act, 1962.
- (v) demand and recovery of Custom duty amounting to Rs. 4,906/- involved on the seized 02 bottles of Chivas Regal Scotch Whiskey of one litre each, valued at Rs. 3066/- @ 150% ADV from Shri Gagan Preet Singh under Section 28 of the Customs Act, 1962.

(vi) recovery of interest at the appropriate rate involved on the amount of Customs duty demanded from Shri Gagan Preet Singh under Section 28 AB of the act, ibid.

(vii) imposed a penalty of Rs. 2,00,000/- upon Shri Gagan Preet Singh, under Section 112 of the Customs Act, 1962 for various acts of omission and commission as brought out supra.

3. Being aggrieved by the said Order-in-Original, the applicant filed appeal before Commissioner(Appeals) who vide Order-in-Appeal No. CC(A) Cus/218/2013 dated 29.04.2013 modified the Orders-in-Original to the following extent:-

(a) allowed the 20% abatement for calculation of duty on the value of confiscated impugned goods.

(b) reduced the redemption fine from Rs. 2,50,000/- to Rs. 75,000/- under Section 125 of the Customs Act, 1962 and penalty from Rs.2,00,000/- to Rs. 90,000/- under Section 112(a) of the Act, ibid imposed upon Shri Gagan Preet Singh.

4. Being aggrieved by the said Orders-in-Appeal, applicant and department applicant have filed revision applications under Section 129 DD of Customs Act, 1962 before Central Government on the grounds as mentioned below:-

4.1. Grounds of revision tendered by the Applicant

4.1.1 That the value of goods appraised at Rs. 8,63,817/- by the Commissioner of Customs(Appeals) after allowing 20% rebate on the NIDB data dated 24.02.2011. That DRI vide F.No. VIII (26)LZU/DRI/18/2012 appraised the value of 2GB Micro SD Card @ Rs. 100 per piece whereas in the present case the value was appraised at Rs. 158 per piece which is not in accordance with valuation Rules. That it is requested to re-appraise the value of Micro SD Cards under confiscation after giving 40% rebate under Rule 7 of the Customs Valuation Rules 2007 or to accept the value of the memory cards 2GB appraised by the DRI in the case of Mr. P.K. Tiwari. That when number of bill of entry relied upon by the Addl. Commissioner has not been mentioned in the adjudication order passed by the Addl. Commissioner of Customs.

4.1.2 That no interest is leviable under Section 28AB on the goods seized under Section 110 of the Customs Act. Section 28AB is applicable only in the case of recovery of duties not levied or short levied or erroneously refunded under Section 28 of the Act. That the goods were seized by the Customs Department and were with the Customs Department. There is no question of short levied or not levied or erroneously refunded under Section 28 of Act. That Section 28 of the Customs Act, 1962 is not applicable in their case. That Section 28 is applicable only when there is order of clearance passed by the proper officer and the proper office has to issue Show Cause Notice for duties not levied or short levied or erroneously refunded is to be issued

within one year from the date of passing of the order by the proper officer. That their case is not of provisional assessment under Section 18 of the Customs Act, 1962 and their case is not the case of refund of Customs Duty. That in their case no order of clearance has been passed by the proper officer. Therefore Section 28 of the Customs Act, is not applicable with the result Section 28 AB is inapplicable erroneously refunded.

~~4.1.3. That reliance is placed on the decision of the Hon'ble CESTAT in the case law Essar Oil Ltd Vs. Commissioner of Customs (Prev.), Jamnagar -2006(197)ELT 450 (Tri-Mumbai).~~

4.1.4 That value of goods be reappraised, redemption fine and personal penalty be reduced, set aside the order in respect of demand of interest under Section 28AB.

4.2. Grounds of Revision tendered by the Department

4.2.1 That no written submissions made by the Shri Gagan Preet Singh and Shri Munish Dhir before the appellate authority has been mentioned in the order. Therefore it is not known as to what was the prayer of the applicants before the appellate authority and on account of non-mentioning such prayers and grounds of appeal make the order passed by the appellate authority as not speaking order to this extent.

4.2.2. That the appellate authority has reduced the value determined by the adjudicating authority by 20% as per the residuary provisions of the relevant law while neglecting the NIDB data relied upon by the adjudicating authority on the grounds that data pertains to dated 24.02.2011 and 18.03.2011 while cause of action arose on 17.05.2011. That the grounds taken by the appellate authority appears to be arbitrary and without any legally justifiable grounds vis a vis NIDB data base used and relied upon by the adjudicating authority, therefore grant of abatement of 20% does not appear to be legal and proper.

4.2.3 That in spite of the serious case of smuggling of memory cards valued at Rs.10,74,400/- the penalty and fine has been reduced significantly without any justifiable reasons. That the facts of the case evidently prove that the applicants are part of smuggling syndicate, which is involved in smuggling activities at Delhi Airport. That the penalty has been significantly reduced. That such act of smuggling should be dealt sternly, not leniently and such a lenient view in spite of evidence on record will encourage smuggling activities. That reduction of fine and penalty without giving any reasons in the order does not appear to be legally correct.

5. An application for condonation of delay in filing Revision Application is also filed by the department applicant on the following grounds:-

5.1. That a revision application against Orders-in-Appeal No. CC(A)Cus/Air/218/ 2013 dated 29.04.2013 in respect of Shri Gagan Preet Singh passed by Commissioner (Appeals), New Delhi has been filed on 27.08.2013 i.e. after lapse of three months time

as prescribed under Section 129 DD (1A). That the date of filing of this application is within the condonable period of further three months' time as prescribed under proviso of Section 129DD (2) of the Customs Act, 1962.

5.2. That the said Orders-in-Appeal was dispatched from the office of the Commissioner (Appeals) New Delhi on 08.05.2013 and was received in the office of the Commissioner of Customs, New Delhi on 13.05.2013.

5.3. That the last date of filing the revision application was due on or before 12.08.2013.

5.4. That the delay is due to inadvertent mistake of law and is not intentional, it is genuine and bonafide.

6. Personal hearing in this case held on 02.09.2015 was attended by Ms. Harsimran Kaur, Attorney on behalf of the applicant, who claimed that in view of several decisions of the adjudicating authority and Commissioner (Appeals) on similar cases wherein 40% abatement has been allowed to arrive at the value of the goods, same benefit should be extended to the present case. She also gave reference of Government of India's order No. 167/2013-Cus dated 22.07.2013. That regarding interest under Section 28 AB, the question does not arise as this is not a case of short levy/non levy of duty but seizure under Section 110 to which Section 28 AB is not applicable. That in this regard CESTAT's decision in case of Essar Oil Ltd Vs CC(Prev), Jamnagar 2006 (197) ELT 450 (Tri-Mumbai) may be referred. None from the side of department attended the hearing.

7 Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal.

8. Government first takes up the application for condonation of delay in filing the Revision Application by the department after a delay of 16 days. The applicant vide their letter C. No. VIII(AP)10/P&I/28-A/2011/Pt-II/8851 dated 14.11.2013 has submitted that the said Orders-in-Appeal was dispatched from the office of the Commissioner of Custom (Appeals) New Delhi on 08.05.2013 and was received in the office of the Commissioner of Customs, New Customs House, New Delhi on 13.05.2013. That the last date for filing the revision application by the department was due on or before 12.08.2013 i.e. within three months from the date of communication of the order. That the delay is due to inadvertent mistake of law and is not intentional, genuine and bonafide.

8.1. As such, the Department filed this revision application in 16 days after initial 90 days period, which falls within condonable limit of 90 days under Section 129 DD (2). Hence, Government condones the said delay.

9. On perusal of records, Government observes that the applicant upon arrival at IGI Airport, Delhi from Hong Kong on 17.05.2011 had mis-declared the impugned goods carried by him which vide impugned Orders-in-Original dated 28.09.2012 were confiscated under Section 111(d),(i),(l) &(m) ibid with option to redeem the same on payment of redemption fine of Rs. 2,50,000/- under Section 125 and payment of appropriate duty and interest under Section 28 & 28AB ibid. A penalty of Rs. 2,00,000/- was also imposed upon the applicant under Section 112 ibid. Aggrieved by the said order, the applicant filed appeal before Commissioner (Appeals), who vide impugned Order-in-Appeal allowed 20% abatement on the value of impugned goods and reduced the quantum of redemption fine and penalty. Now the applicant has filed Revision Application on the grounds stated in para 4.1 and department applicant has filed Revision Application on the grounds stated in para 4.2. above.

10. Government observes that the applicant has contested the valuation of goods, pleaded for reduction of redemption fine and personal penalty and setting aside of demand of interest under Section 28 AB. The Department on the other hand is contesting the 20% abatement allowed by the impugned order and the reduction in redemption fine and penalty.

11. As regards the valuation of the goods, the Department had contended that allowing abatement of 20% by the appellate authority is arbitrary and without any legally justifiable ground vis-a-vis the NIDB data relied upon by the adjudicating authority. Whereas the applicant has contended that the appellate authority should have allowed deduction upto 40% as in some other cases.

11.1. Government notes that the Customs authorities have valued the goods on the basis of National Import Data Base data dated 24.02.2011 and 18.03.2011 and the same was accepted by the applicant to be true value. The Apex Court in the case of Auto Stores Vs CC (Export), Mumbai has held that available NIDB data of comparable goods to be adopted for assessment-2014(305)ELT A 75(SC). Further it is observed that the applicant failed to produce any invoice or any other documentary evidence in support of his contention. As no supporting document to substantiate the value of memory cards has been produced, there is no infirmity in applying NIDB data which gives price of contemporaneous imports of similar/identical goods. In fact the data relied upon by the Department is not even 3 months old. Hence, the plea of over valuation is not acceptable and the value adopted by the adjudicating authority as per law and does not warrant any interference.

12. Government observes that the second issue on which the present application has been filed by the applicant is regarding the charging of interest under Section 28AB of the Act *ibid*. Applicant has contended that interest under Section 28AB of the Customs Act, 1962 is not leviable in the instant case as the Section 28 invoked for the demand of duty is not applicable in this case in as much that there is no question of short levied or not levied or erroneously refunded duty under Section 28 of Act, *ibid*. Moreover, the confiscated goods were in possession of the department.

12.1 In this regard first proceeds to examine the relevant statutory provisions.

12.1.1 Chapter V of the Customs Act, 1962 deals with levy of, and exemption from, Customs duties and Section 12 which is the charging Section reads as under:-

"Section 12: Dutiable goods- (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or exported from India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

From the plain reading of the Section it is clear that at the time of import, duty is chargeable on all the goods imported into the country irrespective of mode of import viz cargo, baggage, post etc. How these goods will be cleared upon import is provided for in separate Sections. While clearance of imported goods is covered under Chapter VII, clearance of baggage and post articles are covered under Chapter XI of the Act.

12.1.2. Section 28 of the Customs Act, 1962 on the other hand provides for the recovery of any duty which has not been paid, short paid or erroneously refunded and reads as under:-

"Section 28-Recovery of duties not levied or short-levied or erroneously refunded-(1) Where any duty has not been, levied or short-levied or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts,-

(a) the proper officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to Show Cause why he should not pay the amount specified in the notice;

(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer the amount of duty along with the interest payable thereon under Section 28AA or the amount of interest which has not been so paid or part-paid".

12.1.3. Section 28 AA/28AB of the Customs Act, 1962 provides for the interest on delayed payment of duty and reads as under:-

"Section 28AA-Interest on delayed payment of duty- (1) Notwithstanding anything contained in any judgment decree, order or direction of any Court, Appellate Tribunal or any authority or any authority or in any other provisions of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that Section.

(2) Interest at such rate not below ten per cent and not exceeding thirty-six percent, per annum, as the Central Government may, by notification in the official gazette, fix, shall be paid by the person liable to pay duty in terms of Section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1) no interest shall be payable where-

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under Section 151 A ; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment".

12.1.4. Further, Government notes that Chapter XI of the Customs Act, 1962 specifies the special provisions regarding baggage, goods imported or exported by post and stores. Section 77 and 78 of the said Act read as under:-

"Section 77-Declaration by owner of baggage- The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contentions to the proper officer.

Section 78-Determination of rate of duty and tariff valuation in respect of baggage- The rate of duty and tariff valuation, if any, applicable to baggage shall be the rate and valuation in force on date on which a declaration is made in respect of such baggage under Section 77".

12.2 Government finds that in the present case the applicant failed to declare the impugned goods imported as baggage thereby violating the provisions of Section 77 of the Customs Act, 1962. The said goods were undisputedly chargeable to appropriate duty under Section 12 read with Section 78 of the Act. The applicant has imported the impugned goods chargeable to duty as baggage as laid down under Section 12 of the Customs Act, 1962 and failed to pay the duty at the time of import. He carried the said goods with an intention to evade payment of the Customs duty leviable on these goods. Therefore duty was rightly demanded under Section 28 of the Act *ibid* and the

demand confirmed after following due process of law. When duty was not paid at the time of import, the interest is chargeable on the duty amount where duty has not been paid on the goods in terms of Section 28 AA/28AB of the Act, *ibid*. Hence interest is also rightly held to be payable by the impugned order on the duty demanded.

12.3. Government also finds no merit in the argument of the applicant that no interest is leviable on goods placed under seizure. Section 110 the Act *ibid* provides for seizure of goods liable for confiscation for improper importation into the country in terms of Section 111. Seizure and confiscation of goods does not absolve such goods from levy of duty and interest in turn is charged on such duty not paid.

12.4 Government observes that the order of CESTAT in the case of *Essar Oil Ltd. vs Commissioner of Customs(Prev.) Jāmnaḡar, 2006 (197) ELT 450 (Tri-Mumbai)* relied upon by the applicant is not applicable to the facts of the present case as the case law relates to an order of assessment under Section 47 which is not applicable to baggage.

13 Government further observes that the department has contended that in spite of serious case of smuggling of memory cards the penalty and fine has been reduced significantly by the Commissioner (Appeals) without any justifiable reasons and the applicant without giving any grounds, has pleaded for reduction in fine and penalty.

13.1 Government notes that it is a fact on record that not only where the impugned goods concealed and not declared by the passenger, the same quantity of goods were recovered from another passenger Shri Munish Dhir who smuggled the goods on his behalf. Government further notes that the statement dated 18.05.2011 tendered by Shri Gagan Preet Singh, the main accused, has been corroborated by the statements recorded under Section 108 of Customs Act, 1962 of Shri Munir Dhir dated 18.05.2011. Shri Dhir has clearly stated that Shri Gagan Preet Singh offered him to go to Hong Kong with him and he was ready to bear all his expenditure for the same and he was to get Rs. 5,000/- for carrying the memory cards.

13.2 Government notes that not only the applicant attempted to smuggle the impugned goods in substantial quantity but it is also an uncontested fact on record that he also colluded with and abetted with another passenger to facilitate smuggling of the impugned goods. Therefore the applicant has rightly been held as liable for penalty under Section 112 of the Customs Act, 1962. As regards the quantum of penalty Government notes that the fine and penalty imposed by the original authority is commensurate to the value of the goods and is not harsh considering the role of Shri Gagan Preet Singh in facilitating the smuggling of impugned goods. Keeping in view the gravity of offence and overall circumstances of the case and the value of the impugned goods, the Commissioner (Appeals) has erred in reducing the redemption fine and penalty on the applicant. Government therefore restores the quantum of redemption fine and penalty as imposed by the original adjudicating authority.

14. In view of the above facts and discussions, Government holds that the Commissioner (Appeals) has erred in allowing any abatement on the value of the goods and in reducing the fine and penalty. Government also upholds interest on duty payable on the impugned goods. The impugned Order-in-Original is therefore hereby restored.

15. The Revision Applications are disposed off in the above terms.

16. So, ordered.



(RIMJHIM PRASAD)

Joint Secretary to the Government of India

- (1) Shri Gagan Preet Singh,
S/o Shri Uday Singh,
R/o 3/18 A, 3rd Floor,
Vijay Nagar Double Storey,
Near Royal Place Banquet Hall,
Delhi-110009.
- (2) Commissioner of Customs (Airport)
IGI Airport, Terminal 3,
New Delhi – 110 037.



Attested.

ORDER NO. 37-38/2016 DATED 31.03.2016

Copy to:-

1. The Commissioner of Customs (Appeal) NCH, New Delhi.
2. The Additional Commissioner of Customs, IGI Airport, New Delhi.
3. Ms. Harsimran Kaur, Attorney, B-1/71, Safdarjung Enclave, New Delhi-110029
4. PA to JS (R.A.)
5. ✓ Guard File
6. Spare Copy.


ATTESTED

(SHAUKAT ALI)
UNDER SECRETARY (RA)