*   IN THE HIGH COURT OF DELHI AT NEW DELHI

%   **Judgment reserved on: 17 November 2023**
Judgment pronounced on: 08 January 2024

+   W.P.(C) 6492/2019, CM APPL. 27479/2019 & CM APPL. 27480/2019

SHRI VEERENDRA SINGH ..... Petitioner
Through: Mr. S. Sunil, Advocate.

versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr. Manish Mohan, CGSC along with Mr. Jatin Teotia, Advocate for R-1 and R-2. Mr. Akshay Amritanshu, Sr. Standing Counsel along with Mr. Ashutosh Jain and Ms. Anjali Kumari, Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

RAVINDER DUDEJA, J.

1. Feeling aggrieved and dissatisfied with Order No. 35/2015-CUS dated 22.12.2015 passed by the learned Joint Secretary to the Government of India under Section 129 DD of the Customs Act, 1962, whereby, she has allowed the revision application preferred by the Revenue against the order in appeal dated 31.7.2013 passed by the Commissioner of Customs (Appeals) New Delhi. By the impugned order, the Order-in-Original dated 09.11.2012 passed by the

Adjudicating Authority, imposing penalty upon the petitioner, has been restored.

BRIEF FACTS

2. Brief facts of the case are that on the basis of specific information that a passenger Sh. Rajdeep Chawla was arriving on Flight No. AI-315 with two handbags and was supposedly carrying 7500 pieces of Memory Cards and 9 Watches, a team of Officers was deputed to track his movement. It was observed that just before the immigration clearance in front of immigration counters, he gave Hong Kong Duty Free Shop polythene bag to one Veerandra Singh, who was wearing immigration uniform. Veerandra Singh was then working as JIO-II, AFRRO Office (Immigration) at IGI Airport. After collecting the bag, he went into the room of Shift Incharge. While coming out of the room, he was intercepted by an Air Customs Officer (Preventive). At that time, he was carrying a black laptop size bag. Thereafter, petitioner was taken into a room along with both Wing Incharge, AFRRO Arrival Office Mr. S. Bagchi and Mrs. Archana Andley. During the search of the Shift Incharge Office, a Hong Kong Duty Free polythene containing Chivas Regal bottle packing was recovered from the lower drawer of the table kept in the room. Examination of the said polythene bag resulted in the recovery of three brown tape wrapped packets and on further examination, the said three packets were found to contain 7140 pieces of memory card Micro SD 2GB. A Panchnama to this effect was prepared on 26.01.2011 on the spot. On the search of brown taped packet, recovered from the laptop size bag, 2360 memory cards Micro SD 2GB were recovered. Another Panchnama dated

26/27.01.2011 was drawn. The total value of the recovered memory cards was estimated as Rs. 15,01,000/-. The recovered memory cards were seized under Section 110 of the Customs Act. The pax Rajdeep Chawla, who had given the parcel to the petitioner, was followed discretely. After immigration clearance, he collected his check-in baggage and walked through the green channel of the customs clearance hall, he was then diverted for screening of his baggage through X-Ray machine. On screening, it was observed that the baggage was containing watches in commercial quantity. On examination of the check-in baggage and handbag, 60 watches and 13 fuel injection pumps were recovered vide Panchnama dated 27.01.2011. The petitioner as also Rajdeep Chawla were asked to produce the documents in support of the above goods but they were unable to do so and were therefore arrested on 28.01.2011. Statements were recorded under Section 108 of the Customs Act.

3. Show Cause Notice dated 19.10.2011 was issued to the petitioner to explain as to why the impugned goods should not be seized and customs duty with interest and penalty should not be imposed upon him. Order-in-Original No. 79/2012 dated 09.11.2012, imposed penalty of Rs. 4 lakhs on the petitioner for the acts of omission and commission under Section 112 of the Customs Act. Petitioner filed appeal against the said order before the Commissioner (Appeals), who vide order dated 31.07.2013 in Appeal No. CC(A)Cus/AIR/467/2013 dated 31.07.2013, set aside the Order-in-Original holding that the matter will require re-look, verification and may be closure of the case in respect of the petitioner. Aggrieved by the said order, the Revenue filed revision

application under Section 129-DD of the Customs Act, whereby, the Order in-Appeal was set aside and the Order-in-Original imposing penalty was restored.

SUBMISSIONS OF THE PARTIES

4. The learned counsel for the petitioner has argued that the entire case of the Revenue is without any evidence. It is submitted that there is no evidence against the petitioner except his involuntary statement to establish that Rajdeep Chawla had handed over the Hong Kong Duty Free polythene bag to him. Not a single Officer, who was deputed to track the movement of the petitioner, has been examined under Section 108 of the Customs Act. No footage of the surveillance cameras affixed in the arrival hall has been seized or placed on record. There is not even a single witness who had seen the petitioner keeping Duty Free bag in the room of the Shift Incharge. No statement of any person was recorded to find out that any Officer had entered the room of the Shift Incharge who had seen any bag lying in the lower drawer of the table. It is also submitted that there is no corroboration of the statements recorded under Section 108 of the Customs Act with the call records. The Commissioner (Appeals) had clearly noticed serious flaws in the investigation and the imperfectness of the evidence, and therefore, the Order-in-Appeal passed by the learned Commissioner (Appeals) deserves to be restored by setting aside the impugned order.

5. Supporting the order passed in revision, the learned counsel for the respondent has argued that there is enough corroborative evidence to establish that Veerendra Singh, JIO-II, employed at AFRRO Office,

IGI Airport used his official status to facilitate the smuggling of the memory cards by main accused Rajdeep Chawla.

ANALYSIS AND DECISION

6. Rejecting the arguments made above, the learned Joint Secretary, Government of India vide his order dated 22.12.2025 observed as under:-

> "6. On perusal of records, Government observes that the case is based on a specific information about the passenger Shri Rajdeep Chawla that he would be carrying the impugned goods on flight no. AI 315 on 26.01.2011. It was observed by Customs Officers that upon arrival, the pax handed over a Hong Kong duty free shop polythene bag to Shri Veerendra Singh who in turn entered the AFFRO shift in charge's office. Upon search of the Shift in-charge's room after following due process of law in the presence of both the wing in-charge, AFRRO arrival office, Mr. Bagchi and Mrs Achana Andley, 01 bottle packing of Chivas Regal, 3 packets containing 7140 pieces of memory cards were recovered from the Hong Kong duty free bag and the proceedings of recovery was done under the panchanama drawn on the spot. Upon search of a laptop bag carried by Shri Veerendra Singh out of the said room, a brown taped packet comprising 2360 pieces of memory cards was recovered and the recovery of 2360 pieces of 2 GB memory cards was also recorded under the panchnama dated 26/27.1.2011 drawn on the spot. The goods collectively valued at Rs. 15,01,000/- were seized under Section 110 of the Act, ibid.
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> 7. Government has carefully gone through the relevant case records available in case file and perused the impugned Order -in-Original and Order-in-Appeal. Government observes that the applicant's main contentions are that the immigration officer Shri Veerendra Singh, who was posted at the material time at I.G I. Airport, Terminal-3 New Delhi as JIO-II, AFRRO office colluded with Shri Baljeet Singh and under his instructions aided and abetted the passenger Shri Rajdeep Chawla in his attempt to clear 2360+7140 pieces of SD 2 GB memory cards, collectively valued at Rs. 15,01,000/- in a clandestine manner, with an intention to smuggle the said goods as detailed in panchnama dated 26/27/01.2011; that Shri Veerendra Singh thus contravened provisions of Section 77 and Section 79 of the Customs Act, 1962 read with para 2.20 of Section 3 of Foreign Trade Policy 2009-14, and Section (7) of Foreign Trade (D&R) Act, 1992; that Shri Veerendra Singh acted for a petty consideration and aided and abetted to smuggle the impugned goods by the above acts of omission and commission in relation to the

seized goods with intent to evade payment of Customs duty; that the Immigration officer Shri Veerendra Singh under the Instructions from Shri Baljeet Singh, and in connivance with Shri Rajdeep Chawla, rendered the seized Impugned goods i.e. 9500 pieces of SD 2GB memory cards, valued at Rs. 15,01,000/- liable to confiscation under Section 111(d), (i), (I) & (m) of the Customs Act, 1962 and rendered himself liable to penal action under Section 112 of the Act, ibid.

8. Government notes that the applicant's contentions as mentioned in para 7 supra and the fact that Shri Rajdeep Chawla, carrier pax, handed over impugned goods to Shri Veerendra Singh and recovery from his possession as mentioned in para 6 supra are clearly established. In this regard, Government observes that in the voluntary statements dated 27.01.2011 and 28.01.2011 of Shri Veerendra Singh recorded under Section 108 of the Customs Act, 1962, he admitted the recovery of the impugned goods from him and the recovery proceedings were carried out by the Customs Officer after following due process of law under panchnama dated 26.1.2011 drawn on the spot in the presence of witnesses. The fact of handing over the impugned goods by Shri Rajdeep Chawala to Shri Veerendra Singh was admitted by both Shri Veerendra Singh and the Shri Rajdeep Chawla in their respective voluntary statements. Government further observes that the appellate authority has also erred in ignoring the fact mentioned in the panchnama dated 28.01.2011 drawn on the spot whereby the mutual identification proceedings of both the accused i.e. Shri Rajdeep Chawla and Shri Veerendra Singh were recorded. Both Shri Rajdeep Chawla and Shri Veerendra Singh in their statements recorded under Section 108 of the Customs Act, 1962 accepted that they were involved in illegal import of goods and acted as carriers and got petty amount in lieu of their services; that the respondent was carrying the goods on behalf of Shri Baljeet Singh ("Chacha"). Another material piece of evidence which establishes the connivance of Shri Veerendra Singh is the mobile phone communication between Shri Baljeet Singh with Shri Veerendra Singh and Shri Mukesh Wahi between 12.01.2011 and 26.01.2011 which has not been refuted at any stage by the respondent. Another material piece of evidence which clearly establishes the connivance of Shri Veerendra Singh is the mobile phone communication between Shri Baljeet Singh with Shri Veerendra Singh and Shri Mukesh Wahi between 12.01.2011 and 26.11.2011 which has not been refuted at any stage by the respondent.

9. Government further observes that this statement which is held to be material piece of evidence has not been retracted by Shri Veerendra Singh till he was arrested and produced before the ACMM Court who sent him to judicial custody. Observing due process of law the Show Cause Notice issued to the main accused along with Shri Veerendra

Singh and others, was duly adjudicated by the adjudicating authority after following the principle of natural justice and was decided by him based on evidence on record as a result of investigation undertaken by the Department.

10. Government also places reliance on the following judgements of various Courts wherein evidentiary value of statements recorded under Section 108 of the Customs Act 1962 is emphasized:

10.1 The Apex Court in the case of Naresh Kumar Sukhwani Vs Union of India 1996(83) ELT 285(SC) has held that statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner inculpating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962 can be used as substantive evidence in connecting the applicant with the act of contravention.

10.2 In the case Collector of Customs, Madras and Ors Vs D. Bhoormull- 1983(13)ELT1546(S.C.) the Hon'ble Supreme Court has held that Department was not required to prove its case with mathematical precision. The whole circumstances of the case appearing in the case records as well as other documents are to be evaluated and necessary inferences are to be drawn from these facts as otherwise it would be impossible to prove everything in a direct way.

10.3 Kanwarjeet Singh & Ors Vs Collector of Central Excise, Chandigarh 1990 (47) ELT 695 (Tri) wherein it is held that strict principles of evidence do not apply to a quasi-judicial proceedings and evidence on record in the shape of various statements is enough to punish the guilty.

10.4 Hon'ble High Court decision in the case of Assistant Collector of Customs Madras- 1 Vs. Govindasarny Ragupathy- 1998(98) E.L.T. 50(Mad.) wherein it was held by the Hon'ble Court 'confessional statement under Section 108 even though later retracted is a voluntary statement and was not influenced by threat, duress or inducement etc. is a true one.

10.5 In the case of Govind Lal Vs. Commissioner of Customs Jaipur (2000(117) E.Lt. 515(Tri)}- wherein Hon'ble Tribunal held that – 'Smuggling evidence-statement- retraction of confessional statement- when statement made under Section 108 of the Customs Act, 1962 never retracted before filing the replies to the Show Cause Notice- retraction of the statement at later stage not to affect their evidence value."

> 10.6 In the case of Surjeet Singh Chabra Vs. UOI 1997 (84) ELT (646) SC. Hon'ble Supreme Court held that statement made before Customs Officer though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. As such, the statement tendered before Customs is a valid evidence under law.
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> 11. Government thus notes that plea of the applicant that there is enough corroboratory evidence to establish that Shri Veerendra Singh willingly colluded with Shri Rajdeep Chawla to facilitate the smuggling of impugned goods has force. The appellate authority has erred in overlooking above vital points in the recovery of the impugned goods which have been discussed in detail by the adjudicating authority in Order-in-Original.
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> 12. In view of the above discussion and facts Government opines that guilt of Shri Veerendra Singh who is accused of colluding and abetting in the smuggling of the Impugned goods is clearly established. Thus, Government sets aside the impugned Order-In-Appeal and restores the Order-In-Original Imposing penalty under Section 112 of the Customs Act 1962 on Shri Veerendra Singh."

7. It may be seen that the petitioner gave incriminating statements under Section 108 of the Customs Act admitting to the recovery of 7140 memory cards from the rack of the table, as also the recovery of 2360 memory cards from his laptop bag. He admitted that he did all this at the instance of one "Chacha". In his further statement dated 28.01.2011, he recognized Rajdeep Chawla as the same person who gave him Hong Kong Duty Free Shop poly bag from which memory cards were recovered from the room of Wing Incharge, AFRRO, Arrival Office. Rajdeep Chawla also stated in his statement under Section 108 of the Customs Act that on 26.01.2011, he landed at IGI Airport and started waiting near the escalator in the Arrival Hall and at the instance of one Mukesh, he handed over the packet to an Officer wearing immigration uniform. He identified the petitioner Veerendra Singh as the person whom he handed over the Hong Kong Duty Free

Shop polythene bag in which the memory cards were kept. Even though, two Wing Incharges, in their statements, stated that the entry of Veerendra Singh in the room of Incharge with polythene bag was not within their knowledge, but as stated by them, the recovery of memory cards was effected at the instance of the petitioner in the manner stated above. The statements were made by the petitioner on 27.01.2011 and 28.01.2011 but the same were retracted after a delay of four days on 01.02.2011. It is a settled law that the statement recorded under Section 108 of the Customs Act is a material piece of evidence and can be used as substantive evidence. The statements recorded under Section 108 of the Customs Act in this case are consistent, the witnesses are supporting each other regarding the incident of recovery and such statements are further corroborated by the Panchnamas prepared at the spot which bear the signatures of the petitioner as also the Panch Witnesses.

8. On a careful perusal of the reasons assigned and the case law relied on in the impugned order, it is evident that the learned Joint Secretary conducted a meticulous exercise to examine and appreciate the evidence on record in the light of the settled principles of law and came to a categorical finding that the guilt of petitioner who is accused of colluding and abetting in the smuggling of impugned goods is established. The findings of the learned Joint Secretary assume legally correct approach in the light of the deposition of the witnesses recorded under Section 108 of the Customs Act, duly corroborated by panchnamas of recovery.

9. Moreover, the High Court exercising power under the writ jurisdiction cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. This exercise must be restricted to grave dereliction of duty and flagrant abuse of fundamental principles of law and justice. The jurisdiction which the High Court exercises in the writs is neither original nor appealable. It is administrative and supervisory in nature. In the present writ petition, petitioner is assailing the impugned order passed in revision on the basis of appreciation of evidence only. The High Court while exercising the power under the writ jurisdiction cannot normally substitute its own conclusion.

10. We find no patent illegality or error apparent on the face of the record.

11. There is no merit in the present writ petition. The same is accordingly dismissed.

RAVINDER DUDEJA, J.

YASHWANT VARMA, J.

January 08, 2024/RM