

REGISTERED
SPEED POST

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

F.No. 380/113/B/16-RA/5407

Date of Issue 15.09.2020

ORDER NO. 128/2020 CUS (SZ)/ASRA/MUMBAI DATED 10.08.2020 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Commissioner of Customs, Chennai.

Respondent : Shri Madhu Sreekanth Reddy & Shri Niasudeen Anvar

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.CUS-I No. 149/2016 dated 24.03.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by the Commissioner of Customs, Chennai. (herein referred to as Applicant) against the order C. CUS-I No. 149/2016 dated 24.03.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated facts of the case are that the Officers of the Directorate of Revenue Intelligence on 04.03.2014 on receipt of specific intelligence intercepted Shri Madhusreekanth Reddy outside the arrival hall at the Anna International Airport, handing a parcel to three persons outside the Chennai airport. Enquiries conducted revealed that the said parcel was given to the Applicant in Singapore to be handed over to persons waiting outside Chennai airport. The parcel contained an electrical appliance used in polishing tiles. Dismantling of the appliance led to the recovery of six gold pieces weighing 200 grams totally valued at Rs. 6,16,800/- (Rupees Six lacs Sixteen thousand Eight hundred).

3. Investigations conducted led to the interception of the second respondent Shri Niasudeen Anvar when he was handing over a similar electrical appliance used in polishing tiles. Dismantling of the appliance led to the recovery of nine gold pieces weighing 595 grams. totally valued at Rs. 18,34,980/- (Rupees Eighteen lacs Thirty four thousand Nine hundred and eighty).

4. After due process of the law vide Order-In-Original No. No. 317/11.09.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed the penalty of 70,000/- on Shri Madhu Sreekanth Reddy and a penalty of 2,50,000/- on Shri Niasudeen Anvar. No penalty under section 114AA of the Customs Act, 1962 was imposed on the Respondents.

Aggrieved by this order the Applicant department filed an appeal against the order of original adjudicating authority for not imposing penalty under



section 114AA of the Customs Act, 1962. The Commissioner of Customs (Appeals), (Appeals) vide his order C. CUS-I No. 149/2016 dated 24.03.2016 rejected the appeal of the Applicant department.

6. Aggrieved with the above order the Applicant department has filed this revision application interalia on the grounds that;

6.1 The Original adjudicating authority and the Commissioner (Appeals) has specifically not imposed penalties U/s 114AA on both the respondents which is neither legal nor proper. The passengers had attempted to smuggle the gold by way of non-declaration, knowing well that they were not eligible passengers to import gold; Passengers had not declared to the Customs officer about the possession of gold as required under Section 77 of the Customs act, 1962; Section 114AA holds a person liable for penalty if that person intentionally makes a declaration which is false or incorrect in any material particular. In the present case, the passengers have intentionally suppressed the possession of gold when questioned in the presence of witnesses. Thus, by making a false declaration, the passengers have rendered themselves liable for penalty under section 114AA of the Customs Act, 1962; The passengers are also liable for penalty under Section 112(a) since they attempted to clear gold by way of concealment and non-declaration; there is no provision /section in the Act which states that penalty should be imposed only under one section, or penalty under the second provision should be waived; The violations have taken place in the course of the same transaction and are interconnected; The Appellate Authority's observation that there was no false declaration as no declaration can be interpreted as a NIL declaration when the passenger was found to be in possession of gold. Thus such false declaration attracts penalty under Section 114AA, of the Customs Act, 1962.

6.2 In view of the above, it is prayed that the order of the appellate authority may be set aside or such an order be passed as deemed fit.



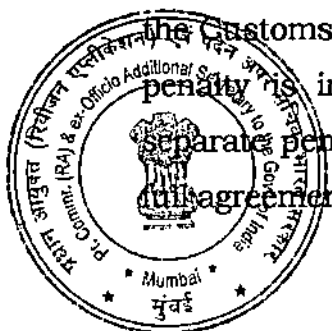
7. In view of the above, personal hearings in the case were scheduled on 27.08.2018, 17.09.2018 and 26.09.2018. Nobody attended the hearing on behalf of the Applicant department nor any representing the Respondent. The Revision Application is therefore being decided on merits.

8. The Government has gone through the facts of the case, The Revision Applications have been filed by the department to address the issue of penalty not imposed under section 114AA. The original adjudicating Authority has not imposed penalty under section 114AA of the Customs Act, 1962, which has been upheld by the Appellate Authority.

9. In addressing the issue Government notes, the objective of introduction of Section 114AA in Customs Act is explained in para 63 of the report of the Standing Committee of Finance (2005-06) of the 14th Lok Sabha which states.....

" Section 114 provides for penalty for improper exports of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulations could escape penal action even when no goods were actually exported The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declaration, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to five times the value of the goods. A new Section 114AA is proposed to be inserted after Section 114A."

Penalty under Section 112 is imposable on a person who has made the goods liable for confiscation. But there could be situation where no goods ever cross the border. Since such situations were not covered for penalty under Section 112/114 of the Customs Act, 1962, Section 114AA was incorporated in the Customs Act by the Taxation Laws (Amendment) Act, 2006. Hence, once the penalty is imposed under Section 112(a), then there is no necessity for a separate penalty under section 114AA for the same act. The Government is in full agreement with the above contentions.



10. Government therefore observes that once penalty has been imposed under section 112 there is no necessity of imposing penalty under section 114AA. The non imposition of penalty under section 114AA of the Customs Act, 1962 is upheld as legal and proper. Government does not find any infirmity in the impugned order and the Revision Application is therefore liable to be dismissed.

11. Revision Application is accordingly dismissed.

12. So ordered.

(SEEMA ARORA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 28/2020-CUS (SZ) /ASRA/

DATED 10.08.2020

To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
2. Shri Madhu Shreekant Reddy, 2-89/1, Bandiatmakur, Kurnool, Andhra Pradesh 518 523.
3. Shri Niasudeen Avvar, Old No. 4/58, New No. 652, Andakkulam village, Kulathur Taluk, Pudukottai District, Andakullam, Tamilnadu 622 003.

ATTESTED

Copy to:

1. Sr. P.S. to AS (RA), Mumbai.
- ✓ 2. Guard File.
3. Spare Copy.

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

