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SPEED POST

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

F.No. 380/110/B/16-RA

Date of issue

17.09.2020

ORDER NO. (29)/2020 CUS (SZ)/ASRA/MUMBAI DATED 10.03.2020 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.

Respondents: Shri Irfan, Sankar, Shri Mohammed Faizan Baig, Shri Noorul Amin, Shri C. Baskar, Shri Najubudeen and others.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.CUS-I No. 150/2016 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. 150/2016 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 were in receipt of specific intelligence that Shri Irfan would be arranging to receive goods and gold from Dubai carried by international passengers. Pursuant to the information the Officers intercepted the international passengers and the persons who received the goods from these passengers. Examination of the goods brought by these passengers resulted in the recovery of 4.088 kgs of gold totally valued at Rs. 1,28,14,994/- ( Rupees one crore Twenty eight lacs Fourteen thousand Nine hundred and Ninety four). Most of the gold was ingeniously concealed and it was recovered after dismantling electrical goods ie home theatre systems and fans etc.

3. After due process of the law vide Order-In-Original No. No. 319/11.09.2015 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 under section 112 (a) and (b) of the Customs Act, 1962 on all the persons involved in the above smuggling operation. But refrained in imposing penalty under section 114AA of the Customs Act, 1962 on the all Respondents.

4. 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. 150/2016 dated 24.03.2016 rejected the appeal of the Applicant department.

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

5.1 The Original adjudicating authority and the Commissioner (Appeals) has specifically not imposed penalties U/s 114AA on 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.

5.2 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.

6. 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.

7. 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. In addressing the issue the Appellate authority states *" I find that the passengers were already been penalized under Section 112 (a) and (b) of the Customs Act, 1962, for having done certain acts which has rendered the impugned goods confiscable. For the same transaction a new colour is sought to be given that they have made a false declaration to the Customs Authorities, whereas I find that they have not made any declaration at all in the Customs declaration Form. Had they made declaration that they had not brought gold or something else, then they can be said to have made false declaration. In this case, they have not declared anything which means has omitted to do something and that omission rendered the gold liable for confiscation. This omission has already been penalised under Section 112 (a; and (b)of the Customs Act, 1962. Non-declaration cannot be false declaration Therefore the provisions of Section 114AA of the Customs Act, 1962 cannot invoked as the ingredients therein are not present in this case. Penalty under Section 112 (a) and (b) of the Customs Act, 1962, is just and sufficient in this case."*

8. Be that as it may, Government notes that the Hon'ble High Court of Karnataka in the case of Khoday Industries Ltd. Vs UOI reported in 1986(23)ELT 337 (Kar), while interpreting the taxing statutes states *" Interpretation of taxing statutes – one of the accepted canons of Interpretation of taxing statutes is that the intention of the amendment be gathered from the objects and reasons which is a part of the amending Bill to the Finance Minister's speech"*.

9. 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. 23/2020-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 Ghouse Samdhani, S/o Ibrahim, No. 144, Samy Naikan Street, Chindadripet, Chennai 600 002.
3. Shri Sankar Kuruvilankudi PO, Thiruvadanai Taluk, Ramanathapuram District, 623 409.
4. Shri Irfan, S/o Mahboob Ali No. 72, IInd Floor, Venkatesh GramaniSt, Chidadripet, Chennai 600 002.
5. Shri Mohammed Faizan Baig, S/o Abdul Hafeez Baig, 17/10 Subbiah Street, Barracks Road, Periamet, Chennai 600 003.
6. Shri Noorul Amin, S/o Sheikh Abdul Khader, 2/116, Mahasoomiya Street, Budamangalam PO, Nagai District 610 114.
7. Shri C. Baskar, S/o Chandrasckar, 31/24 Old Aramanai Street, Kumbakonam 612 001.
8. Shri Najubudeen, S/o Abdul Jalcel, South Street, Atikkadai PO, Thiruvarur 613 702.

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