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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. 373/58-59/B/2018-RA/5341
F. No. 380/10-11/B17-RA

Date of Issue 11.09.2020

ORDER NO. 141-144/2020-CUS (SZ)/ASRA/MUMBAI DATED 07.08.2020 OF THE
GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT
OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

F.No. 373/58-59/B/2018-RA

Applicant : Shri Gnanam & Smt. Nithyakala

Respondent : Commissioner of Customs, Chennai.

F. No. 380/10-11/B17-RA

Applicant : Commissioner of Customs, Chennai.

Respondent : Shri Gnanam & Smt. Nithyakala

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C.Cus-I No. 157-
158/2017 dated 30.08.2017 passed by the Commissioner of
Customs (Appeals-I), Chennai.



ORDER

These revision applications has been filed by both Shri Gnanam & Smt. Nithyakala (herein after referred to as the Applicants-1) and the Commissioner of Customs, Chennai (herein after referred to as the Applicants-2) against the order in appeal C.Cus-I No. 157-158/2017 dated 30.08.2017 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that Shri Gnanam & Smt. Nithyakala both Srilankan citizens arrived at the Anna International Airport on 21.10.2016 alongwith their children Ms Thishmi and Master Harshvin. They were intercepted at the exit after they had cleared themselves through the green channel. Examination of Smt. Nithyakala resulted in the recovery of gold jewelry worn on her person. Six bangles were recovered from her hand baggage. The jewelry totally weighed 491.5 gms and was valued at Rs. 14,55,942/- (Fourteen Lacs Fifty five thousand Nine hundred and forty two). Similarly, Examination of Shri Gnanam resulted in the recovery of gold jewelry carried by him in his underwear. The jewelry totally weighed 401 gms and was valued at 12,02,710/- (Rupees Twelve Lacs Two thousand Seven hundred and Ten).

3. The Original Adjudicating Authority vide Order-In-Original No. 15/2017-18 ordered absolute confiscation of the impugned gold under Section 111 (d) and (l) of the Customs Act,1962, and imposed penalty of Rs. 1,45,000/- (Rupees One lac Forty five thousand) on Smt. Nithyakala under Section 112 (a) of the Customs Act. Similarly the Original Adjudicating Authority vide Order-In-Original No. 24/2017-18 ordered absolute confiscation of the impugned gold under Section 111 (d) and (l) of the Customs Act,1962, and imposed penalty of Rs. 1,20,000/- (Rupees One lac Twenty thousand) on Shri Gnanam under Section 112 (a) of the Customs Act. In addition the Original Adjudicating Authority imposed a penalty of Rs. 5000/- each on both the Applicants under Section 114AA of the Customs Act 1962 in the above mentioned orders.

4. Aggrieved by the said order, both the applicants-1 filed appeals before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus-I No. 157-158/2017 dated 30.08.2017 set aside the penalty imposed under Section 114AA of the Customs Act 1962, rejected rest of the appeal of both the appellants.

Aggrieved with the above order Shri Gnanam & Smt. Nithyakala have filed these revision applications interalia on the grounds that;



5.1 The order of the appellate authority is contrary to the law, weight of evidence and violates the principle of natural justice; The Shri Gnanam & Smt. Nithyakala had arrived at the Anna International Airport with their daughter Ms Thishmi and their son Master Harshvin to attend a marriage at Chennai. Part of the seized jewelry ie a gold chain each, was also worn by their son and daughter. The lower authority has failed to see that the Applicants had declared the gold when it was visible to the naked eye; The lesser authority ought to have seen that baggage is not confined merely to bonafide baggage within the meaning of section 79 of the Customs Act to personal effects; The lower authority ought to have permitted export as they are foreign nationals; The gold chain, gold bangles and anklet were worn and the same was visible to naked eye and therefore it amounted to declaration; The applicants both had arrived on 21.10.2016 and had return tickets for the 24.10.2016, instead of registering a case they could have advised them to keep it in ware house and take it while going back.

5.2 The Revision Applicants cited decisions in favor of their case prayed for setting aside the absolute confiscation of the gold and order its release on merit rate of duty or order for re-export on payment of redemption fine and penalty and thus render justice.

6. Aggrieved with the above order the Applicant department, have also filed these revision applications interalia on the grounds that;

6.1 The Passengers have filed separate appeals before the appellate authority who vide his common order C.Cus.No. 157 & 158 dated 30.08.2017 has set aside the penalties imposed U/s 114AA on both the passengers. 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; The Appellate Authority had observed that considering the objective of introduction of section 114AA in the Customs Act, 1962 as explained in the report of Standing Committee of Finance (2005-06), the gold in the present cases has physically crossed the border and hence Section 112 is applicable for imposing penalty and there is no need for invoking Section 114AA; it can be seen that 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 as correctly held in the Order-in-Original; The passengers are also liable for penalty under Section 112(a) since they attempted to clear gold by way of concealment and non-declaration to Customs and thus rendered the gold liable for confiscation under section 111(d) & (I) of the customs act, 1962; In view of the above, the Appellate Authority's observation that section 112 is applicable for imposing penalty since smuggled gold has physically crossed the border and that there is no need for imposing penalty under Section 114AA, does not appear to be legally correct.

6.2 In view of the above, it is prayed that the order of the appellate authority may be set ie or such an order be passed as deemed fit, just and proper in the circumstances of the case.

7. A personal hearing in the case was scheduled in the case on 01.10.2019, the Advocate for the Applicant Shri A. Ganesh appeared for the Applicant and submitted that there was no concealment and citing previous orders he sought relief in the form of re-export. Nobody from the department attended the hearing.

8. The Government has gone through the facts of the case, The Revision Applications have been filed by the department (Applicants-2) to address the issue of penalty imposed under section 114AA, which has been set aside by the Appellate Authority. In addressing the issue the observations of the Hon'ble High Court of Karnataka in the case of Khoday Industries Ltd. Vs UOI reported in 1986(23)ELT 337 (Kar), has held that "*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 Appellate authority has congruently gleaned the objective of introduction of Section 114AA in Customs Act as 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 therefore in full agreement with the above observations of the Appellate authority.

10. In addressing the issues raised in the Revision Applications filed by the Shri Gnanam & Smt. Nithyakala, Government notes the gold was not properly declared as required under section 77 of the Customs Act, 1962 and therefore the confiscation of the gold is justified. However, it is observed that the amount of gold under import is not very large considering that there were four passengers. The gold jewelry was worn by the Applicant-1 and some of it was recovered from thier hand baggage and cannot be termed as ingenious concealment. The applicants are foreign nationals. There are no allegations of any such previous offences. The Advocate of the Applicants has submitted their passport copies and their boarding passes during the course of their hearing supporting the fact that these Applicants had arrived with their two children who were also wearing gold jewelry and they were planning to leave India within the next 4-5 days. In view of the above, having detected the passengers wearing gold jewelry the officers could have detained the same allowing them to take the gold back on their return journey. The facts of the case do not justify absolute confiscation. Dispossessing the applicants of the gold is harsh in the reported circumstances.

11. Further, there are a number of judgments wherein the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 requires it to be exercised. In the case of Umabalasaraswati v/s Collector of Customs, 1988(37)ELT 106(Tribunal states " *The non-declaration which entails confiscation under section 111 (1) should be conscious and intentional non-declaration and would not take within its ambit more unintentional omission such as not declaring the ornaments worn on the person which are not at all concealed but are visible to the naked eye and therefore we set aside that part*



of the order." It is not stipulated in the Baggage Rules 1998 that a foreign tourist coming to India cannot wear gold ornaments. The High Court of Kerala in Vigneshwaran case held as follows " In the absence of any prohibition by the Act or any other law to the effect that a common tourist arriving in India cannot wear gold ornaments of 24 carat purity, clause (d) of section 111 could not have been invoked to confiscate the gold chain worn by the petitioner." The Government therefore is inclined to set it aside in the Appellate order and release the gold on suitable redemption fine and penalty.

12. In view of the above facts, the Government sets aside absolute confiscation of the gold in the order of the Commissioner (Appeals). The impugned gold ornaments weighing 491.5 gms and valued at Rs. 14,55,942/- (Fourteen Lacs Fifty five thousand Nine hundred and forty two) recovered from Smt. Nithyakala and the 401 gms of gold ornaments recovered from Shri Gnamam and valued at 12,02,710/- (Rupees Twelve Lacs Two thousand Seven hundred and Ten) are allowed to be redeemed for re-export on payment of redemption fine of Rs.3,32,000/- (Rupees Three lacs thirty two thousand) each under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify the amount of penalty imposed under section 112 of the Customs Act 1962 and needs no interference. Government however observes that once penalty has been imposed under section 112 there is no necessity of imposing penalty under section 114AA. The setting aside of penalty imposed under section 114AA of the Customs Act, 1962 in the Appellate order, on both the Applicants is upheld as legal and proper.

13. Revision Application is disposed as above.

14. So ordered.

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

141-144
ORDER No. /2020-CUS (SZ) /ASRA/

DATED 07.08.2020

To,

Shri Gnamam & Smt. Nithyakala
C/o Shri A. Ganesh, Advocate, F. Block179, IV Street, Annanagar, Chennai 600 102

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. Shri A. Ganesh, Advocate, F. Block179, IV Street, Annanagar, Chennai 600 102
3. Sr. P.S. to AS (RA), Mumbai.
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ATTESTED

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

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