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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. 380/29/B/2018-RA/5029

Date of Issue 01.09.2020

ORDER NO. 154/2020-CUS (SZ)/ASRA/MUMBAI DATED 31.08.2020 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 : Smt. Kanchal Bansal

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.CUS-I No. 02/2018 dated 25.01.2018 passed by the Commissioner of Customs (Appeals), 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. 02/2018 dated 25.01.2018 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Smt. Kanchal Bansal at the green channel of the arrival hall at the Anna International Airport, Chennai on 17.08.2017, after clearing customs with her baggage. When she was questioned about possession of dutiable goods she replied in the negative. Not being satisfied the officers conducted a search of her baggage. The examination of her hand baggage resulted in the recovery of nine gold chains totally weighing 500 grams and valued at Rs. 13,97,000/- (Rupees Thirteen lacs Ninety seven thousand).

3. After due process of the law vide Order-In-Original No. 159/2017-18 AIRPORT dated 16.11.2017 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) and (l) of the Customs Act, 1962 read with section 3(3) of the Foreign Trade (Development & Regulation) Act,1992 and imposed penalty of Rs. 1,40,000/- (Rupees One lac Forty thousand) under Section 112 (a) of the Customs Act,1962. The adjudicating authority also imposed penalty of Rs. 15,000/- (Rupees Fifteen thousand) under Section 114AA of the Customs Act,1962.

4. Aggrieved by this order the Respondent filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals) set aside the absolute confiscation and allowed release of the gold on payment of Rs. 3,00,000/- (Rupees Three lacs) and set aside the penalty imposed under 114AA of the Customs Act,1962, without interfering with the penalty imposed under section 112 (a) of the Customs Act,1962.

5. Aggrieved with the above order the Applicant department has filed this revision application stating that the order of the Commissioner (Appeal) is not legal or proper for the following reasons;

6.1 The Commissioner (Appeals) order setting aside the penalty under section 114AA on the respondent is neither legal nor proper.

6.2 The passengers had attempted to smuggle the gold by way of concealment and non-declaration to customs knowing well that she was not an eligible passenger to import gold.

6.3 The passenger had not declared the possession of gold totally weighing 500 gms as required under section 77 of the Customs Act, 1962.

6.4 Considering these facts the Adjudicating Authority has imposed separate penalties under section 112 (a) and 114AA of the Customs Act, 1962. But the Appellate authority has set aside the penalty under section 114AA ordered by the lower adjudicating authority.

6.5 Section 114AA of the Customs Act, 1962 states that "if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, he shall liable to a penalty not exceeding five times the value of goods".

6.6 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 passenger has intentionally suppressed the possession of gold when questioned in the presence of witnesses, thus, by making a false declaration, the passenger has rendered herself liable for penalty under section 114AA of the Customs Act, 1962 as correctly held in the Order in original

6.7 The passenger is also liable for penalty under Section 112(a) since she 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) & (l) of the Customs Act, 1962.

6.8 In view of the above, the Appellate Authority's observation that section 112(a) is applicable for imposing penalty since smuggled gold has physically crossed the border and that there is no need for imposing penalty under Section 14AA, does not appear to be legally correct, as can be seen from the following case laws:

1. In CUSAA No. 42/2011 dated 26/03/2012 the Hon'ble High Court of New Delhi has upheld penalty under both Section 112 (a) and Section 114AA of the Customs Act 1962.

II. Vide order dated 09/04/2014 in F. No: 371/101/B/13-RA, the Revision Authority has confirmed levy of penalty under the section 112(a) and 114AA of the Customs Act, 1962;

In view of the above, It is prayed that the order of the Appellate authority with reference to dropping of penalty levied u/s 114AA of Customs Act, 1962 may be set aside or such an order be passed as deemed fit.

7. Accordingly, a Show Cause notice under section 129DD of the Customs Act, 1962 was issued to the Respondent as to why the said order in Appeal should not be annulled or any other order as deemed fit be passed by the Government on the grounds stipulated in the said Revision Application. In reply the Advocate of the Respondent in his letter dated 09.01.2019 has interalia stated that,

7.1 Section 114AA was introduced by the Taxation Laws (Amendment) bill, 2005 and the same has come in effect from 13.07.2006.

7.2 The Appellate authority has specifically given the finding for setting aside the penalty under Section 114AA of the Customs Act, 1962.

7.3 The order of the Appellate authority is licit and has categorically given his findings that once penalty is imposed under section 112 (a) of the Customs Act, 1962, then for the same Act, a separate penalty under Section 114AA of the Customs Act, 1962 is uncalled for.

7.4 A similar order passed by the Appellate authority was challenged before the Hon'ble CESTAT, SZB Chennai, in the case of Commissioner of Customs , Sea Chennai-II vs M/s Sheri Hrisna Sounds and Lightings. The tribunal has upheld the order setting aside the penalty since already a penalty has been imposed under section 112 (a). The said order of the Tribunal has also held that the Commissioner of Customs (Appeals) has analyzed the object and purpose of this section and has held that in view of the rationale behind the introduction of Section 114AA of the Customs Act, 1962 and found the same to be excessive and has to be set aside.

7.5 The Respondent fervently submits that the Finance Act 2018 has amended section 125 of the Customs Act, 1962 by inserting sub-section (3) which states that whenever an option of redemption is granted, the same has to be executed within 120 days.

7.6 The Respondent prayed that the Revision Application be dismissed and the order of the Commissioner (Appeals) be confirmed and thus render justice.

8. The Respondent meanwhile filed a Writ Petition No. 5099 of 2019 before Hon'ble High Court of Madras for issuance of a writ of mandamus directing the respondent (Applicant department) to implement the order passed by the Commissioner (Appeals). The Applicant department through their standing counsel informed that the Hon'ble High Court of Madras that the Revision Application filed by the Applicant department before the Revision authority will be disposed within a period of eight weeks from the date of hearing ie 22.07.2020 the petitioner over video conferencing. In view of the submission the Hon'ble High Court has listed the case on 21.09.2020 for production of the order.

9. In view of the orders of the Hon'ble High Court an e-mail scheduling the personal hearing was sent to the Advocate, Shri T. Chezhiyan of the Respondent. In reply the Advocate in his e-mail letter has stated that *" the only issue in the revision filed by the department is the penalty under section 114AA. Since this issue is covered by Tribunal as well as the Revisional authority I submit that my appearance (through video conferencing) may be dispensed with and the case be decided on the strength of the reply to the Show Cause Notice and the order enclosed herewith. Stating further that he requires a personal hearing only if at all or in the event of any issues other than section 114AA"*

10. In view of the above the case is taken up for a decision on merits. The Government has gone through the facts of the case, The Revision Applications have been filed by the department specifically to address the issue of penalty imposed under section 114AA of the Customs Act,1962 by the original adjudicating Authority, which was set aside by the Appellate Authority.

11. In addressing the applicability of penalty under section 114AA of the Customs Act, 1962, 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 "*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*".

12. The intention for introducing Section 114AA in the Customs Act, 1962, 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."

13. Penalty under Section 112 is imposable on a person who has made the goods liable for confiscation. But in the case of exports there could be situation where no goods cross the border and the export was shown to have made on the basis of fraudulent documents. Since such situations were not covered for penalty under Section 112/114, Section 114AA was incorporated in the Customs Act by the Taxation Laws (Amendment) Act, 2006. Thus Government concludes section 114AA has been specifically introduced to address fraudulent exports, wherein the exports incentives were sought to be availed on false documents, without the exports actually taking place. Therefore, the instant case does not warrant imposition of penalty under section of the Customs Act, 1962.

14. The Government is therefore in full agreement with the order of the Appellate authority in setting aside the penalty imposed under section 114AA. The setting aside of penalty under section 114AA of the Customs Act, 1962 is upheld as legal and proper. The Revision application is therefore required to be dismissed.

15. Revision Application is dismissed.

16. So, ordered.



(SEEMA ARORA)


Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 154/2020-CUS (SZ) /ASRA/MUMBAI

DATED 31-08.2020

To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.

 Smt. Kanchan Bansal, W/o Shri Hitesh Bansal, No. 7(7), Vichur Muthiah Street, 4th Floor, Choolai, Chennai 600 112.

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