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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. 380/28/B/SZ/2018-RA / 4305

Date of Issue

15/10/2019

ORDER NO. 19/2019-CUS (SZ) / ASRA / MUMBAI/ DATED 30.09.2019 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.

Applicant : Commissioner of Customs (Airport) Chennai-I.

Respondent : Shri Abdul Rehman Darji

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus. I. No. 01/2018 Dated 22.01.2018 passed by the Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Commissioner of Customs (Airport) Chennai (herein referred to as Applicant) against the Order in Appeal C.Cus. I. No. 01/2018 Dated 22.01.2018 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. On 15.06.2017 the Respondent Applicant was intercepted by the Customs officers as he was walking out through the exit after passing the green channel of the Chennai Airport. Personal search of the Respondent resulted in the recovery of three gold bars totally weighing 349.5 gms valued at Rs. 10,19,841/- (Rupees Ten lacs Nineteen thousand Eight hundred and Forty one). The gold bars were taped to his feet inside the socks worn by the respondent.

3. After due process of the law vide Order-In-Original No. 137/2017-18-AIRPORT dated 27.10.2017 the Original Adjudicating Authority ordered confiscation of the gold under Section 111 (d) & (l) of the Customs Act, 1962. But allowed redemption of the same for re-export on payment of fine of Rs. 5,10,000/- (Rupees Five lacs Ten thousand) and imposed penalty of Rs. 50,000/- (Rupees Fifty Thousand) on the Applicant under Section 112 (a) of the Customs Act,1962. A penalty of Rs. 10,000/- (Rupees Ten Thousand) was also imposed under Section 114AA of the Customs Act,1962.

4. Aggrieved by the said order, the Applicant, filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C.Cus. I. No. 01/2018 Dated 22.01.2018 reduced the redemption fine to Rs. 2,50,000/- and set aside the penalty imposed under section 114AA of the Customs Act,1962.

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

5.1 While disposing the Appeal the Commissioner (Appeals) vide his Order in C.Cus I. No. 01/2018 dated 22.01.2018 has reduced RF to Rs.2,50,000, Set aside the penalty under section 114AA ordered by the lower adjudicating authority

5.2 For the reasons recorded In the Grounds of Appeal as stated below, it appears that the order passed by the Commissioner of Customs Appeal with reference to setting aside penalty levied U/s 114AA is neither legal nor proper.

- 5.3 (i) The passenger had attempted to smuggle the gold by way of concealment and non-declaration to Customs knowing well that he was not an eligible passenger to Import gold;
- (ii) The passenger had not declared to the Customs officer about the possession of gold totally weighing 349.5 Gms (valued at Rs.10,19,841/-) as required under Section 77 of the Customs Act, 1962;
- (iii) Considering the facts of the case the Adjudicating Authority, vide his O-in-O no. 137/2017-18 dated 27.10.2017, has passed order for confiscation of the said gold and imposed separate penalties u/s 112(a) and 114AA of the Customs Act, 1962. But the Appellate Authority has set aside the penalty under Sec. 114AA levied by the lower adjudicating authority.
- (iv) 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 case has physically crossed the border and hence Section 112 is applicable for imposing penalty and there is no need for invoking Section 114AA.
- (v) 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, shall be liable to a penalty not exceeding five times the value of goods".
- (vi) 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 himself liable for penalty under section 114AA of the Customs Act, 1962 as correctly held in the Order-in-Original.

5.4 The Applicant Department submitted case laws in favor of his case and prayed that the order of the Appellate authority setting aside the penalty imposed under section 114AA of the Customs Act, 1962 may be set aside or such order be passed as deemed fit.

6. A personal hearing in the case was held on 30.08.2019. The Respondent Shri Abdul Rehman Darji attended the hearing, he submitted that he was not aware of the

rules and procedures and admitted his mistake. He also submitted purchase bills and withdrawal SMS and expressed his willingness to pay fine and penalty. Nobody attended the hearing on behalf of the Applicant Department.

7. Government has carefully gone through the facts of the case. The Revision Applications have been filed 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*".

8. 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.

9. In light of observations made in foregoing para, the Government in conclusion therefore finds no reason to interfere with the Orders-in-Appeal on this aspect. The setting aside of the penalty under section 114AA in the impugned Appellate order is

upheld as legal and proper. Hence the instant Revision Application is liable to be dismissed.

10. Revision Applications is accordingly dismissed.

11. So, ordered.


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

ORDER No. 19/2019-CUS (SZ) /ASRA/

DATED 28-09-2019

To,

Shri Abdul Rehman Darji
h. No. 7/4252, Srinivas Nagar,
Proddatur - 516360,
Kadapah District,
Andhra Pradesh.

Copy to:

1. The Commissioner of Customs, (Airport), Mangalore
2. The Commissioner of Customs (Appeals-I), Custom House, Bangalore.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.