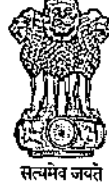


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GOVERNMENT OF INDIA
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F.No. 373/111,113 & 114/B/16-RA/241
Issue 03/05/2018.

Date of

ORDER NO. ²²⁶⁻²²⁸ /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.04.2018 OF
THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA ,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE
CUSTOMS ACT, 1962.

Applicant : Shri E. Stalin
: Shri.Jeevarathinam
: Shri Ganesh

Respondent : Commissioner of Customs (Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. 212
to 214/2016 dated 31.03.2016 passed by the
Commissioner of Customs (Appeals-I) Chennai



ORDER

These revision applications has been filed by Shri E. Stalin, Shri.Jeevarathinam, and Shri Ganesh against the Order in Appeal no 212 to 214/2016 dated 31.03.2016 passed by the Commissioner of Customs Excise (Appeals-I) Chennai pleading for setting aside or reducing the penalty imposed under 112 (a) and 114AA of the Customs Act, 1962. Since a common issue is involved in all these Revision Applications and as they are being represented by the same advocate Shri Palanikumar, these Revision Applications are being disposed by a common order.

2. Briefly stated facts of the case are that M/s. Picasso Enterprises filed bill of entry No. 4453062 dated 25.01.2014 declaring the goods as 4000 pieces of Chinese mobile phones from China totally valued at Its 33,89,844/-. In receipt pf specific intelligence, a thorough examination of the consignment was taken up by the officers of the Directorate of Revenue Intelligence it was found that 21 Kgs. of gold valued at Rs. 6,46,17,000/- was found concealed in the boxes containing mobile phones. In their statements recorded during the course of the investigations , the three appellants confessed, interalia, that they were employees of M/s. Ashirvad Global Logistics and they used to go to Air Cargo Complex in the name of affixing MRP stickers on the mobile in the name of Mts. Picasso Enterprises or M/s. Sri Lakshmi Printers, used to remove (the concealed gold bars from the imported mobile phones consignment and keep them in their pant pockets and take them out of Air cargo complex for which they received a consideration. It was found out that another 23 Kgs of gold of foreign origin valued at Rs. 6,78,50,000/- was smuggled previously by the same persons.

3. After due process of the law the Original Adjudicating vide this order No. 92/2016 dated 11.02.2016 imposed a penalty of Rs. 1,00,000 each under



Section 112 (a) of the Customs Act, 1962 was imposed on the all the three Applicants and Penalty of Rs. 1,00,000/- each was also imposed under section 114AA of the Customs Act, 1962 .

4. Aggrieved by this order the Applicants filed an appeal with the Commissioner of Customs (Appeals-I) Chennai. The Commissioner of Customs (Appeals-I) Chennai, vide his Order in Appeal 212 to 214/2016 dated 31.03.2016 rejected the Appeal.

5. The applicant has filed this Revision Application interalia on the grounds that;

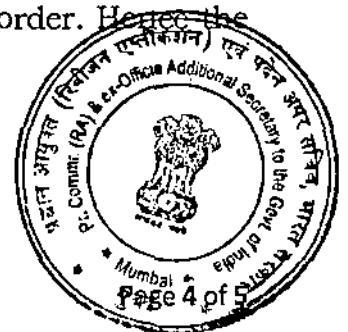
5.1. The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; They were only working as office boys and were not signing authority and have not made any declaration or submitted any false documents to the department. Therefore, there is no situation to warrant penalty under Section 114 AA of the Customs Act, 1962. ; They have no connection to the gold bars alleged to have been seized. Gold was not seized from their possession nor were they the owners of the gold; They are s not making any claim for the gold bars under seizure; They were not aware of the concealment of gold; Show cause notice was issued on 26.07.2014. Personal hearing was fixed on 18.01.2016. On 13.01.2016 request was made to the adjudicating authority to furnish all the documents relied upon in the show cause notice. Their plea was not consider; Non supply of relied upon and referred documents is violation of article 21 of the Constitution of India. Hence they were not able to make their proper defence effective and meaningful; The pant that were said to be worn by the appellants and used for keeping the gold removed from the consignment were not seized. They have not removed any gold from the said consignment nor he handed over the gold to any body and had never received any money. The sub Section of Section 112 of the Customs Act, 1962 was not applied.



5.2 The Revision Applicant finally stated that the Revisionary authority may be pleased to set aside the impugned order and set aside the penalty under section 112 (a) and (b) and thus render justice.

6. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar re-iterated the submissions filed in Revision Application and requested for setting aside the penalty under section 112 (a) and (b). Nobody from the department attended the personal hearing.

7. The Government has gone through the case records it observed that Gold weighing 21 Kgs valued at Rs. 6,46,17,000/- were found concealed in the consignment of mobiles. In their statements recorded under section 108 of the Customs Act, 1962 the applicants have confessed, interalia, that they were employees of M/s. Ashirvad Global Logistics and they used to go to Air Cargo Complex in the name of affixing MRP stickers on the mobile phones imported, and used to remove concealed gold bars from the imported mobile phones consignment and keep them in their pant pockets and take them out of Air cargo complex for which they have received consideration. They have also confessed that weekly one such consignment was imported. It is clear that all the Applicants are complicit in the crime. The Applicants were well of their roles in bringing the gold out of the Air Cargo complex and they also revealed the methods used. The facts of the case also reveal that the Applicants employers have revealed the role played by these three in the said modus operandi. Thus there is no doubt about the fact that the Applicant have contravened the provisions of Customs Act, 1962 and therefore, are liable for penalty. Further, gold was being imported in the guise of mobiles, thus it is clear the false and incorrect declarations were made and therefore the Applicants are also liable for penalty under Section 114AA. In view of the above mentioned observations the Government is inclined to agree with the Order in Appeal and the penalty imposed vide the impugned order. Hence the Revision Application is liable to be rejected.



8. Taking into consideration the foregoing discussion, Government upholds the Order in Appeal No. 212 to 214/2016 dated 31.03.2016.

9. Revision Applications are dismissed.

10. So, ordered.

Ashok Kumar Mehta

(ASHOK KUMAR MEHTA)

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

ORDER No. ^{226-22F} /2018-CUS (SZ) /ASRA/MUMBAI

DATED 28-04-2018

To,

Shri Shri E. Stalin
Shri.Jeevarathinam
Shri Ganesh

C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attested

Sankarsan Munda

SANKARSAN MUNDA
Asstt. Commissioner of Customs & C. Ex.

Copy to:

1. Commissioner of C. Ex.& Cus (Airport), Chennai
2. Commissioner of C. Ex. (Appeals-I) Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
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