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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. 373/112/B/16-RA / 234

Date of Issue 03/05/2018.

ORDER NO 237/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 27.04.2018 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 Albert Babu

Respondent : Commissioner of Customs (Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 210/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals-I) Chennai



ORDER

These revision application has been filed by Shri Albert Babu against the Order in Appeal no 210/2016 dated 31.03.2016 passed by the Commissioner of Customs Excise (Appeals-I) Chennai.

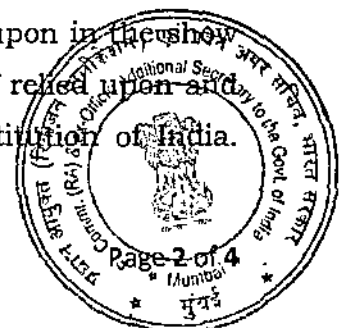
2. Briefly stated facts of the case are that M/s. Picasso Enterprises filed bill of entry No. 4453062 dated 25.01.2014 declaring the goods as 4000 pieces of Chinese mobile phones from China totally valued at Its 33,89,844/-. In receipt of specific intelligence, a thorough examination of the consignment was taken up by the officers 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. The Applicant was arrested and subsequently released on bail.

3. After due process of the law the Original Adjudicating vide his order No. 92/2016 dated 11.02.2016 imposed a penalty of Rs. 20,00,000/- under Section 112 of the Customs Act, 1962 and Penalty of Rs. 10,00,000/- was also imposed under section 114AA of the Customs Act, 1962 on the Applicant. As the Applicant for having successfully smuggled 23kg of gold valued at Rs. 6,78,50,000/- earlier, and as the gold was not available for confiscation a penalty of Rs. 51,00,000/- was also imposed on the Applicant.

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 210/2016 dated 31.03.2016 rejected the Appeal as not maintainable as the mandatory pre-deposit of 7.5% to be filed at the time of filing the Appeal was not made by the Applicant..

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; The Adjudication Authority has simply glossed over the judgments and points raised in the Appeal grounds; 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 considered; Non supply of referred documents is violation of article 21 of the Constitution of India.

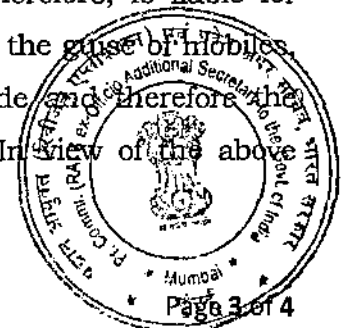


Hence they were not able to make their proper defence effective and meaningful; he has no connection whatsoever with the gold bars alleged to have been seized; He is not the owner and not making any claim for the gold; he has not done any act with respect to the seized gold; he has not seen the gold bars nor removed them; the imposition of penalty of Rs. 10lacs, Rs. 20 lacs and Rs. 51 lacs is very high, disproportionate and unreasonable as no previous case was registered against him; All his statements were recorded by force and third degree methods and he has retracted all his statements before the ACMM, Egmore Chennai;

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 his statements recorded under section 108 of the Customs Act, 1962 the applicant has revealed that as he did not have a CHA license he used to clear the consignments using the license of another firm paying him a sum of Rs. 10,000/- per month. The Applicant facilitated the smuggling by getting the consignments cleared and getting them out of the customs area with the help of his three employees. Investigations have revealed that the Applicant has been successful in his previous attempts thus causing a huge loss to the exchequer. It was he who informed and identified the carton box where the gold was concealed to his employees. The Applicant and his partner have both colluded with the importer in clearing the impugned consignments. It is thus clear that the Applicant is complicit in the crime. There is no doubt about the fact that the Applicant has contravened the provisions of Customs Act, 1962 and therefore, is liable for penalty under section 112. 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. 210/2016 dated 31.03.2016.

9. Revision Application is dismissed.

10. So, ordered.

(Handwritten Signature)
27-4-18

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 237/2018-CUS (SZ) /ASRA/Mumbai

DATED 27-04-2018

To,

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

True Copy Attested

(Handwritten Signature)
27/4/18

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

Copy to:

1. Commissioner of Cus (Airport), Chennai
2. Commissioner of Customs (Appeals-I) Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

