



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No 380/07-08/B/17-RA / 7306

Date of Issue 22/12/2021

ORDER NO. 321 - 322 /2021-CUS (SZ)/ASRA/MUMBAI
DATED 15.12.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI
SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF
THE CUSTOMS ACT, 1962.

File No. : 380/07-08/B/17-RA

Applicant : Pr. Commissioner of Customs, Commissionerate - I, Chennai
Airport, New Custom House, Meenambakkam,
Chennai - 600 027.

Respondent : Shri. Subramania Kolam Madhava Prakaash

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
C.Cus.I. No. 150 & 151/2017 dated 17.08.2017 [C4-I/91 &
92/0/2017-AIR] passed by the Commissioner (Appeals-I),
Chennai - 600 001.



ORDER

The revision applications have been filed by Pr. Commissioner of Customs, Commissionerate – I, Chennai Airport, (hereinafter referred to as Applicant) against the Order in Appeal No. C.Cus.I. No. 150 & 151/2017 dated 17.08.2017 [C4-I/91 & 92/0/2017-AIR] passed by the Commissioner (Appeals-I), Chennai – 600 001.

2. Briefly stated facts of the case are that based on a specific intelligence, the Respondent was intercepted at the Chennai Airport on 17.12.2015 after he had crossed the green channel. The Respondent had arrived from Singapore onboard Air India Express Flight No. IX-681/17.12.2015. Respondent had submitted a Customs Declaration Form wherein it was mentioned that no dutiable goods were in his possession. To the specific query put to him by the Officers regarding possession of any dutiable goods either on his person or in his baggage, the Respondent had replied in the negative. A personal search of the Respondent revealed that he had strapped 8 heavy bundles below both his knees. An examination of these 8 heavy bundles led to the recovery of 27 nos of foreign marked gold bars, totally weighing 2700 grams (27 nos x 100 gms each) and valued at Rs. 69,30,900/-. The Respondent was neither in possession of any valid document/permit/licence for the legal import of the impugned gold into India nor had possessed any foreign currency to pay the customs duty. In his voluntary statement recorded immediately, Respondent had revealed that he had carried the gold bars at the instance of Mr. Sadiq of Singapore for a monetary consideration of Rs. 15,000/-. Respondent also revealed that he had received the 2700 grams of gold bars which were packed in 8 bundles duly covered with black adhesive tape and that he had stuck 4 packets on each leg, below the knees with the help of strong white adhesive tape prior to boarding the flight to Chennai.

3. After due process of law and investigations, the original adjudicating authority viz, Addl. Commissioner of Customs, Chennai Airport, Chennai – 600 027, vide Order-In-Original No. 270/2016-17 dated 09.02.2017 [F.No. OS. 36/2016-INT-AIR (F.No. OS.DRI/CZU/VIII/48/ENQ-01/INT-34/2015)] ordered for the (i). absolute confiscation of the impugned gold bars, totally weighing 2700 gms and valued at Rs. 69,30,900/- under Section 111 (a) of the Customs



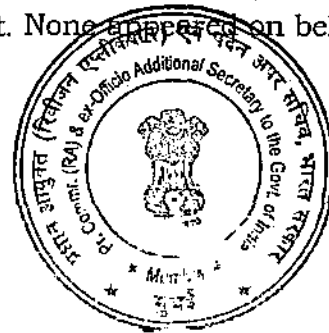
Act, 1962 read with the Foreign Trade (Development and Regulation) Act, 1992 (ii). imposed a penalty of Rs. 6,75,000/- on the Respondent under Section 112(a) of the Customs Act, 1962 (iv) imposed a penalty of Rs. 25,000/- on the Respondent under Section 114AA of the Customs Act, 1962 and (iv) imposed a penalty of Rs. 7,00,000/- on Shri. Sagubar Sadiq under Section 112(a) of the Customs Act, 1962.

4. Aggrieved by the said Order dated 09.02.2017, the Respondent filed an appeal before the Appellate Authority viz, Commissioner of Customs (Appeals-I), Chennai - 600 001 who vide Order-in-Appeal no. C.Cus.I. No. 150 & 151/2017 dated 17.08.2017 [C4-I/91 & 92/0/2017-AIR], modified the Order-In-Original dated 09.02.2017 to the extent of setting aside the penalty of Rs. 25,000/- imposed on the Respondent under Section 114AA of the Customs Act, 1962 whereas, the remaining part of the Order was upheld.

5. Aggrieved with the above order, the Applicant (i.e. the Department) has filed this revision application on the limited grounds that the penalty under Section 114AA of the Customs Act, 1962 arises for making a wrong declaration or using false document and since the Respondent had not declared the goods at the time of clearance, the penalty under Section 114AA of the Customs Act, 1962 was justified and setting aside of the same by the appellate authority was not proper.

Applicant (i.e. the department) have prayed that the Order-In-Appeal No. C.Cus.I. No. 150 & 151/2017 dated 17.08.2017 [C4-I/91 & 92/0/2017-AIR] passed by the appellate authority was not legal and proper to the extent of setting aside the penalty under Section 114AA was concerned and hence, the Order-In-Appeal was required to be set aside.

6. Personal hearing in the matter was scheduled for 21.11.2019 / 05.12.2019. Thereafter, upon the change of the Revisionary Authority, personal hearings in the case through the online video conferencing mode were scheduled for 09.02.2021 / 23.02.2021, 17.03.2021 / 24.03.2021, 21.10.2021 / 28.10.2021. Sufficient number of personal hearings were granted to the Applicant. None appeared on behalf of the



applicant and respondent. Accordingly, the case was taken up for decision on the basis of evidence on record.

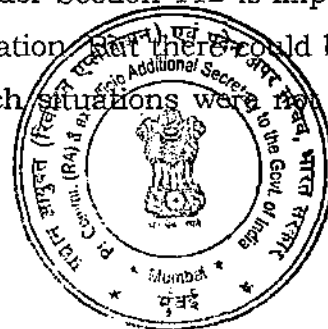
7. At the outset, the Government notes that the revision application has been filed by the applicant against the Order-In-Appeal passed by the appellate authority and the same is on the limited issue of setting aside the penalty imposed on the respondent under Section 114AA of the Customs Act, 1962. The records indicate that the Respondent have not filed any revision application. The Government proceeds to decide on the limited issue of legality or otherwise of the setting aside of the penalty of Rs. 25,000/- imposed on the Respondent under Section 114AA of the Customs Act, 1962.

8. In addressing the issue of penalty under section 114AA of the Customs Act, 1962, Government relies on 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. In view of the above 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 is reproduced below;

"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."

10. Government therefore observes, 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 penalty of Rs. 25,000/- (Rupees Twenty five thousand only) imposed under section 114AA of the Customs Act, 1962 is liable to be set aside.

11. In view of the above, the Government observes that once penalty has been imposed under section 112(a) / (b) there is no necessity of imposing penalty under section 114AA of the Customs Act, 1962. Therefore, the Government notes that the appellate authority has rightly set aside the penalty of Rs. 25,000/- (Rupees Twenty five thousand only) imposed under section 114AA of the Customs Act, 1962.

12. For the aforesaid reasons, the Government is not inclined to interfere in the Order of the appellate authority setting aside the penalty of Rs. 25,000/- imposed on the applicant by the adjudicating authority under Section 114AA of the Customs Act, 1962.

13. Accordingly, the Revision Application filed on the limited issue of the appellate authority setting aside of the penalty imposed under Section 114AA is hereby dismissed.

Shrawan Kumar
15/12/21
(SHRAWAN KUMAR)

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

ORDER No. ³²¹⁻³²² /2021-CUS (SZ) /ASRA/

DATED 15.12.2021

To,

1. Shri. Subramania Kolam Madhava Prakaash, Cholakkara House, Koduvally PO, Kozhikode.
2. The Commissioner of Central Excise, Customs & Service Tax, C.R Buildingm Mananchira, Calicut : 673 001land, Cochin, Kerala : Pin 682 009.Pin : 620 001.

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