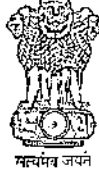


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
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Mumbai-400 005

F.No. 380/05/B/17-RA (MUM) / 1857 Date of Issue 22/12/2021

ORDER NO. 324/2021-CUS (SZ)/ASRA/MUMBAI
DATED 16.12.2021 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. : 380/05/B/17-RA

Applicant : Commissioner of Customs, Commissionerate-I, Chennai
Airport, Chennai : 600 027. .

Respondent : Shri. Yuvabalan Sivasamy

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
CUS.I.No. 169/2017 dated 12.09.2017 [C4-I/146/O/2017-
AIR] passed by the Commissioner (Appeals-I), Chennai.



ORDER

The revision application have been filed by Commissioner of Customs, Commissionerate - I, Chennai Airport (hereinafter referred to as the Applicant) against the Order in Appeal No. CUS.I.No. 169/2017 dated 12.09.2017 [C4-I/146/O/2017-AIR] passed by the Commissioner (Appeals-I), Chennai.

2. Briefly stated facts of the case are that the respondent a Malaysian National had arrived at Chennai Airport from Kuala Lumpur on 06.10.2016 and was intercepted by Customs. A personal search conducted resulted in the recovery of two gold chains of 24 carat purity, totally weighing 401 grams, valued at Rs 12,19,040/-. The gold chains were silver coated and had been worn by the respondent around his neck under the shirt. The respondent had neither declared the gold nor was in possession of any valid document/permit/licence for the legal import of the impugned gold into India and also did not possess any foreign currency to pay the Customs duty. The Respondent being a foreign national was not an eligible passenger to bring the gold into India and in his voluntary statement immediately after detection of the impugned gold, stated that he had deliberately not declared the gold with an intention to evade Customs duty. Respondent also stated that he had brought the gold chains to sell it in the market and to derive a monetary benefit.

3. After due process of investigation and the law, the original adjudicating authority viz, the Addl. Commissioner of Customs, (Adjudication-AIR), Chennai vide Order-In-Original No. 67/2017-18 [F.No. O.S No. 726/2016-AIR] dated 25.05.2017 ordered the absolute confiscation of the two gold chains of 24 carat purity, totally weighing 401 grams, valued at Rs. 12,19,040/- under Section 111 (d) and (l) of the Customs Act, 1962 read with Sec 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 and imposed a penalty of Rs.1,20,000/



under Section 112 (a) of the Customs Act, 1962 and also imposed a penalty of Rs 5000/- under Section 114 AA of the Customs Act, 1962.

4. Aggrieved with the above order, the respondent filed an appeal before the appellate authority viz, Commissioner (Appeals-I), Chennai who vide Order-in-Appeal No. CUS.I.No. 169/2017 dated 12.09.2017 [C4-I/146/O/2017-AIR], allowed the respondent to re-export the impugned gold on payment of a redemption fine of Rs. 3,00,000/- and the penalty imposed under Section 112(a) of the Customs Act, 1962 was sustained, however, the penalty of R. 5000/- imposed under Section 114AA of the Customs Act, 1962 was set aside.

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

5.1. that the order passed by the appellate authority with reference to setting aside the penalty levied u/s 114AA was neither legal nor proper.

Applicant has prayed that the Order-In-Appeal passed by the appellate authority was not legal and proper to the extent of penalty under Section 114AA was concerned and hence, the same is required to be set aside.

6. Personal hearings in the case was scheduled for 21.11.2019 / 05.12.2019. After the change of the revisionary authority, the personal hearing through the online video conferencing mode was scheduled for 09.02.2021 / 23.02.2021, 17.03.2021 / 24.03.2021, 21.10.2021 / 28.10.2021. Sufficient opportunity has been given to the applicant and the respondent both to avail the personal hearing. Since no one appeared, the case is being taken up for disposal on the basis of evidence on record.

7. At the outset, the Government notes that the applicant have filed this revision application on the limited ground of applicability of Section 114AA of the Customs Act, 1962. The applicant have stressed that the setting aside of Section 114AA of the Custom Act, 1962 by the appellate authority was not proper nor judicious. Government notes that the re-export of the impugned gold allowed on payment of redemption fine in the Order-in-Appeal No. CUS.I.No. 169/2017 dated 12.09.2017



[C4-I/146/O/2017-AIR] is acceptable to the applicant. In view of the same, the Government is confining itself only to the issue prayed for by the applicant.

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. 5,000/-



(Rupees Five thousand only) imposed under section 114AA of the Customs Act, 1962 has been rightly set aside by the appellate authority.

11. In view of the above, the Government observes that once penalty has been imposed under section 112(a) / (b) of the Customs Act, 1962, 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. 5,000/- (Rupees Five thousand only) imposed under section 114AA of the Customs Act, 1962.

12. The Government therefore, does not find it necessary to interfere in the order-in-appeal passed by the appellate authority.

13. Revision Application is accordingly, rejected.

Shrawan
14/12/21

(SHRAWAN KUMAR)

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

ORDER No. 324/2021-CUS (SZ) /ASRA/

DATED 16.12.2021

To,

1. Shri. Yuvabalan Sivasamy, S/o. Shri. Sivasamy, 40, Market Street, 10200, George Town, Pulau Pinang, Malaysia – 2016.
2. Pr. Commissioner of Customs, Commissionerate-I, Chennai Airport, New Custom House, Meenambakkam, Chennai : 600 027.

Copy to:

1. Shri. Yuvabalan Sivasamy, C/o. Shri. A Ganesh, Advocate, F-Block 179, Anna Nagar, Chennai – 600 102. (address as per OIA).
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.

