



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No.380/03/B/17-RA (Mum)/624 Date of Issue : 14/06/2018

ORDER NO. 342/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.5.18 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 : Principal Commissioner of Customs, Chennai.

Respondent : Shri Harriesh Singh

Subject :Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal Airport C.Cus.I No.142/2017 dated 28.07.2017 passed by the Commissioner of Customs (Appeals-I) Chennai.



ORDER

This revision application has been filed by the Principal Commissioner of Customs, Chennai (hereinafter referred to as the Applicant) against the Order-in-Appeal Airport C.Cus.I No.142/2017 dated 28.07.2017 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated facts of the case are that the The facts of the case is that, on 30.01.2017 Shri. Harriesh Singh s/o Shri Hadmat Singh, (respondent) holder of Indian passport No. Z3963655 was about to travel Bangkok from Anna International Airport, Chennai by Spicejet airlines flight No. SG-95 dated 30.01.2017 and was intercepted on specific intelligence by the Customs Officers of the Anna International Terminal of Chennai Airport on reasonable suspicion that he may be carrying foreign currencies/contraband in his baggage or on person. Subsequently, US Dollars 5000 and 8000 Thai Baht totally valued at Rs. 3,52,360/-were recovered from the passenger. The passenger had also not made any customs declaration as per Section 77 of the Customs Act 1962. The passenger had attempted to smuggle the said foreign currencies by not declaring the same and was not in possession of any valid document. Therefore, the foreign currencies was seized under a mahazar for further action under the Customs Act, 1962 read with Sec 3(3) of the Foreign Trade (Development & Regulation) Act, 1992.

3. The Assistant Commissioner vide OIO no. 52/2017 dated 29.03.2017 had absolutely confiscated foreign currencies totally valued at Rs.3,52,360/- under section 113 (d), (e) and (h) of Customs Act, 1962 and imposed Penalty of Rs. 36,000/- under section 114(i) of the Customs Act, 1962 and also imposed a penalty of Rs 10,000/- under section 114 AA of Customs Act, 1962.

4. Aggrieved by the said order of the lower authority, the respondent filed appeal before the Commissioner of Customs (Appeals),Chennai.

While disposing the Appeal filed by the respondent, the Commissioner (Appeals) vide his Order-in-Appeal Cus No. 142/2017 dated 28.07.2017 set aside the absolute confiscation and allowed redemption of foreign currencies



on payment of redemption fine of Rs. 90,000/- and also set aside the penalty under Sec 114AA ordered by the lower adjudicating authority.

5. Since the ownership of the impugned foreign currencies was not in dispute, the Commissioner of Customs accepted the Commissioner (Appeals) order to the extent of allowing redemption on payment of redemption fine but ordered filing of appeal against the decision of Commissioner (Appeals) in regard to dropping penalty levied u/s 114AA of Customs Act, 1962 on the following grounds:

- 5.1 The passenger had attempted to smuggle the foreign currencies by way of non-declaration to Customs;
- 5.2 The passenger had not declared to the Customs officer about the possession of foreign currencies (valued at Rs.3,52,360/-) as required under Section 77 of the Customs act, 1962;
- 5.3 Considering the facts of the case, the Adjudicating Authority vide his O-in-O No.52/2017 dated 29.03.2017, has passed order for absolute confiscation of the said foreign currencies and imposed penalties u/s 114(i) and u/s 114AA of the Customs Act, 1962. But the Appellate Authority has set aside the absolute confiscation and allowed redemption on payment of redemption fine of Rs. 90,000/- and also set aside the penalty under Sec 114AA ordered by the lower adjudicating authority.
- 5.4 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 foreign currencies 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
- 5.5 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 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”.

5.6 It can be seen that Section 114 AA hold 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 had intentionally suppressed the possession of foreign currencies when questioned in the presence of witnesses. Thus by making false declaration the passenger has rendered himself liable for penalty under Section 114 AA of the Customs Act, 1962 as correctly held in Order in Original.

6. A personal hearing in the case was held on 21.05.2018. Nobody from the department attended the personal hearing. The Advocate for the respondent Shri R.V. Shetty attended the hearing and he re-iterated the Order of Commissioner (Appeal) and pleaded that the same may be upheld and Revision Application be dismissed.

7. On perusal of records, Government observes that in the instant case original authority absolutely confiscated foreign currencies totally valued at Rs.3,52,360/- under section 113 (d), (e) and (h) of Customs Act, 1962 and imposed Penalty of Rs. 36,000/- under section 114(i) of the Customs Act, 1962 and also imposed a penalty of Rs 10,000/- under section 114 AA of Customs Act, 1962. While disposing the Appeal filed by the respondent, the Commissioner (Appeals) vide his Order-in-Appeal Cus No. 142/2017 dated 28.07.2017 set aside the absolute confiscation and allowed redemption of foreign currencies on payment of redemption fine of Rs. 90,000/- and also set aside the penalty under Sec 114AA ordered by the lower adjudicating authority. Now, the applicant department has filed the instant revision application on grounds mentioned at para 5 supra and prayed that the order of the appellate authority with regard to dropping the penalty imposed u/s 114 AA may be set aside.

8. Government observes that Section 114AA of the Customs Act deals with penalty for providing false or incorrect statement. For better clarity Section 114AA of the Customs Act reads as follows:



"SECTION 114AA. Penalty for use of false and incorrect material. - 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.

A reading of the above-said provision reveals that penalty on the person can be imposed for the violation i.e. 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.

9. Government observes that the respondent in the instant case had not declared the impugned foreign currency truthfully to the Custom Officers in contravention of Section 77 of the Customs Act, 1962 and had intentionally attempted to export the same illegally. For the contravention of Section 77, for non declaration to Customs authorities at the time of his departure, the respondent has already been rightly penalized by the department under Section 114 of the Customs Act, 1962 as the respondent has done an act which has rendered the goods liable for confiscation under Section 113 of Customs Act, 1962.

10. Government further notes that the Commissioner (Appeals) has rightly pointed out at para 10 of the impugned order, the objective of introduction of Section 114 AA in Customs Act by the Taxation Laws (Amendment) Act, 2006 , as under:

The objective of introduction of Section 114AA in Customs Act is explained in para 63 of the report of the Standing Committee of Finance (2005-06) of the 14th Lok Sabha which 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, 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."



In the instant case the applicant has not made declaration as mandated under Section 77 of the Customs Act, 1962 and not in transaction of any business. The penalty under Section 114 AA of the Customs Act, 1962 is invocable if any person misdeclares, signs, issues any statement in the transaction of any business which is not the case in the instant revision application as the respondent failed to declare the seized currency which was confiscated under Section 113 of Customs Act, 1962 and he was penalized under Section 114 of Customs Act, 1962 and therefore, the penalty is not imposable under Section 114 AA of the Customs Act, 1962.

11. In view of the foregoing discussion, the Government holds that no penalty is imposable under section 114AA of the Customs Act 1962 as these provisions are not attracted in Baggage cases, and therefore entirely agrees with the observations of the Commissioner (Appeals) in para 10 of his impugned Order.

12. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate Order-in-Appeal Airport C.Cus.I No.142/2017 dated 28.07.2017 passed by the Commissioner of Customs (Appeals-I) Chennai, is upheld as legal and proper.

13. Revision Application is thus dismissed as devoid of merits.

14. So, ordered.

True Copy Attested

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28/5/18
एस. आर. हिरुलकर
S. R. HIRULKAR
(A.C)

Ashok Kumar Mehta
28/5/18
(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-officio
Additional Secretary to Government of India

ORDER No.342/2018-CUS (SZ)/ASRA/MUMBAI DATED 28.05.2018

To,

The Principal Commissioner of Customs (I)
New Customs House, Meenambakkam,
Chennai -27



Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai.60, Rajaji Salai, Custom House, Chennai-600 001.
2. Shri Harriesh Singh, S/o Shri Hadmat Singh, No.13/44, Nayaniappa Maistry Street, Park Town, Chennai-600 003
3. The Assistant Commissioner of Customs (Airport), New Custom House, Meenambakkam, Chennai 27.
4. Shri R.V. Shetty, Advocate, 101-E, Sterling Court, Next to Maheshwari Nagar, MIDC, Andheri (E), Mumbai 93
5. Sf. P.S. to AS (RA), Mumbai.
6. Guard File.
7. Spare Copy.

