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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. 380/01-02/B/17-RA / 13205

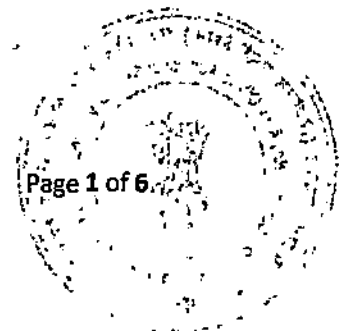
Date of Issue 31.08.2020

ORDER NO. 56-57/2020-CUS (SZ)/ASRA/MUMBAI DATED 20.05.2020 OF THE
GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Commissioner of Customs, Chennai.

Respondent : Smt. Vairavasundaram Jeyanthi

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C.Cus-I No.
146 & 147/2017 dated 04.08.2017 passed by the
Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Commissioner of Customs, Chennai. (herein referred to as Applicant) against the order C.Cus-I No. 146 & 147/2017 dated 04.08.2017 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the respondent, on 04.03.2016 Smt. Vairavasundaram Jeyanthi arrived at Anna International Airport, Chennai from Kuala Lumpur and was intercepted by the Customs Officers of the Anna International Terminal of Chennai Airport on reasonable suspicion that she might be carrying gold/contraband in her baggage or on person. She was brought to the AIU room for a detailed examination and 5 Nos, of gold bars and 3 Nos. of rectangular gold cut pieces which were kept concealed in two purses, one of them was kept inside the brassiere worn by the passenger and the other was kept concealed in a pouch tied around the waist, were recovered. The gold was of 24 carat purity totally weighing 6470 gms totally valued at Rs. 1,92,54,720/- (Rupees One crore Ninety two lacs Fifty four thousand Seven hundred and twenty). The passenger had written "NIL" in customs declaration form required as per Sec 77 of the Customs Act 1962.

3. The Original adjudicating authority vide OM no. 28/2016-17 dated 02.05.2017 absolutely confiscated the gold bars and gold cut pieces under section 111 (d) and (l) of Customs Act, 1962 read with Sec 3(3) of Foreign Trade (Development & Regulation) Act, 1992 and imposed Penalty of Rs. 18,00,000/- under section 112 (a) of the Customs Act, 1962 and also imposed a penalty of Rs 7,00,000/- on the respondent under section 114AA of Customs Act, 1962. Similarly penalties of Rs. 15,00,000/- and Rs. 5,00,000/- on Shri. A.K. Ganesan and Shri. R. Tirupathi, the respondents accomplices in the smuggling activity, respectively u/s 112(a) of the Customs act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus-I No. 146 & 147/2017 dated 04.08.2017 the Appellate Authority modified the order by setting aside the penalty imposed on Smt. Vairavasundaram Jeyanthi under Sec. 114AA passed by the lower adjudicating authority.

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

5.1 The order passed by the Commissioner of Customs (Appeals-I) with reference to setting aside the penalty imposed u/s 114AA is neither legal nor proper; The passenger had attempted to smuggle the gold by way of non-declaration to Customs;

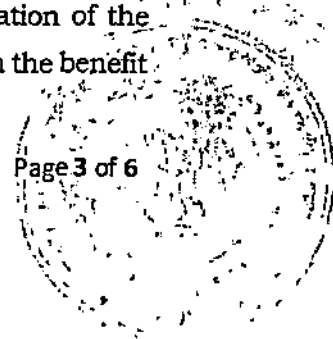


knowing well that she was not an eligible passenger to Import gold as required under Section 77 of the Customs act, 1962; Considering the facts of the case, The Adjudicating Authority, passed order for absolute confiscation of the said gold and imposed penalty. But the Appellate Authority has modified the order by setting aside the penalty imposed on Smt. Vairavasundaram Jeyanthi under Sec. 114AA passed by the lower adjudicating authority; The order of the Ld. Appellate Authority is erroneous and is liable to be set-aside. The order is full of infirmities and there is no application of mind while passing the orders.; The impugned order has failed to consider the various submissions of the applicant and evidence on record before adjudicating the matter; 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 gold 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; that Section 114AA holds 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 has intentionally suppressed the possession of gold when questioned in the presence of witnesses. Thus, by making a false declaration, the passenger has rendered herself liable for penalty under section 114AA of the Customs Act, 1962 as correctly held in the Order-in-Original. In view of the above, the Appellate Authority's observation that section 112 is applicable for imposing penalty since smuggled gold has physically crossed the border and that there is no need for imposing penalty under Section 114AA, does not appear to be legally correct.

5.2 In view of the above, it is prayed that the order of the Appellate authority may be set aside or such an order be passed as deemed fit,

6. Aggrieved with the above order the Respondent has also filed a reply to the Revision application on the following grounds;

6.1 Nowhere under the scheme of the Customs Act, 1962, or the Foreign trade Policy or for that matter of fact, under any other law, is importation of gold is prohibited. Foreign Trade Policy itself which governs the field relating to importability says that import of gold as a commodity is free. Import of gold in baggage of a passenger, coming from abroad is subject to certain conditions. Therefore, on fulfillment of such conditions, the importation of gold as baggage becomes not prohibited. The non-fulfillment of conditions would only make importation of the gold restricted inasmuch as the Person bringing the gold may not be given the benefit of the notification on concessional payment of duty.



6.2 The statements of the respondent should be viewed with caution as they were submitted at a time where the respondent had been put to peril in as much as she was arrested; The revisionist submits that the first statement dated 4.3.2016 had been retracted, by her from the prison and her bail application before the remanding magistrate court also talks averse that the statement recorded on 4.3.2016 from the revisionist was involuntary and under vitiating circumstances.; In fact, the first available defense to the allegations made against the revisionist at the time of interception, search and arrest is to the effect that she was supposed to accompany eligible passengers in the carriage of the gold from Malaysia to Chennai and due to the sudden cancellation of the said eligible passengers coming to Chennai, she had to carry the gold for the purpose of bringing' and allowing it to be detained at the customs counter in terms of section 18 of the Customs Act, 1962 for the purpose of re-export.

6.3 It is also her case that she was stopped at the X-ray machine end she was nowhere near the green channel or the exit of the arrival hall at the time of the interception. Therefore, the revisionist submits that the case of attempted illicit import of the gold in question on the basis of such statements should not be sustained and the order of the lower authority, confiscating the gold absolutely requires to be set aside, and grant option of redemption in terms of section 125 of the Customs Act, 1962.

6.4 The Respondent cited case laws in support of their contention and prayed that the orders of the lower authority be set aside and the gold released on redemption fine and penalty.

7. A personal hearing in the case was held in the case on 05.12.2018 the Advocate of the respondent contested confiscation and the penalty imposed and sought re-export, as the statements of the respondent is the only basis for imposition of penalty.

8. In addressing the grounds of the respondent on the issue of penalty under section 114AA of the Customs Act, 1962, 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*".



8.1 The Appellate authority has congruently gleaned 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 which states.....

"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."

8.2 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.

8.3 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 Government therefore, in full agreement with the above observations of the Appellate authority.

8.4 In light of observations made in foregoing para, the Government In conclusion therefore finds no reason to interfere with the Orders-in-Appeal on this aspect. The setting aside of the penalty under section 114AA in the impugned Appellate orders is upheld as legal and proper.

9. Government now, dwells on the reply of the respondent on the Revision Application. At the outset the Government notes that the quantity of gold is huge and was not declared as required under section 77 of the Customs Act, 1962. The respondent did not have any legal permit nor documents for permitting legal import of such large quantity of gold. She had only one day of stay abroad and the concealment and non-declaration clearly point out to her intention to evade payment of duty and facilitate the smuggling of the gold. The respondent is also not an eligible person to import gold. The Respondent does not have the means to purchase such huge quantity of gold and the gold was carried for somebody else. The initial statement of the respondent, that she had gone abroad for training purposes and her subsequent explanation that she was supposed to accompany eligible passengers in the carriage of the gold from Malaysia to Chennai etc. are all after thoughts to escape her present predicament and secure release of the gold. The order in original also notes

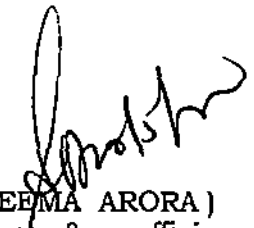


that in her frequent travels in the guise of attending training she had brought gold jewelry and sold it in India for small profits, thus she is an habitual offender. Government therefore does not find any merits in her submissions, the Impugned orders are therefore liable to be upheld.

10. Accordingly, Government upholds the impugned order of the Appellate authority. The setting aside of penalty under section 114AA of the Customs Act, 1962 by the Appellate authority is also upheld as legal and proper.

11. Revision applications are disposed of on above terms.

12. So, ordered.


(SEEMA ARORA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ⁵⁶⁻⁵⁷ /2020-CUS (SZ) /ASRA/MUMBAI DATED 20/5/2020.

To,

Shri Vairavasundaram Jeyanthi, D/o Shri Vairavasundaram, No. 19/20 , Kasidevar Sandhu, West Masi Street, Madurai City, Tamilnadu.

Copy To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

