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SPEED POST

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,

Mumbai-400 005

F.No. 373/72/B/17-RA

Date of Issue 31/08/2018

ORDER NO. ⁶⁴² /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 30.08.2018 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 Bismir Khan Saburbacth

Respondent : Commissioner of Customs(Airport), Visakhapatnam.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. Viz-CUSTOM-000-APP-126-16-17 dated 07.03.2016 passed by the Commissioner (Appeals) Visakhapatnam.



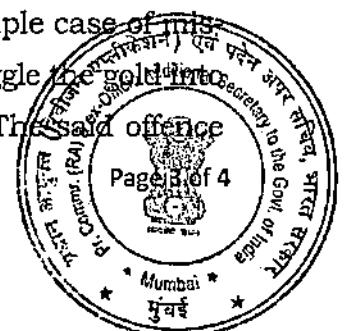
has erred in imposing penalty on the higher side inspite of the applicant pleadings that he agreed to carry the item without the knowledge that gold was concealed in the item; Imposition of penalty amounts to awarding punishment only if the adjudication authority finds that the applicant is responsible for the acts of commission or omission; The various judicial forums are very considerate when the passenger had no conscious knowledge of the offence; As there was no case of short levy, imposition of penalty under section 114AA need not be confirmed; Considering the totality of the case without any corroborative evidence the penal provisions may be dropped.

5.2 The Applicant submitted case laws in favor of his case and prayed for taking this memorandum of Appeal on record and pass such order as may be fit and proper in the facts and circumstances of the case.

6. The respondents in the case also filed their written submissions in the case. Citing a number of case laws they have submitted that if the conditions for import are not complied with then the gold would squarely fall under the definition of "prohibited goods"; In the case of Jasvir Kaur v/s Union of India reported in 2009 (241) ELT 521 (Del) the Hon'ble High Court of Delhi noted re-export cannot be allowed when the passenger is caught after trying to smuggle the gold into India; Considering the facts and circumstances of the case, it was reiterated that the orders passed by the adjudicating authority as well as the Appellate authority are fit and proper in all aspects and there are no grounds for Revision in the case.

7. A personal hearing in the case was scheduled to be held on 09.08.2018, the Advocate for the respondent Shri B. Kumar attended the hearing, he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals and requested for a lenient view to be taken in the matter. Nobody from the department attended the personal hearing.

8. The Government has gone through the case records it is observed that the gold was concealed in the Home theatre so as to avoid detection and evade Customs duty and smuggle the gold into India. This is not a simple case of mis declaration. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The said offence



was committed in a premeditated and clever manner and clearly indicates mensrea, and that there was no intention of declaring the gold to the authorities and if he was not intercepted before the exit, the Applicant would have taken out the gold without payment of customs duty. The Government also observes that the Applicant has admitted to having committed such acts earlier in his statements. Government however holds that no penalty is imposable under section 114AA of the Customs Act,1962 as this provision is not attracted in baggage cases.

9. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty of Rs. 1,52,000/- (Rupees One lakh Fifty two thousand) on the Applicant. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority. The penalty of Rs. 76,000/- (Rupees Seventy six thousand) imposed under section 114AA of the Customs Act,1962 has been incorrectly imposed, the penalty is therefore set aside.

10. The impugned Order in Appeal is modified as detailed above.

11. So, ordered.

Ashok Kumar Mehta
30/8/18

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

ORDER No. ⁶⁴²/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 30.08.2018

To,

Shri Bismir Khan Saburbacth
c/o M/s L. K. Associates
" Time Tower"Room No. 5, II Floor,
169/84, Gengu Reddy Road,
Egmore, Chennai- 600 008.

ATTESTED

S. R. Hirulkar
31/8/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of Customs, International Airport, Visakhapatnam.
2. The Commissioner (Appeals), Visakhapatnam.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

