373/82/B/17-RA

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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. 373/82/B/17-RA/1461 Date of Issue 04/09/2018

ORDER NO. 645/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 27.08.2018 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 Zahir Hussain Mohideen

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-CUSTM-OOO-APP-144-16-17 dated 24.03.2017 passed by the Commissioner (Appeals) Visakhapatnam.

ORDER

This revision application has been filed by Shri Zahir Hussain Mohideen (herein after referred to as the Applicant) against the order No. Viz-CUSTM-OOO-APP-144-16-17 dated 24.03.2017 passed by the Commissioner (Appeals) Visakhapatnam.

2. Briefly stated the facts of the case is that the officers of the Directorate of Revenue Intelligence intercepted 57 passengers on specific intelligence that these passengers would be attempting to smuggle gold pieces concealed in electronic items. The applicant, one of the above 57 passengers, was thus intercepted by the officers as he attempted to walk through the Green channel without declaration. Examination of his baggage resulted in the recovery of gold weighing 420 grams valued at Rs.11,42,400/- (Rupees Eleven lakhs Forty Two thousand and Four hundred).The gold was indigenously concealed in the home theatre brought as checked in baggage.

3. The Original Adjudicating Authority vide Order-In-Original No. 75/2016 dated 18.05.2016 ordered for absolute confiscation of the impugned gold under Section 111 (d), (i) and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 1,14,000/- under Section 112 (a) of the Customs Act. A penalty of Rs. 57,000/- under Section 114AA of the Customs Act, 1962 was also imposed on the applicant.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) Visakhapatnam who vide Order-In-Appeal No. Viz-CUSTM-OOO-APP-144-16-17 dated 24.03.2017 rejected the appeal of the applicant.

5. The applicant has filed this Revision Application interalia on the following grounds that;

5.1 The order of the appellate authority is unjust, unfair unfounded and totally devoid of merits; Both the authorities failed to see that the applicant was a victim of circumstances and was conned into carrying the Home theatre as a genuine item; The department has not produced any evidence apart from the involuntary statement of the Applicant; The Commissioner (Appeals) 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, stating that the appeal is a reiteration of their submissions before the adjudicating authority and Commissioner (Appeals) and the same have been discussed in detail in the findings of the orders. The orders are fit and proper in all respects including the imposition of penalties; The aforesaid facts may be taken into cognizance when disposing the Revision application.

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 bars 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. 1,14,000/- (Rupees One lakh fourteen 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. 57,000/- (Rupees Fifty seven 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.

27.8.18

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

ORDER No.645/2018-CUS (SZ) /ASRA/Mumbai DATED 27.08.2018

To,

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

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.

ATTESTED

4/9/18

S.R. HIRULKAR
Assistant Commissioner (R.A.)