

REGISTERED
SPEED POST



F.No. 380/15-A/B/2015-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue... 13/4/16

Order No. 65/18-Cus dated 11-4-2018 of the Government of India passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No.05/(SLM)/Cus/JPR/2015 dated 23.02.2015 passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur

Applicant : Commissioner of Customs, Central Excise, Jaipur

Respondent : Sh. Manoj Kumar Sharma

ORDER

A Revision Application F.No. 380/15-A/B/2015-RA dated 19.05.2015 has been filed by Commissioner of Customs & Central Excise, Jaipur, (hereinafter referred to as the applicant) against the Order-in-Appeal No. 05/(SLM)/Cus/JPR/2015 dated 23.02.2015 passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur, whereby the penalty on respondent under section 112 has been reduced from Rs. 30,00,000/- to Rs. 5,00,000/- and penalty under Section 114AA of Customs Act, 1962 has been waived.

2. The revision application is filed mainly on the grounds that the reduction of penalty under Section 112 from Rs. 30,00,000/- to Rs. 5,00,000/- is not commensurate to the gravity of offence committed by the respondent, penalty on the respondent under section 114AA is wrongly set aside by the Commissioner(Appeal) and the penalties imposed under section 112 and 114 AA were correctly imposed on the respondent.

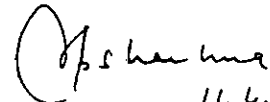
3. Personal hearing in the matter was fixed on 09.03.2018 and 04.04.2018. But no one for the applicant or the respondent appeared for personal hearing on any of these dates. No request for any other date of the hearing is also received from which it is implicit that they are not interested in availing hearing. Therefore, this matter is taken up for decision on the basis of available case records.

4. The Government has examined the matter and it is found that respondent had brought 8164.800 gms of gold of the value of Rs. 2.51 Crore in flagrant violation of Section 7 of the Foreign Trade (Development & Regulation) Act, 1992, Section 77 and Section 79 of the Customs Act and resorted to all tricks of concealment and misdeclaration for outrageous smuggling of gold from Dubai to India. Consequently, the original adjudicating authority inter-alia, confiscated the gold biscuits absolutely and imposed penalty of Rs. 30 lacs and Rs. 10 lacs on the respondent under Section 112 and Section 114AA of the Customs Act, 1962 respectively. Absolute confiscation of the gold has been upheld by the Commissioner(Appeal) also accepting all charges of brazen violation of above provisions. However, still the Commissioner(Appeal) has drastically reduced the penalty under Section 112 from Rs. 30 lacs to Rs. 5 lacs on the ground that gold has been absolutely confiscated and penalty under Section

114AA has been totally set aside for the reason that the respondent's case is not covered under this Section. The applicant has challenged the reduction of penalty under Section 112 mainly for the reason that penalty of Rs. 5 lacs is not commensurate to the gravity of the offence and the penalty imposed by the adjudicating authority was already more than reasonable. The government finds lot of force in this argument of the applicant as the penalty imposed on the respondent under Section 112 is less than 2 per cent of the value of the illegally imported good. Moreover, the respondent not only suppressed the import of gold at the time of his arrival but also mis declared the quantity when he was subjected to intense checking by the officers. He declared only 10 gold biscuits when the officers started examining his baggage but finally 70 gold biscuits were found from him on screening his baggage. Therefore, considering the high value of the smuggled goods and his all tricks played by him till last to hide true quantity of smuggled goods, the government is convinced that penalty of Rs. 5 lakh rupees is not commensurate to the gravity of the actions and omissions of the respondent. While penalty equivalent to the value of the smuggled-gold is imposable under Section 112 of the Customs Act, 1962, it is generally seen that the penalty of more than 15% of the value of gold is imposed by the Custom Authorities in such cases of smuggling of gold where even the value of gold is very small in comparison to this case. Therefore, the penalty of Rs. 30 lacs imposed by the Additional Commissioner in this case was reasonable as per the prevalent practice and it could not be regarded as excessive taking into view the magnitude of the offence committed by the respondent. The Commissioner(Appeal) has justified reduction of the penalty from 30 lacs to 5 lacs merely on the ground that the gold has been absolutely confiscated in this case. But the government is not impressed by this reason at all as confiscation of goods and penalty on the offender are two totally different matters and are dealt separately under two different Sections 111 and 112 of the Customs Act. While the confiscation of gold is for the reason of its illegal importation, personal penalty on the respondent is for the offense committed by the person in total disregard to the law of the land. Therefore, the government is fully convinced that the Commissioner(Appeal) has erroneously reduced the penalty from Rs. 30 lacs to 5 lakhs. However, the

government does not find any merit in the applicant's case with regard to the waiver of penalty under Section 114AA of the Customs Act by the Commissioner(Appeal) as applicant has not been able to make any case against the respondent that he had made or signed any declaration, statement or document which is false or incorrect. Instead, the applicant's case against the respondent is that he had not declared/mis-declared the imported goods to the customs authorities and for this purpose a penalty is already imposed on the respondent under Section 112(a)(ii) of the Customs Act, 1962.

5. In view of the discussions above, Commissioner (Appeal)'s order is modified and revision application is allowed to the above extent.


11.4.18

(R.P.Sharma)
Additional Secretary to the Government of India

Commissioner of Customs (p),
Jodhpur, Hqrs., New Central Revenue Building,
Statue Circle, C Scheme,
Jaipur-302005, Rajasthan,

Order No. 65/18-Cus dated 11-4-2018

Copy to:

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2. Commissioner of Customs and Central Excise (Appeals), NCR building, C-scheme, Jaipur-302005
3. Additional Commissioner of Customs (Preventive), NCR building, C-scheme, Jaipur-302005
4. PA to AS(RA)
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Superintendent / अधीक्षक
Customs & Central Excise
केन्द्रीय उत्पाद एवं सीमा शुल्क
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