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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No. 373/144/B/2018-RA  
F.No. 380/52/B/SZ/2018-RA / 3292

Date of Issue 28.08.2020

ORDER NO. <sup>66-67</sup> 2020-CUS (SZ)/ASRA/MUMBAI DATED 26/5/2020 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.

F.No. 373/144/B/2018-RA

Applicant : Shri Raychand Chopra

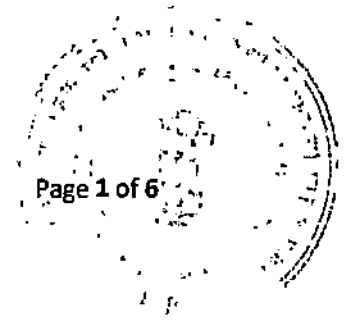
Respondent : Commissioner of Customs, Chennai.

F.No. 380/52/B/SZ/2018-RA

Applicant : Commissioner of Customs, Chennai.

Respondent: Shri Raychand Chopra

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal C.Cus-I No.  
16/2018 dated 31.01.2018 passed by the Commissioner of  
Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Raychand Chopra (herein after referred to as the Applicant) against the order in appeal Order-in-Appeal C.Cus-I No. 16/2018 dated 31.01.2018 passed by the Commissioner of Customs (Appeals), Chennai. A Revision Application has also been filed by the Commissioner of Customs, Chennai against the same order, C.Cus-I No. 16/2018 dated 31.01.2018 wherein Shri Raychand Chopra is the respondent. As both these applications have been filed against the same order, these applications are being disposed together.

2. Briefly stated the facts of the case are that the Applicant, arrived from Bangkok on 12.02.2017 and was intercepted as he was walking through the exit. On personal examination he was found carrying three gold chains worn carried in the jeans pockets worn by him. The gold totally weighed 485 grams and was valued at Rs. 14,38,726/- ( Rupees Fourteen lacs Thirty eight thousand Seven hundred and Twenty six ). The Original Adjudicating Authority vide Order-In-Original No. 140/2017-18-Airport ordered absolute confiscation of the impugned gold under Section 111 (d) (l) of the Customs Act,1962, and imposed penalty of Rs. 1,50,000/- ( Rupees One lac Fifty thousand ) under Section 112 (a) of the Customs Act. A penalty of Rs. 30,000/- (Rupees Thirty thousand ) was also imposed under Section 114AA 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. 16/2018 dated 31.01.2018 set aside the penalty under section 114AA of the Customs Act, 1962, and rejected the rest of the appeal.

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

5.1 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 Ld. Appellate Authority failed to appreciate the



contentions that Gold is not a prohibited item and according to the liberalized policy; Ld. Appellate Authority failed to appreciate the fact that the applicant was under the control of Customs Officer and he had not crossed the Green Channel and that there was no mensrea on the part of the applicant in so far as the alleged mis-declaration is concerned as the gold was not hidden in any ingenious manner.

5.3 The statement given by the applicant is invalid under Section 108 of the Customs Act as the same was obtained under force, threat and duress. The Learned Appellate Authority failed to take note of the fact that the applicant had specifically pleaded before the Lower Adjudicating Authority that he was in possession of the bill/invoice of the purchase made in Bangkok, Thailand and that he was ready to produce the same, as and when required.

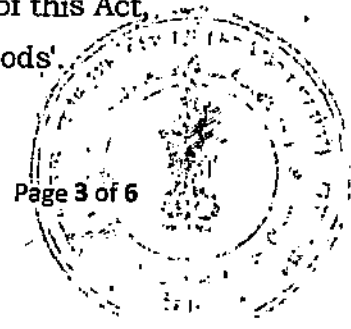
5.4 The Applicant cited case laws in his favour and prayed that the impugned order may be set aside and orders issued to for the redemption of the gold and re-export.

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

6.1 Considering the facts of the case, The Adjudicating Authority has passed order for absolute confiscation of the said gold and imposed separate penalties u/s 112(a) and 114AA of the Customs Act, 1962. But the Appellate Authority has set aside the penalty under Sec. 114AA levied by the lower adjudicating authority.

6.2 The Appellate Authority had observed that considering the objective of introduction of sec 114AA in the Customs Act, 1962 as explained in The report of Standing Committee of Finance (2 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.

6.3 Section 114AA of the Customs Act, 1962 states that "If a person knowingly or intentionally 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 purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods".



6.4 It can be seen 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 himself liable for under section 114AA of the Customs Act, 1962 as correctly held in the Order-in-Original.

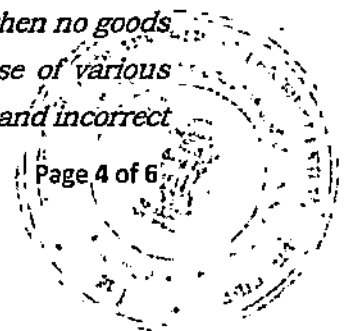
6.5 The passenger is also liable for penalty under Section 112(a) since he attempted to clear the gold by way of concealment and non-declaration to Customs and thus rendered the gold I confiscation under section 111(d) & (l) of the customs act, 1962. The Respondent therefore submits that the Appellate Authority's observations that there is no need for imposing penalty under section 114AA does not appear to be legally correct.

7. A personal hearing in the case was held in the case on 05.12.2018 the Advocate of the Applicant attended the hearing, he re-iterated the submissions made in the Revision Application and sought for release of the gold on redemption fine and penalty. In the hearing held on 09.12.2019 he re-iterated his pleas made at the last hearing and sought leniency.

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 Revision Application of the Applicant Shri Raychand Chopra. The gold chains was not declared as required under section 77 of the Customs Act, 1962 therefore the confiscation of the gold is upheld. However, Gold is restricted and not prohibited in the liberalized policy. The Applicant has purchased the gold and the ownership of the same is not disputed. The Applicant is not a carrier. The Applicant does not have any previous cases registered in his name. Further, the gold chains were carried by the Applicant in his jeans pocket worn by him, therefore it can be safely assumed that the gold was not ingeniously concealed and therefore absolute confiscation is harsh and unjustified and an order in excess. The absolute confiscation is therefore required to be set aside. The Hon'ble Supreme Court has in the case of Om Prakash vs Union of India stated that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions. In the case of Hargovind Das K. Joshi v/s Collector of Customs reported in 1992 (61) E.L.T. 172 (S.C.), The Apex Court has pronounced that a quasi judicial authority must exercise discretionary powers in judicial and not arbitrary manner and remanded the

Case for consideration under section 125(1) of the Customs Act, 1962. Reliance also placed on the decision of the Honble High Court of Andhra Pradesh.




reported in Shaikh Jamal Basha Vs. GOI [ 1997 (91)ELT 277 (A.P.)]wherein it has been held that option to pay the fine in lieu of the confiscation of the goods is to be given to the importer. The Government therefore observes that absolute confiscation is unjustified and an order in excess. The Applicant has requested for release of the gold on redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

10. Accordingly, the absolute confiscation of the gold is set aside. The impugned gold is allowed to be redeemed on payment of a redemption fine of Rs. 3,60,000/- ( Rupees Three lacs Sixty thousand ). The penalty of Rs. 1,50,000/- ( Rupees One lac Fifty thousand ) imposed under section 112 (a) is appropriate. The setting aside of penalty under section 114AA of the Customs Act, 1962 by the Appellate authority is 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. <sup>66-67</sup> /2020-CUS (SZ) /ASRA/MUMBAI DATED 26/1/2020.

To,

Shri Raychand Chopra. No. 334, Vaibhav Apartments, No. 52, EVK Sampath Road, Vapery, Chennai- 600007.

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.)

