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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. 380/89/B/14-RA

Date of Issue

28.11.2018

ORDER NO. 776/2018-CUS (S Z) / ASRA / MUMBAI/ DATED 28.09.2018 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 : Commissioner of C. Ex, Customs & Service Tax, Calicut.

Respondent : Shri Changam Veettil Thazha Kuni Abdussalam

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 57/2014 passed by the Commissioner of C. Ex, Customs & Service Tax (Appeals), Cochin.



ORDER

This revision application has been filed by Commissioner of C. Ex, Customs & Service Tax, Calicut, (herein referred to as Applicant) against the Order in Appeal No 57/2014 passed by the Commissioner of C. Ex, Customs & Service Tax (Appeals), Cochin.

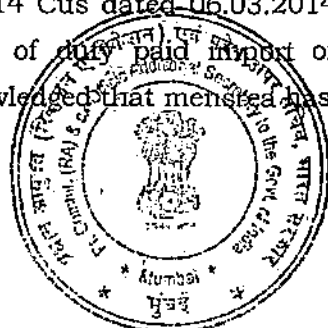
2. On 07.03.2014 the respondent arrived at the Calicut Airport, he was intercepted at the exit . Examination of his baggage resulted in the recovery of Two gold bars totally weighing 240 gms valued at Rs. 6,54,168/- (Rupees Six lakhs Fifty Four thousand One hundred and Sixty Eight). The gold bars were covered with black paint and ingeniously concealed in the pulling rods of the trolley bag.

3. After due process of the law vide Order-In-Original No. 34/2014 dated 07.03.2014, the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 1,95,000/- under Section 112 (a) of the Customs Act,1962 on the Respondent. A penalty of Rs. 75,000/- under Section 114AA of the Customs Act,1962 was also imposed on the Respondent.

4. Aggrieved by the said order, the Respondent filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 57/2014 allowed redemption of the gold on payment of redemption fine of Rs.1,95,000/- and applicable duty, and set aside the penalty under Section 112 (a) of the Customs Act,1962 without interfering in the penalty imposed under Section 114AA of the Customs Act,1962.

5. Aggrieved with the above order the Applicants have filed this revision application interalia on the grounds that;

5.1 Gold is not a freely importable item; The passenger had returned to India after a brief period of 57 days and therefore was not eligible to import gold; The Commissioner has gone by section 111 but has ignored the definition of "prohibited goods" and therefore the order is erroneous; The passenger has used deceptive practices to conceal the gold and has attempted to evade detection and evade payment of duty; The concealment was detected only through the diligent and persistent efforts of the officers; Attention is drawn to CBEC circular No. 06/2014 Cus dated 06.03.2014 prescribing checks to prevent misuse of the benefit of duty paid import of gold; The Commissioner (Appeals) has acknowledged that mens rea has been established, and therefore penalty under



section 112 gets automatically attracted, the Commissioner (Appeals) however, should not have set aside the penalty; The Order in Appeal is therefore not legal and proper.

5.2 The Revision Applicants cited case laws in support of their case and prayed that after taking into consideration the above facts, the Appellate order was legally correct and proper and prayed for such an order as deemed fit.

6. In view of the above, the Respondent and his Advocate was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was scheduled held on 30.05.2018, 20.08.2018 and 10.09.2018. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided exparte on merits.

7. The Government has gone through the case records it is observed that the gold bars coins were not declared as required under section 77 of the Customs Act, 1962 by the Respondent. Therefore the confiscation of the gold is justified.

8. The Government has gone through the case records it is observed that the gold bars were covered with black paint and ingeniously concealed in the pulling rods of the trolley bag carried by the Respondent. The concealment was planned 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 the Applicant had 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 Appellate order allowing redemption of the gold and setting aside the penalty therefore is liable to be set aside. The Government however notes that no penalty is imposable under section 114AA of the Customs Act, 1962 as 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 penalty under 114AA of the Customs Act, 1962 therefore needs to be set aside.

The above acts have therefore rendered the Respondent 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. In view of the above the impugned Order in Appeal is set aside. a Order-In-Original No. 34/2014 dated 07.03.2014 issued by the Original Adjudicating Authority is upheld as legal and proper. The penalty of Rs. 75,000/- (



Rupees Seventy Five thousand) imposed under section 114AA of the Customs Act,1962 by the Original Adjudicating Authority has been incorrectly imposed, the same is therefore set aside.

10. Revision application is allowed on above terms.

11. So, ordered.

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

ORDER No. 776/2018-CUS (S Z) /ASRA/MUMBAI.

DATED 28-09-2018

To,

1. The C. Ex, Customs & Service Tax, Calicut,
C. R. Building,
Mananchira,
Calicut - 673 001.
Kerala.
2. Shri Changam Veetil Thazha Kuni Abdussalam
S/o Ammed Vayalil Puthiyottil, Kiliamkode P.O.,
Nadapuram,
Via Kozhikode,
PIN 673 504.

Copy to:

3. The Commissioner of C. Ex, Customs & Service Tax (Appeals), Cochin.
4. Sr. P.S. to AS (RA), Mumbai.
- ~~5.~~ Guard File.
6. Spare Copy.

ATTESTED


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

