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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. 380/53/B/SZ/2018-RA

2/23

Date of Issue

28.11.2018

ORDER NO. 873/2018-CUS (WZ) / ASRA / MUMBAI DATED 21.10.2018 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 Customs, Chennai-I.

Respondent : Shri Ajmal Khan.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C.Cus.I. No. 25/2018 dated 13.02.2018 passed by the Commissioner of Customs (Appeals 1), Chennai.



## ORDER

This revision application has been filed by Commissioner of Customs, Chennai-I (herein referred to as Applicant) against the Order in Appeal No C.Cus.I. No. 25/2018 dated 13.02.2018 passed by the Commissioner of Customs (Appeals 1), Chennai Commissionerate.

2. Based on suspicious movements, the passenger, Shri Ajmal Khan (herein referred to as "the respondent") was intercepted by the officers of Air Intelligence Unit at the Chennai Airport on his arrival by the Air Asia Flight No. FD-153 from Bangkok on 05.04.2017. During the personal search of the respondent, one black colour mobile case cover with markings "DOMI CAT LEIERS" was recovered from the inner pocket of the pant worn by him and the said Mobile case cover was found to be unusually heavy, the same wrapped with white colour tape was kept in place of the mobile phone. On removing the white colour tape, one rectangular yellow colour metal bar bearing markings, "PMAP" SUISSE 1 KILO FINE GOLD 999.9 PMAP ESSAYEUR FONDEUR C448755" and three Nos. yellow colour metal cut bars were recovered, which were suspected to be gold. The Government approved Gold Appraiser certified the said recovered items to be one gold bar of 24K purity weighing 1000 gms and three Nos. gold cut bars of 24K purity weighing 189.3 gms, 198.3 gms and 39.4 gms respectively. Thus the total weight of the said gold was found to be 1427 gms. The value of the said gold bars totally weighing 1427 gms was appraised at Rs.42,46,752/- (Rupees Forty Two Lakh Forty Six Thousand Seven Hundred Fifty Two Only). As the respondent was not in possession of any valid permit/licence/document issued by the Competent Authority for the legal import of the gold bars, totally weighing 1427 gms into India and he had attempted to smuggle the above said gold bars by concealing and not declaring the same to Customs, the said gold was seized under Section 110 of the Customs Act, 1962. The respondent informed that the gold was given to him by one unknown person at Bangkok Airport to be delivered to unknown person at Chennai Airport for a monetary consideration.



3. After due process of the law vide Order-In-Original No. 158/2017-18-AIRPORT dated 16.11.2017 the Original Adjudicating Authority ordered absolute confiscation of the gold totally weighing 1427 gms valued at Rs. 42,46,752/- under Section 111 (d) & (l) of the Customs Act, 1962, absolute confiscation of material objects viz. one black colour mobile case cover and one torn piece of white colour paper tape use for concealing the gold. The Adjudicating Authority also imposed penalty of Rs. 4,50,000/- under Section 112 (a) and Rs. 50,000/- under Section 114AA of the Customs Act, 1962 on the Respondent.

4. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C.Cus.I. No. 25/2018 dated 13.02.2018 set aside the penalty of Rs. 50,000/- imposed on the respondent under Section 114AA and modified the appeal to that extent.

5. Aggrieved with the above order the Department has filed this revision application on the grounds that;

5.1 the passenger had attempted to smuggle the gold by way of concealment and non-declaration to Customs knowing well that he was not an eligible passenger to import.

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

5.3 therefore, by making a false declaration, the passenger has rendered himself liable for penalty under Section 114AA of the Customs Act, 1962.

5.4 the passenger is also liable for penalty under Section 112(a) since he attempted to clear gold by way of concealment and non declaration to Customs.

ATTESTED

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



5.5 the applicant has requested that the order of the appellate authority with reference to setting aside the penalty imposed under 114AA of Customs Act, 1962 may be set aside.

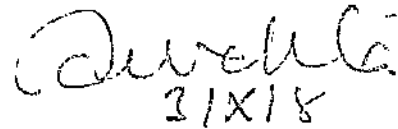
5.6 the applicant declined to be heard in person.

6. In the instant case, the Government finds that the appellate authority has rightly set aside the penalty imposed upon the respondent under Section 114AA. The Government also holds that the Penalty under Section 112(a) 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 and export was on paper only. 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. Therefore, once the penalty is imposed under Section 112(a), then for the same act, a separate penalty under Section 114AA is uncalled for.

7. The Government therefore finds no reason to interfere with the Order-in-Appeal. The impugned order No. C.Cus.I. No. 25/2018 dated 13.02.2018 of Commissioner of Customs (Appeals-I), Chennai is upheld as legal and proper.

8. The instant Revision Application is accordingly dismissed.

9. So, ordered.

  
31/10/18

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

ORDER No. 873/2018-CUS (WZ) /ASRA/MUMBAI DATED 31.10.2018

To,

1. The Commissioner of Customs, Chennai-I,  
New Custom House,  
Chennai- 600 027.



**ATTESTED**

  
28/11/18  
**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)

2. Shri Ajmal Khan,  
4/2, Abdul Kareem Cross Street,  
Triplicane, Chennai- 600005.

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai.
2. Shri S. Palanikumar, Advocate, 10, Sunkurama Street, Chennai-  
600 001.
3. Sr. P.S. to AS (RA), Mumbai.
- ~~4. Guard File.~~
5. Spare Copy.

