



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
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Mumbai-400 005

F. No. 373/64/B/2017-RA  
F. No. 380/43/B/SZ/2017-RA

Date of Issue 29.11.2018

ORDER NO. 898-899 /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 30.10.2018  
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 : Shri Thiyagarajah Nadarajah

Respondent : Commissioner of Customs(Airport), Chennai

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Respondent : Shri Thiyagarajah Nadarajah

Subject : Revision Applications filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal C. Cus I  
No. 134/2017 dated 20.07.2017 passed by the  
Commissioner of Customs (Appeals-I), Chennai

ORDER

A Revision Application has been filed by Shri Thiyagarajah Nadarajah (hereinafter referred to as the "passenger applicant") against the Order-in-Appeal No. C. Cus I No. 134/2017 dated 20.07.2017 passed by the Commissioner of Customs(Appeals-I), Chennai. The Department has also filed Revision Application against the Order-in-Appeal No. C. Cus I No. 134/2017 dated 20.07.2017 passed by the Commissioner of Customs(Appeals-I), Chennai.

2. On 12.01.2017, the passenger applicant who is a Sri Lankan national arrived at the Chennai Airport. Examination of his person resulted in the recovery of three copper coloured gold chains weighing 382.5 gms valued at Rs. 11,14,605/- ( Rupees Eleven Lakhs Fourteen Thousand Six Hundred and Five Only). The copper coloured gold chains were worn by the passenger applicant.

3. After due process of law the Additional Commissioner of Customs(AIR) vide Order-In-Original No. 31/2017-18-AIRPORT dated 11.05.2017 ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 1,15,000/- under Section 112 (a) of the Customs Act,1962 on the passenger applicant. A penalty of Rs. 5,000/- under Section 114AA was also imposed on the passenger applicant.

4. Aggrieved by the said order, the passenger applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus I No. 134/2017 dated 20.07.2017 set aside the penalty imposed under section 114AA and rejected rest of the appeal of the passenger applicant.

5. Aggrieved by the above order the passenger applicant filed revision application on the following grounds:

- (i) The order of the appellate authority is bad in law, the weight of evidence and probabilities of the case were not considered; gold is not a prohibited item and as per liberalized policy can be released on payment of redemption fine and penalty; the appellate

authority has simply glossed over the points and judgements raised in the appeal and no reason has been given to dismiss the appeal; the passenger applicant is a devotee of Iyappan and uses metal chain with wooden beads; the passenger applicants statement that the gold chains were given to him at Colombo and do not belong to him was given under duress and coercion; detailed retraction was submitted but not considered; the Departments contention that the passenger applicant was given numerous chances to declare the gold is not based on evidence; he was all along at the red channel under the control of the officers and never tried to pass the green channel and that the CCTV footage would reveal this truth; there is no ingenious concealment and the gold is not in commercial quantity; baggage rules will apply only when goods are recovered from baggage; the Hon'ble Supreme Court (full bench) in the case of Om Prakash vs UOI states that the main object of the enactment of the said Act was the recovery of Excise Duties and not really to punish for infringement of its provisions;

- (ii) The passenger applicant prayed that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities orders and allow the gold for re-export on lesser redemption fine and penalty and thereby render justice.

6. A personal hearing in the case was held on 25.09.2018, the Advocate for the passenger applicant Shri Palanikumar attended the hearing. He reiterated the submissions filed in Revision Application and pleaded that the gold be released on redemption fine and reduced penalty for re-export. Nobody from the department attended the personal hearing.

7. The Government has gone through the case records it is observed that the gold chains were worn by the passenger applicant but were not declared by the passenger applicant as required under section 77 of the Customs Act, 1962 and therefore, confiscation of the gold is justified.

8. However, the gold was not ingeniously concealed. Import of gold is restricted but not prohibited. There are no instances of any previous offences registered against the passenger applicant. Absolute confiscation in such a case is very harsh and would be unjustified. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. The absolute confiscation of the gold is therefore a harsh action and not justified. The passenger applicant has pleaded that the gold be allowed to be redeemed on payment of fine and penalty for re-export. Government is inclined to accept this plea. The absolute confiscation of the gold therefore needs to be set aside and the impugned Order in Appeal requires to be modified to that extent.

9.1 On the other hand, the Department has filed for revision on the sole ground that the penalty under Section 114AA of the Customs Act, 1962 was imposable. The Government observes that the appellate authority has gathered the objective of introduction of Section 114AA of the Customs Act, 1962 as explained in para 63 of the report of the Standing Committee of Finance(2005-06) of the 14<sup>th</sup> Lok Sabha which reads as reproduced hereinafter.

*"Section 114 provides for penalty for improper export 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."*

9.2 Penalty under Section 112 is imposable on a person who has made the goods liable for confiscation. But there could be a situation where no goods ever crossed the border. Since such situations were not covered for penalty under Section 112/114 of the Customs Act, 1962, Section 114AA was incorporated in

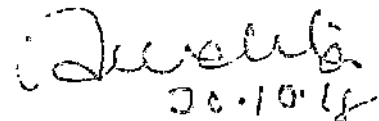
the Customs Act by the Taxation Laws(Amendment) Act, 2006. Hence, where penalty has once been imposed under Section 112(a), there is no necessity for imposing a separate penalty under Section 114AA of the same Act. The Government is therefore in full agreement with the observations recorded by the appellate authority.

10. In the light of the observations in the foregoing para, the Government finds that in so far as the grounds made out for revision by the Department is concerned, there is no infirmity in the Order-in-Appeal passed setting aside the penalty imposed under Section 114AA. In conclusion, the Government does not find any reason to interfere with the order passed by the lower appellate authority on this aspect. The setting aside of the penalty imposed under Section 114AA by the appellate authority is upheld as legal and proper. Hence, the Revision Application is liable to be dismissed.

11. The Government sets aside the absolute confiscation of the gold. The Government allows redemption of the gold weighing 382.5 gms valued at Rs. 11,14,605/- (Rupees Eleven lakhs Fourteen Thousand Six Hundred and Five Only) for re-export on payment of redemption fine of Rs. 4,00,000/- (Rupees Four Lakhs Only) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the passenger applicant is therefore reduced from Rs. 1,15,000 /- (Rupees One Lakh Fifteen Thousand Only) to Rs. 1,00,000/- (Rupees One Lakh Only) under section 112(a) of the Customs Act,1962.

12. Revision application filed by the passenger applicant is allowed on the above terms. Revision application filed by the Department is dismissed.

13. So, ordered.

  
20.10.18

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

898-899  
ORDER No. /2018-CUS (SZ) /ASRA/MUMBAI.

DATED 30.10.2018

To,

Shri Thiyagarajah Nadarajah  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> Floor,  
Chennai - 600 001.

Copy to:

1. The Commissioner of Customs(Airport), Chennai.
2. The Commissioner of Cus and C. Ex. (Appeals), Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.