

REGISTERED  
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. 380/41/B/2017-RA/2197

Date of Issue 29.11.2018

ORDER NO. 922/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.10.2018  
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, (Airport), Chennai.

Respondent : Shri Ghouse Basha Shaik

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal C.  
Cus I No. 137/2017 dated 24.07.2017 passed by the  
Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Commissioner of Customs, (Airport), Chennai (herein referred to as the "Applicant") against the Order-in-Appeal No. C. Cus I No. 137/2017 dated 24.07.2017 passed by the Commissioner of Customs (Appeals-I), Chennai in respect of Shri Ghouse Basha Shaik(hereinafter referred to as the "Respondent"):

2. On 02.12.2016 the Respondent arrived at the Chennai Airport. He was intercepted as he was walking out of the exit after clearing the green channel. Examination of his person resulted in the recovery of two gold bits weighing 205 gms valued at Rs. 5,90,195/- ( Rupees Five lakhs Ninety thousand and One hundred and Ninety five ). The gold chains bits recovered from the innerwear worn by the Applicant.

3. After due process of the law, the adjudicating authority had vide Order-In-Original No. 55/2017-18 AIRPORT dated 20.05.2017 ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 55,000/- under Section 112 (a) of the Customs Act, 1962 on the Respondent. A penalty of Rs. 5,000/- 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 C.Cus No. 137/2017 dated 24.07.2017 set aside the absolute confiscation of the gold and allowed re-export on payment of redemption of the gold on payment of Rs. 1,50,000/- and also set aside the penalty imposed under section 114AA and disposed of the Appeal of the respondent.

5. The Department did not find the Order-in-Appeal to be legal and correct and therefore filed Revision Application on the following grounds:

- (i) The Respondent has attempted to smuggle the gold by way of non-declaration knowing fully well that he is not eligible to import gold;

- (ii) The respondent had not declared to the Customs Officer about possession of gold totally weighing 205 gms valued at Rs. 5,90,195/- as required under Section 77 of the Customs Act, 1962;
- (iii) The Commissioner(Appeals) had wrongly set aside the penalty imposed under Section 114AA of the Customs Act, 1962. Section 114AA holds a person liable to penalty if that person has intentionally made a declaration which is false or incorrect in any particular manner. In the present case, the passenger has intentionally suppressed the possession of gold when questioned in the presence of witnesses. Therefore, since the respondent had by making false declaration rendered himself liable to be penalized under Section 114AA of the Customs Act, 1962 as correctly held in the Order-in-Original.
- (iv) The respondent is also liable to be penalized under Section 112(a) of the Customs Act, 1962 since he had attempted to clear gold by way of concealment and non-declaration to customs and thus rendered the gold liable for confiscation under Section 111(d) & (l) of the Customs Act, 1962.
- (v) The observation of the appellate authority that there is no need to impose penalty under Section 114AA of the Customs Act, 1962 where Section 112 is applicable for imposing penalty since smuggled gold has physically crossed the border does not appear to be correct in view of the judgment of the Delhi High Court in CUSAA No. 42/2011 dated 28.03.2012 where the court has imposed penalty under both Section 112(a) and Section 114AA of the Customs Act, 1962. So also in the order dated 9.04.2014 issued vide F. No. 371/101/B/13-RA, the Revisionary Authority has confirmed levy of penalty under Section 112(a) and Section 114AA of the Customs Act, 1962.

6. The respondent and his Advocate was called upon to show cause as to why the Order-in-Appeal should not be annulled or modified as deemed fit. Personal hearing in the matter was scheduled for 25.09.2018. However, none appeared

on behalf of the respondent. As the issue involved hereunder falls within a very narrow compass, the case is being taken up for decision ex-parte.

7. Government has carefully gone through the facts of the case. The Revision Application has been filed to address the setting aside of the penalty imposed under Section 114AA by the appellate authority. In addressing the issue, the observations of the Hon'ble High Court of Karnataka in the case of Khoday Industries Ltd. Vs. UOI[1986(23)ELT 337(Kar)] would be relevant. While passing the judgment, their Lordships have 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. The appellate authority has congruently gleaned 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. 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

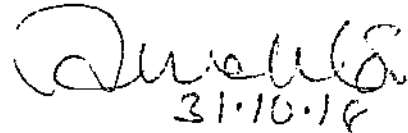


imposing a separate penalty under Section 114AA of the same Act. The Government is therefore in full agreement with the observations recorded by the appellate authority.

10. In the light of the observations in the foregoing para, the Government finds no infirmity in the Order-in-Appeal. In conclusion, the Government does not find any reason to interfere with the orders 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 Revision Application filed by the Department is rejected.

12. So ordered.



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

ORDER No. 922/2018-CUS (SZ) /ASRA/Mumbai, DATED 31.10.2018

To,

Shri Ghouse Basha Shaik  
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.