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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. 380/156/B/WZ/2016 -RA / 29/2

Date of Issue 30.11.2018

ORDER NO. 956 /2018-CUS (WZ) / ASRA / MUMBAI/ DATED 12.11.2018
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 : Principal Commissioner of Customs, Ahmedabad

Respondent : Shri Mohammed Husain Abdul Kadar Rangrej.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
AHD-CUSTM-OOO-APP-031-16-17 dated 27.06.2016
passed by the Commissioner of Customs (Appeals),
Ahmedabad.



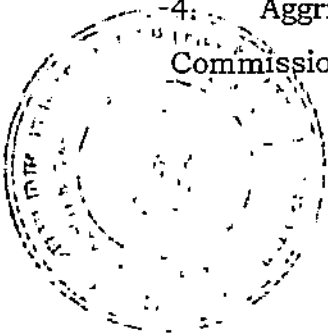
ORDER

This Revision Application has been filed by Principal Commissioner of Customs, Ahmedabad (herein referred to as Applicant) against the Order in Appeal No AHD-CUSTM-OOO-APP-031-16-17 dated 27.06.2016 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. The issue in brief is that on 01.10.2014 Shri Mohammed Husain Abdul Kadar Rangrej, arrived at SVPI Airport, Ahmedabad from Dubai by flight No. SG-16. He had opted for Green Channel and had submitted disembarkation slip. The custom officers asked the Respondent verbally whether he was carrying/ having any dutiable goods, which he denied. During screening of his baggage in X-ray scanning machine, the Custom officer noticed dark black colored object in the centre of two wheels attach with one of the luggage bag, which was sent for further examination. His date of last departure was 25.09.2014. Examination of his baggage let to recovery of two aluminum coated cylindrical metal pieces found in both the wheels of one of the luggage bags. On rubbing the metal pieces, yellow colored metal was recovered. The Government Approved Valuer who was called for examination, certified that the metal was of pure gold, having purity of 995, weighing 280 gms and valued the goods at Rs. 6,91,600/- tariff value and Rs. 7,60,200/- market value as on 02.10.2014.

3. After due process of the law, the Additional commissioner of Customs, CSIA, Mumbai vide Order-In-Original No. 136/ADC-AK/SVIPA/O&A/2015 dated 20.11.2015, ordered absolute confiscation of the seized gold totally weighing 280 gms and valued Rs. 6,91,600/- tariff value and Rs. 7,60,200/- market value under Section 111 (d) (l) and (m) of the Customs Act, 1962. He also imposed penalty of Rs.1,00,000/- (Rupees One Lakh Only) under Section 112 of the Customs Act,1962 and penalty of Rs. 75,000/- under Section 114AA of the Customs Act, 1962 on the Respondent.

4. Aggrieved by the said order, the Respondent filed appeal before the Commissioner of Customs (Appeals), Mumbai Zone-III. who vide Order

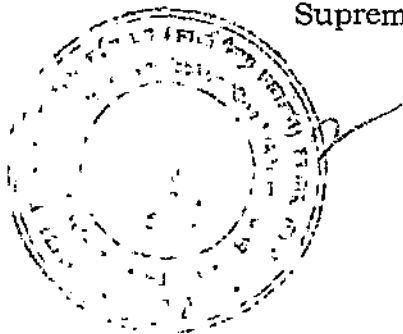


Appeal No. AHD-CUSTOM-000-APP-031-16-17 dated 27.06.2016 redeemed the impugned goods on payment of redemption fine of Rs. 50,000/- (Rupees Fifty Thousand Only) and also clearance after payment of appropriate duty and other charges in terms of Section 125(2) of the Act. He modified the penalty of Rs. 1,00,000/- imposed and re-determine it as Rs. 35,000/- (Rupees Thirty Five Thousand Only) under Section 112(b). And since the ends of justice will be met by imposition of penalty under Section 112 of the Customs Act, 1962, he set aside the penalty imposed under Section 114AA of the Customs Act, 1962.

5. Aggrieved with the above order, the Applicant has filed the Revision Application on the following grounds :

5.1 The Commissioner (Appeals) had observed that the Respondent had attempted to smuggle the gold bars by concealing and admitted the offence. He claimed the ownership of the impugned goods. The gold brought in by the Respondent was not bonafide baggage and he had not declared any dutiable goods which were in contravention of the Customs Act, 1962, rendering the goods liable for confiscation and liable for penalty under Customs Act, 1962. Also, as the Respondent knowingly/ intentionally filed false declaration on his arrival hence imposition of penalty under Section 114AA of the Customs Act, 1962 is justified. Though the above, the Commissioner(Appeals) has erred in modifying the order by setting aside absolute confiscation of the goods and an option was given to redeem the impugned goods on payment of redemption fine and also allowed clearance after payment of appropriate duty and other charges in terms of Section 125(2) and also reduced the penalty under Section 112(b) of the Customs Act, 1962.

5.2 The Commissioner(Appeals) has erred in his orders by relying upon the Tribunal judgment in the case of Sapna Sanjeev Kohli Vs Commissioner of Customs reported at 2008 (230) ELT 305 (Tri-Mumbai) which was upheld by the High Court [2009(240) ELT 207 (Bombay)] as well as the Supreme Court [2010 (252) ELT A52 (SC)]. The contents of this case is



not applicable in the present case since the Tribunal in this case has held that

"...the fact that her jewellery was not concealed but was in her hand baggage clearly shows that it was not her intention to clear the jewellery without payment of duty. If at all she wanted to evade duty, she would have taken the efforts conceal her jewellery in some way or the other"

Whereas in the present case, the intention of the Respondent was very clear to evade payment of duty by concealing the gold in both the wheels of the luggage bags.

5.3 In this case the Respondent had deliberately filed false declaration embarkation slip on this arrival with intent to smuggle the gold and to evade payment of customs duty. The lower authority, in his findings, clearly held that Government of India had introduced the scheme to put a curb on the rising illegal import of gold and allowed import of gold with a vision to encourage export and realize foreign exchange for development of nation. If the goods i.e. gold is released on payment of fine, it may be very harsh to those honest importers, who are importing gold with so many conditions, imposed by the RBI and Government of India and playing a role in the development of nation and realizing foreign currency. The act of smuggling is an illegal activity jeopardizing the very economic fabric of nation. Hence the Commissioner(Appeals) decision by giving option to redeem the gold on payment of redemption fine and on payment of Customs duty is bad in law and not sustainable in view of the above ground.

5.4 From the facts and circumstances, it is clear that the Respondent is mastermind behind the smuggling of gold with due intention smuggle the gold from Dubai into India and thus attempted to evade the payment of customs duty which was in contravention of the provision of Baggage Rules, 1998, as amended. He by his acts of omission and commission, has rendered himself liable for penalty under Section of the Customs Act, 1962. The Respondent has acted deliberately in

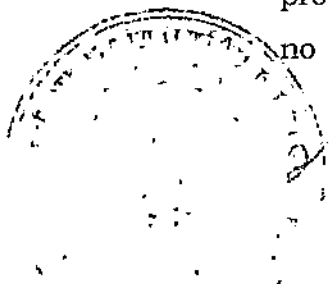


defiance of law and found in guilty of contumacious for his dishonest conduct. Hence penalty imposed by the lower authority is justifiable

5.5 Section 114 and 112 of Customs Act, 1962 give a leverage to the adjudicating authority to impose penalty or redemption fine upto the maximum cap provided in the Sections. The lower authority has imposed penalty of Rs. 1,00,000/- on the Respondent under Section 112(b) is justifiable as per the provision of the Section 112(b) and reduction of penalty by the Commissioner(Appeals) is not maintainable in view of the provision as laid down in Section 112(b) of the Customs Act, 1962.

5.6 The Commissioner(Appeals) in the findings as Para 8 clearly held that as the appellant knowingly/ intentionally filed false declaration on his arrival; hence imposition of penalty under Section 114AA of the Customs Act is justified. Further in Para 9.3, the Commissioner(Appeals) found that the adjudicating authority has rightly held that the appellant had acted and / or omitted in a manner which rendered the impugned goods liable for confiscation under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962. By his act and / or omission, he has also made himself liable for penalty under Section 112 of the Customs Act, 1962 and by making false declaration, made himself liable to penalty under Section 114AA of the Customs Act, 1962. Hence the Commissioner(Appeals) has overlooked his own findings and set aside penalty which is bad in law and not maintainable in view of the provision of Section 114AA of the Customs Act, 1962.

5.7 The Commissioner(Appeals) has erred in observing that since the ends of justice will be met by imposition of penalty under Section 112, he set aside the penalty imposed under Section 114AA of the Customs Act, 1962. In the Customs law, there is no provision if the penalty is imposable under Section 112 of Customs Act, 1962, then no penalty will be imposable under Section 11aAA. Proviso fifth to Section 114A provided that where any penalty has been levied under Section 114A, no penalty shall be levied under Section 112 or Section 114. Such



provision has not been given for Section 114AA. Hence setting aside penalty under Section 114AA is bad in law and not maintainable.

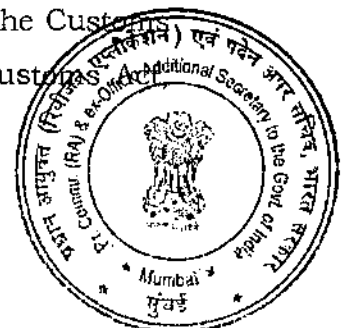
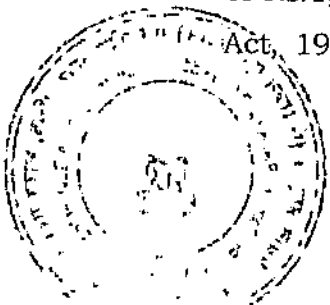
5.8 Prayed that the Order-in-Appeal may be aside and the Order-in-Original may be restored and upheld.

6. Accordingly a personal hearing in the case was held 04.09.2018, 30.10.2018 and 06.11.2018. However neither the Applicant nor his Advocate attended the said hearings. Hence the case is being decided exparte on merits.

7. The Government has gone through the facts of the case. It is a fact that the gold were not declared by the Respondent as required under Section 77 of the Customs Act,1962 and under the circumstances confiscation of the gold is justified.

8. The Government observed that the Respondent had tried to conceal the two cylindrical gold pieces and coated the same with aluminum in both the wheels of one of the luggage bags to avoid customs duty. 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 Respondent had 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 Respondent had no intention of declaring the gold to the authorities and if the custom officers had not detected it in the X-ray machine, he not would have taken out the gold without payment of Customs duty. The Order-in-Appeal reducing the Penalty under Section 112 of the Customs Act, 1962, therefore is liable to be set aside. The Government holds that no penalty is imposable under Section 114AA of the Customs Act, 1962. The same is liable to be set aside.

9. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed the penalty of Rs.1,00,000/- (Rupees One Lakh Only) under Section 112 of the Customs Act, 1962. The penalty imposed under Section 114AA of the Customs Act, 1962.



1962 is set aside. In view of the above the impugned Order-in-Appeal No. AHD-CUSTOM-OOO-APP-031-16-17 dated 27.06.2016 is set aside and the Order-In-Original No. 136/ADC-AK/SVIPA/O&A/2015 dated 20.11.2015 is upheld as legal and proper, except setting aside the penalty imposed under Section 114AA of the Customs Act, 1962.

10. Revision application is partially allowed on above terms.

11. So, ordered.

(Handwritten Signature)
12.11.2018

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

ORDER No. ⁹⁵⁶/2018-CUS (WZ)/ASRA/MUMBAI DATED 12.11.2018

To,

1. The Commissioner of Customs
CSI Airport,
Mumbai
2. Shri Mohammed Husain Abdul Kadar Rangrej,
610, Kallapur Bhagatwada ki Pole,
New Gate Nava Darwaja Road,
Zakariya Masjid,
Ahmedabad,
Gujarat.

Copy to:

1. The Commissioner(Appeals), Customs, Mumbai Zone-III.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

