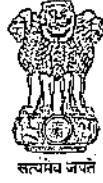


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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F. No. 380/112/B/16-RA

Date of Issue 03.12.2018

ORDER NO. 970/2018-CUS (SZ) / ASRA / MUMBAI DATED 28.10.2018 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 Sibtain Hyder.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C.Cus.I. No. 102/2016 dated 29.01.2016 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. 102/2016 dated 29.01.2016 passed by the Commissioner of Customs (Appeals 1), Chennai Commissionerate.

2. Based on suspicious movements, the passenger, Shri Sibtain Hyder (herein referred to as "the respondent") was intercepted by the officers of DRI-CZU at the Anna International Airport, Chennai on his arrival by the Thai Airways Flight No. TG-337 from Bangkok on 18.09.2013. The respondent had not declared any value in Customs Declaration Form. On enquiry as to whether he possessed any dutiable goods, the respondent replied in negative. Then on persistent enquiry by the officers, the respondent informed that he was carrying about 1.5 kgs of foreign origin gold bars in his person and took a brown paper packet from the backside pocket of his jeans pant. Further, he also disclosed a navy blue cloth packet found to be stitched inside the right hip portion of the pant worn by him. The respondent then removed the packet by removing the stitches and handed over both the packets to the officers. The officers thus recovered two gold bars totally weighing 1.5 kg valued at Rs. 44,71,500/- (Rupees Forty Four Lakh Seventy One Thousand Five Hundred Only) . On enquiry, the respondent informed that the two gold bars were given to him by his wife's uncle Shri Anjum at Bangkok and the same were concealed by him in order to avoid detection by the Custom Officers.

3. The Original Adjudicating Authority vide Order-In-Original No. 258/2015 dated 31.08.2015 ordered absolute confiscation of two gold bars totally weighing 1.5 kg valued at Rs. 44,71,500/- under Section 111 (d) & (l) of the Customs Act, 1962. The Adjudicating Authority also imposed penalty of Rs. 5,50,000/- under Section 112 (a) of the Customs Act, 1962 on the Respondent.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner of Customs (Appeals-I), Chennai. The appellate authority upheld the original order and rejected the appeal.

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



- 5.1 there is no provision / section in the Act which states that penalty should be imposed under one section only.
- 5.2 the appellate authority concluded that there was no false declaration.

6. A personal hearing in the case was held on 27.08.2018, 17.09.2018 and 26.09.2018. However, no representative from the applicant's side appear on any of the occasion so offered.

7. In the instant case, the Government finds that the appellate authority has rightly upheld the order in original. 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.

8. The Government therefore finds no reason to interfere with the Order-in-Appeal. The impugned order No. C.Cus.I. No. 102/2016 dated 29.01.2016 of Commissioner of Customs (Appeals-I), Chennai is upheld as legal and proper.

9. The instant Revision Application is accordingly dismissed.

10. So, ordered.

(Handwritten Signature)
28.11.18

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

ORDER No. 970/2018-CUS (SZ) /ASRA/MUMBAI DATED 28.11.2018

To,

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

ATTESTED

(Handwritten Signature)
3.12.18
S.R. HIRULKAR
Assistant Commissioner (R.A.)



380/112/B/ 16-RA

2. Shri Sibtain Hyder,
No.55/123, III Floor, V.M. Street,
Royapettah, Chennai- 600014.

Copy to:

1. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Customs House, Chennai- 600 001
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.

ATTESTED

ASSISTANT COMMISSIONER (RA)
CHENNAI