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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 380/182/B/16-RA | 3943

Date of Issue 25.08.2020

ORDER NO. 97/2020-CUS (SZ)/ASRA/MUMBAI DATED 21.07.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Commissioner of Customs, Chennai

Respondent : Shri K. Anbalagan

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus I No. 283/2016 dated 15.07.2016 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

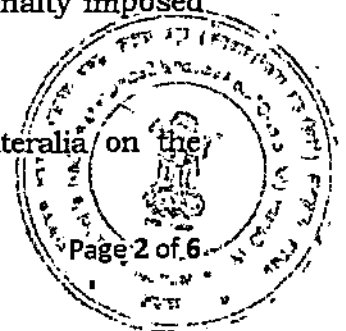
This revision application has been filed by Commissioner of Customs, Chennai (herein referred to as Applicant) against the order no 283/2016 dated 15.07.2016 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the officers of Air Intelligence Unit on specific intelligence intercepted a passenger by name, Shri Sahubar Sathik Hithayadullah at the aerobridge who arrived at the Chennai Airport from Singapore as soon as he alighted from the flight. Examination of his baggage resulted in the recovery of 2300 grams of gold valued at Rs. 65, 94,100/- ( Rupees Sixty Five lacs Ninety four thousand One hundred) ingeniously concealed in a " Cadbury's Milk Chocolate" packet. Enquiries conducted revealed that the gold was to be handed over to an "Bureau of Immigration" staff person, who would respond to a phone call, and appear near the lift. The officers accordingly intercepted the one person Shri K. Anbalagan, the Respondent, of Bureau of Immigration as identified by Shri Sahubar Sathik Hithayadullah. Shri K. Anbalagan the Respondent, was supposed to take the gold out of the Customs area without being detected by the Customs.

3. The Original Adjudicating Authority, vide order No. 431/27.12.2015 absolutely confiscated the gold mentioned above under section 111(d) & (l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 6,50,000/- ( Rupees Six lacs Fifty thousand) was imposed on Shri Sahubar Sathik Hithayadullah under section 112 (a) and 112 (b) of the Customs Act, 1962 and personal penalty of Rs. 3,50,000/- ( Rupees Three lacs Fifty thousand) was imposed on Shri K. Anbalagan under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by this order the Respondent filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his order No. 283/2016 dated 15.07.2016 interalia observed that the Respondent never came in contact with the gold as it was seized before he took part in the conspiracy. The subsequent part of the conspiracy never took place and the none of the activities envisaged under section 112(b) of the Customs Act, 1962 have been done by the Respondent and Commissioner ( Appeals) set aside the penalty imposed on the respondent.

The Applicant department has filed this Revision Application interalia on the grounds that;

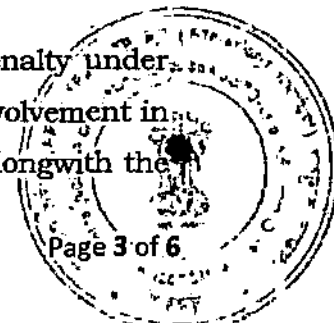


5.1 Shri Sahubar Sathik Hithayadullah in his voluntary statement informed that he was supposed to hand over the gold to an Immigration staff on his mobile number 9003610487; that he and the Immigration staff would meet in the passenger lift from the Immigration area in the first floor to the Customs Area,; and thereafter the Immigration staff would smuggle the gold out of the airport without being detected by Customs; that he was not the owner of the gold and that he did not have any foreign currency to pay as duty for the gold imported as he had intended to smuggle the same by way of handing over the gold to the immigration staff inside the airport. Thereafter, when the Customs official directed Shri Sahubar Sathik Hithayadullah to dial the Immigration staff's mobile number recovered from the person of the passenger and asked the passenger to convey that he was awaiting him with the gold near the lift which the passenger did. Immediately the Customs officers rushed out of the AIU room and after sometime brought the Immigration staff whom the passenger identified as the person to whom he had intended to hand over the gold.

5.2 The Immigration staff who identified himself as K. Anbalagan, Junior Immigration officer working in the Immigration Department in the Chennai International Airport was searched by the officers and during the course of the search of the person of Shri K. Anbalagan, the officer recovered two mobile phones. One more NOKIA mobile phone which dropped off his pocket was recovered from underneath the sofa in the room. Scrutiny of the call logs indicated to and fro calls made/received (including missed calls) during the crucial time period between the passenger's mobile no. and the mobile no. found on the person of the respondent.

5.3 From the investigation conducted it has come to notice that the respondent was identified by Shri Sahubar Sathik Hithayadullah in the presence of independent witnesses, which has been brought out in the Mahazar drawn on 19.08.2014. It was also noticed that the person came to the designated area immediately on receipt of the telephone call on his mobile and when intercepted and kept in a room, he tried to drop off the said mobile in an attempt to wash off his role. Hence, the respondent has abetted in the smuggling of gold for which action he is liable be penalized.

The Order-in-original dated 27/.12/2015 has rightly imposed penalty under Section 112 la) of the Customs Act, 1962 on the appellant for his involvement in the entire gamut of smuggling. It is also seen that Shri Anbalagan alongwith the



passenger had orchestrated this whole unscrupulous activity of smuggling of foreign origin gold bars into India from Singapore without declaring to Customs and without payment of duty several times in the past also. All these facts were not considered by the Commissioner of Customs(Appeals) while passing the Order in Appeal.

5.3 In view of the above, it is prayed that the order of the appellate authority may be set aside or such an order be passed as deemed fit.

6. A personal hearing in the case was held on 05.12.2019, the Advocate for the respondent Shri Somesh Arora attended the hearing he stated that the case of abatement was set aside by the Appellate Authority and made further written submissions as under;

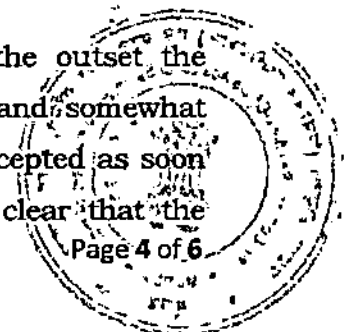
6.1 The present RA does not give any reasons or grounds against the findings of lower Appellate authority.

6.2 The Noticee submits that as correctly held by the lower appellate authority that penalty under Section 112 (a) can be imposed only when any person does or omits to do any act which act or omission could render such goods liable to confiscate under Section 111 are abets the doing or commission of such an act.

6.3 The Noticee submits that the impugned goods were seized before commissioning of the role said to be assigned to the Noticee in the conspiracy. There is no proof or evidence suggesting that the Noticee had abetted for the act of the accused person. The charge of abetment has has not been alleged in the Show Cause Notice. The order in original has neither given any cognizance nor findings on the noticee reply against the Show Cause Notice. The reply to the Show Cause Notice may kindly be taken as a part and parcel of this reply.

6.4 The notice was nowwher connected with the alleged offence and the investigation carried out clearly shows that section 112 (a) cannot be liable on the noticee. The noticee is a police man serving in the Tamilnadu Police and if stay is granted it would adversely affect his employment.

The Government has gone through the facts of the case. At the outset the Government observes that the officers of AIU have acted impulsively, and somewhat prematurely the passenger Shri Sahubar Sathik Hithayadullah was intercepted as soon as he stepped out of the Aircraft, at the aero bridge. It is therefore clear that the



passenger was prevented from filing a declaration as required under section 77 of the Customs Act, 1962. As a plan/ conspiracy was in existence, the officers having specific intelligence could have made the interceptions after the transfer of the gold near the lifts.

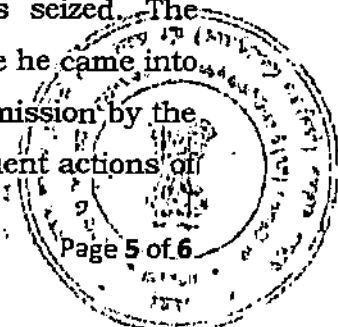
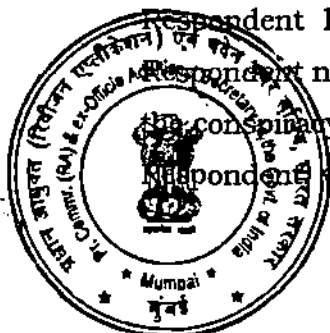
8. Further, the seizure of the gold took place at the aero bridge and according to the mahazar, the Respondent has not received the gold from the passenger nor has he come into contact with him or the gold. The entire case on the respondent has originated from the statement given by Shri Sahubar Sathik Hithayadullah in which he has stated that he was to proceed to lift to hand over the gold to the Respondent. To put it shortly, there is no tangible involvement of the Respondent leading to seizure of gold. The passenger with gold was intercepted at the Aero Bridge itself, before the entire conspiracy took place. The officers alongwith the passenger contacted the respondent and intercepted him at the lift. However, by then the gold was already taken into possession by the officers, the intended plan of smuggling the gold out of Airport as a part of conspiracy did not take place, as the plan has not been executed. As the gold was seized before the respondent came in the picture, the offence associated with the mensrea was not allowed to happen. The investigations revealed the conspiracy, But the conspiracy never attained fruition. The gold was seized/recovered before this conspiracy could play out. Therefore, the offence of the Respondent remained unfulfilled and therefore in the area of speculation, and hence penalty cannot be imposed on an offence yet to be committed.

9. Government further observes for penalty under section 112 (a) of the Customs Act, 1962, the offence should have taken place. If the entire conspiracy was allowed to take place and the Respondent was caught with the gold or had he taken out the gold out of the Airport, penalty would have become applicable. The Adjudication Authority has imposed penalty under section 112( a) on the Applicant, The Section 112 (a) is reiterated below;

112; Penalty for improper importation of goods, etc. —Any person,—

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act,

The Respondent never came in contact with the gold. It is thus evident that the Respondent has not done anything in relation to the gold that was seized. The Respondent never came in touch with the gold at all, as it was seized before he came into the conspiracy, and therefore there was no cogent act of commission or omission by the Respondent which rendered the goods liable for confiscation. The subsequent actions of



unravelling the conspiracy and implicating the applicant did not take place and therefore there is no reason for invoking Section 112 (a) of the Customs Act, 1962. In view of the above the government holds that section 112 (a) cannot be invoked in the case and penalty is not imposable. The penalty imposed is therefore rightly set aside in the Appellate order. The impugned Appellate order is therefore to be upheld and the Revision Application is liable to be dismissed.

10. Accordingly, the Revision application is dismissed.

11. So, ordered.

( SEEMA ARORA )

Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 97/2020-CUS (SZ) /ASRA/MUMBAI

DATED 21-07-2020

To,

Shri K. Anbalagan, S/o Shri P. Kaliyamurthi, Door No. 191.3, Main Road Street, Mela Raman Sethi, Seethakkamangalam Post, Kudavasal (TK), Thiruvuru District - 612 604, Tamilnadu.

Copy to:

1. The Commissioner of Customs, Chennai.
2. Shri Somesh Arora, D-302, Shubam Apts., Plot No. 13, Sector 22, Dwarka New Delhi 110 077.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

**ATTESTED**

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

