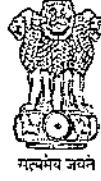


373/31/B/16-RA & 380/12/B/16-RA  
 373/57/B/17-RA & 380/04/B/17-RA  
 373/19/B/16-RA  
 380/05/B/17-RA

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. (i). 373/31/B/16-RA & (ii). 380/12/B/16-RA, (iii). 373/57/B/17-RA & (iv). 380/04/B/17-RA,  
 (v). 373/19/B/16-RA, (vi). 380/05/B/17-RA/6416 Date of Issue 03.11.2021

ORDER NO. 284-289 /2021-CUS (SZ)/ASRA/MUMBAI DATED  
 26.10.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN  
 KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL  
 SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF  
 THE CUSTOMS ACT, 1962.

**TABLE No. 1.**

Sr No. (i).	APPLICANTS (ii).	RESPONDENTS (iii).	O-I-A No / date (iv).	R.A No. (v).
1.	Shri. Assainar K (Referred as A1)	Commissioner of Central Excise, Customs & Service Tax, Calicut : 673 001. (Also, referred as i.e R-D i.e. Respondent Department)	(a).CAL-EXCUS-000- APP-283-15-16-CUS dated 04.11.2015 * passed by appellate authority (referred as OIA-1)	373/31/B/16-RA
2.	Shri. Muhammed Haneef Moideen (Referred as A2)	----do--	(b). CAL-EXCUS-000- APP-316-16-17-CUS dated 30.12.2016 *, (referred as OIA-2) .	373/57/B/17-RA
3.	Shri. Shameej K (Referred as A3)	----do--	(c). CAL-EXCUS-000- APP-282-15-16-CUS dated 04.11.2015 *, (referred as OIA-3).	373/19/B/16-RA
4.	Commissioner of Central Excise, Customs & Service Tax, Calicut : 673 001. (Also, referred as i.e A-D1 i.e. Applicant Department)	Shri. Assainar K (Also, referred as R1)	(a).CAL-EXCUS-000- APP-283-15-16-CUS dated 04.11.2015 *. (i.e. OIA-1) .	380/12/B/16-RA
5.	----do-- (Also, referred as i.e A-D2 i.e. Applicant Department)	Shri. Muhammed Haneef Moideen (Also, referred as R2)	(b). CAL-EXCUS-000- APP-316-16-17-CUS dated 30.12.2016 *, (OIA-2).	380/04/B/17-RA
6.	----do-- (Also, referred as i.e A-D3 i.e. Applicant Department)	Smt. Soujath Mohamed Haneef (Also, referred as R3)	(c). CAL-EXCUS-000- APP-317-16-17-CUS dated 30.12.2016 * (referred as OIA-4).	380/05/B/17-RA

[\* passed by appellate authority viz, Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin-18].

Subject : 6 Revision Applications filed under Section 129DD of the Customs Act, 1962 against the Orders-in-Appeal Nos. mentioned at col. no. (v) of Table No. 1, above.

ORDER

These revision applications have been filed by the 6 applicants (herein referred to as Applicants or for brevity and more specifically as A1, A2, A3 & A-D1, A-D2, A-D3) against the Orders in Appeal nos. mentioned at col. no. (iv) of the Table No. 1, above, all of which have been passed by the Commissioner of Central Excise, Customs & Service Tax (Appeal-II), C.R Building, I.S Press Road, Cochin - 18.

2. All the above mentioned Revision Applications pertain to gold ornaments and commercial quantity of saffron attempted to be imported through baggage without filing of a declaration. The issue involved is similar in all these 6 applications (3 RAs filed by A1,A2 & A3 and 3 RAs filed by A-D1, A-D2, A-D3) arising out of a single Order-in-Original no. 27-Customs dated 28.11.2014 (issued through C.No. VIII/10/12/2014-Cus Adj/230) passed by Joint Commissioner, C.Ex, Cus. & ST, Calicut. These 6 applications are being taken up together for a common disposal.

2. Brief facts of the case are as under;

(a). The Directorate of Revenue Intelligence (DRI), Calicut Regional Unit had received specific information that one Shameej Kunnolimmal (hereinafter referred to as A3) alongwith 3 other passengers would be arriving at Calicut International Airport (CIA) on 28.11.2013 from Dubai onboard Air India Flight AI938/28.11.2013 and would attempt to smuggle gold through body concealment and Saffron in commercial quantity without filing declaration and paying Customs Duty and one person named Assainar would be waiting outside the CIA with a Toyota Innova Car (PY-03-9560) to receive these 3 passengers.

(b). A3 was intercepted at the exit gate and to the query about possession of any dutiable goods had replied in the negative.

(c). From the checked-in baggage of A3, 8 kgs of Saffron (25 gms x 320 packets) were recovered and 103 gms of gold (i.e. 24 chains of 18 carats) which were concealed inside the socks worn by him were recovered.

(d). The Toyota Innova Car was located and its driver Assainar (hereinafter referred to as A1/R1) was intercepted. A person named Basheer C.P was in the car who had arrived from Dubai alongwith A3.

(e.). On examination of the car, 6 nos of gold bars of 10 tolas each were found secreted under the floor mat of the driver's seat of the Toyota Innova Car. Basheer C.P admitted that the gold was brought by him from Dubai. Also, 12 kgs of Saffron were recovered from his baggage kept in the Toyota Innova car. i.e. in all 699 gms of gold (i.e. 6 nos -Ten Tola bars of 24 carats) and 12 kgs of Saffron (i.e. 25 gms x 480 packets) were recovered.

(f). A personal search of the driver of the Toyota Innova Car, viz Shri. Assainar K (i.e. A1/R1) led to the recovery of Rs. 25,000/- in Indian currency and two packets found in the car led to the recovery of Rs. 1,00,000/- in Indian currency and foreign currency viz UAE Dhiraams : 7400, Qatari Riyals : 1300 and USD : 815.

(g). Another person named Faizal T.K was intercepted at the exit gate of CIA and to the query about possession of any dutiable goods had replied in the negative.

(h). from the checked-in baggage of Faizal T.K, 10 kgs of Saffron (25 gms x 400 packets) were recovered and 582.5 gms of gold (i.e. 5 nos -Ten Tola bars of 24 carats) which were concealed inside the socks worn by him were recovered.

(i). Thus, in all the gold and saffron recovered from the 3 persons (i.e. A3 / R3 and 2 other persons) totally weighing 1384.5 gms and Saffron totally weighing 30 kgs and having total combined value of Rs. 58,02,007/- (International Value) / Rs. 71,75,440/- (Market Value) were seized under the provisions of the Customs Act, 1962. The Toyota Innova Car having value of Rs. 10,00,000/- was also seized. Further, the Indian currency and foreign currency found on the person / car of A1/R1 were also seized.

(j). Investigations of A1/R1 revealed the names of Smt. Soujath Muhammed Haneef (hereinafter referred to as R3) and Shri. Muhammed Haneef Moideen (hereinafter referred to as A2/R2).

(k) R3 was the daughter of A1/R1 and was the owner of the Toyota Innova Car PB-03-9560.

(l). that A2/R2 was the son-in-law of A1/R1 and that R3 was his wife and had requested A1/R1 to facilitate the collection of the gold and saffron brought by the 3 passengers (i.e. A3 + Basheer C.P and Faizal T.K) from Dubai.

3. Investigations culminated in the issuance of a SCN to A1, A2, A3, R3 and the two other persons viz Basheer C.P and Faizal T.K which was adjudicated by the lower adjudicating authority i.e. Joint Commissioner, C.Ex, Cus. & ST, Calicut who vide Order-in-Original No. 27 - Customs dated 28.11.2014 (issued through C.No. VIII/10/12/2014-Cus Adj/230) held / ordered as under;

(i). for the absolute confiscation of the gold and saffron brought in by the three passengers i.e. (i.e. A3 + Basheer C.P and Faizal T.K).

(ii). Confiscation of the Toyota Innova Car bearing registration no. PY-03-9560 and allowed redemption to R3 on payment of redemption fine of Rs. 8,37,000/- under provisio to Section 115(2) ibid of the Customs Act, 1962.

(iii). imposed penalty on A3 of Rs. 2,60,000/- and Rs. 1,00,000/- under Section 112(a) and Section 114AA of the Customs Act, 1962, respectively.

(iv). imposed penalty of Rs. 7,00,000/- and Rs. 2,79,000/- on Faizal T.K under Section 112(a) and Section 114AA of the Customs Act, 1962, respectively.

(v). imposed penalty of Rs. 8,37,000/- and Rs. 3,35,000/- on Basheer C.P under Section 112(a) and Section 114AA of the Customs Act, 1962, respectively.

(vi). imposed penalty of Rs. 18,00,000/- on A1/R1 under Section 112(a) of the Customs Act, 1962.

(vii). imposed penalty of Rs. 18,00,000/- on A2/R2 under Section 112(a) of the Customs Act, 1962.

(viii). No penalty imposed on R3

(ix). Indian currency totaling Rs. 1,25,000/- and assorted foreign currency viz, UAE Dhiraams : 7400, Qatari Riyals : 1300 and USD : 815, having realization value of Rs. 1,82,269/- were released.

4. Aggrieved with the order passed by the lower adjudicating authority, A1, A2, A3 & R3 preferred separate appeals with the Appellate Authority, who held as under;

(a). vide O-in-A no. CAL-EXCUS-000-APP-283-15-16-CUS dated 04.11.2015 (referred as OIA-1) found no infirmity in the order passed by the lower adjudicating authority and the personal penalty imposed on A1 under Section 112(a) of the Customs Act, 1962 was reduced to Rs. 9,00,000/- from Rs. 18,00,000/-. The redemption fine in respect of the vehicle valued at Rs. 10,00,000/- was reduced to Rs. 1,00,000/-.

(b). vide O-in-A no. CAL-EXCUS-000-APP-316-16-17-CUS dated 30.12.2016 (referred as OIA-2) found no infirmity in the order passed by the lower adjudicating authority against A2 and the personal penalty imposed on A2 under Section 112(a) of the Customs Act, 1962 was reduced to Rs. 9,00,000/- from Rs. 18,00,000/-

(c). vide O-in-A no. CAL-EXCUS-000-APP-282-15-16-CUS dated 4.11.2015 (referred as OIA-3) confirmed the confiscation of the gold chains and saffron passed by the lower adjudicating authority against A3 and the penalty of Rs. 2,60,000/- imposed on A3 under Section 112 (a) of the Customs Act was reduced to Rs. 1,00,000/- and the penalty of Rs. 1,00,000/- imposed on A3 under Section 114 AA of the Customs Act was reduced to Rs. 50,000/-.

(d). vide O-in-A no. CAL-EXCUS-000-APP-317-16-17-CUS dated 30.12.2016 (referred as OIA-4) held that the redemption of the Toyota Innova Car had already been decided in the O-in-A no. CAL-EXCUS-000-APP-283-15-16-CUS dated 04.11.2015 (i.e. OIA-1) wherein the redemption fine had been reduced to Rs. 1,00,000/- and observed that any further discussion on the issue was unwarranted and gave effect to the said O-in-A No. CAL-EXCUS-000-APP-283-15-16-CUS dated 04.11.2015 (i.e. OIA-1).

5. Aggrieved with the Orders-in-Appeal listed at col. no. (iv) of Table No. 1 above, Revision Applications were filed by A1, A2, A3 and A-D1, A-D2 & A-D3 on the following grounds.

(I). The grounds of appeal in the revision application [i.e. 373/31/B/16-RA] filed by A1 in respect of OIA-1 mentioned at sr. no. 1, col. no. (i) above, [i.e. CAL-EXCUS-000-APP-283-15-16-CUS dated 04.11.2015] are as under:

- 5.1. that the impugned orders passed by the lower authorities are illegal and improper.
- 5.2. that except for the Indian and foreign currencies which were ordered to be released, no contraband was recovered from the applicant.
- 5.3. that the quantum of the modified penalty was excessive and disproportionate and liable to be reduced.

A1 has prayed to set aside the orders passed by the adjudicating authority as well as the appellate authority and to set aside the penalty imposed on him and to release the Innova car.

Aggrieved, A-D1 with respect to the OIA-1 mentioned at sr. no. 4, col. no. (iv) of Table no. 1 above [i.e. CAL-EXCUS-000-APP-283-15-16-CUS dated 04.11.2015], too have filed a Revision Application [i.e. 380/12/B/16-RA] on the grounds that;

- 5.4. from the case records, it had been proved that A1/R1 had engaged and abetted in the smuggling of gold and saffron and thus had rendered himself liable for penalty under Section 112(a) of the Customs Act, 1962 and the vehicle which had been used for concealment and transportation of contrabands was liable for confiscation under Section 115(2) ibid of the Customs Act, 1962 and the adjudicating authority had correctly imposed penalty of Rs. 18 lakhs under Section 112(a) ibid on A1/R1.
- 5.5. that Smt. Soujath Mohamed Haneefa (R3) was the registered owner of the seized Innova Car bearing Reg. no. PY-03-9560 and

the original authority had order for release for the vehicle on payment of redemption fine of Rs. 8.37 lakhs to her. No appeal against this was filed by her before the appellate authority. However, the appellate authority ordered for release of the car to A1/R1 on payment of reduced redemption fine of Rs. 1 lakh; that the appellate authority had no authority to interfere with the order dealing with the penalty and redemption fine and had erred in reducing the penalty from Rs. 18 lakhs to Rs. 9 lakhs.

A-D1 in their revision application have framed two questions (i) whether decision of the appellate authority was legally correct and proper and (ii). The revision authority should set aside the order of the appellate authority by passing an order under Section 129DD(4) of Customs Act, 1962.

(II). The grounds of appeal in the revision application [i.e. 373/57/B/17-RA] filed by A2 in respect of OIA-2 mentioned at sr. no. 2 & also, sr.no. 5, col. no. (ii) of Table no. 1 above [i.e. CAL-EXCUS-000-APP-316-16-17-CUS dated 30.12.2016], are as under;

- 5.6. that the impugned orders passed by the lower authorities are illegal and improper.
- 5.7. that the principles of natural justice were not given to him as he was not available in India.
- 5.8. that the lower authorities did not notice that the subject case did not have any admissible evidences and is based on hearsay against him.
- 5.9. That the lower authorities have totally placed reliance on the statement given by A1.
- 5.10. That the lower authorities have placed reliance on the retracted statements of the co-noticees.
- 5.11. that the quantum of penalty imposed was excessive, disproportionate and liable to be reduced.

A2 has prayed to set aside the orders passed by the adjudicating authority as well as the appellate authority and to set aside the penalty imposed on him.

Aggrieved, A-D2 with respect to the OIA-2 mentioned at sr. no. 2 & 5, col. no. (v) of Table no. 1 above [i.e. CAL-EXCUS-000-APP-316-16-17-CUS dated 30.12.2016], have filed a Revision Application [i.e. 380/04/B/17-RA] on the grounds that;

5.12. that A2/R2 was involved in the smuggling as revealed by the other co-noticees and had received the contraband from the agents of A2/R2 and thus he had abetted in the smuggling of gold and saffron and was the main conspirator. Penalty had been rightly imposed on him under Section 112(a) of the Customs Act, 1962 and that the appellate authority was not correct in reducing the penalty imposed on the main conspirator.

5.13. that the appellate authority had no authority to interfere with the order dealing with the penalty and redemption fine and had erred in reducing the penalty from Rs. 18 lakhs to Rs. 9 lakhs.

A-D2 in their revision application have framed two questions (i) whether decision of the appellate authority was legally correct and proper and (ii). The revision authority should set aside the order of the appellate authority by passing an order under Section 129DD(4) of Customs Act, 1962.

(III). The grounds of appeal in the revision application [i.e. 373/19/B/16-RA] filed by A3 against OIA mentioned at sr. no. 5, col. no. (iii) of Table no. 1 above [i.e. CAL-EXCUS-000-APP-282-15-16-CUS dated 04.11.2015] are as under;

5.14. that the impugned orders passed by the lower authorities are illegal and improper and was unsustainable.

5.15. there was glaring contradictions and inconsistencies in the statements given by the co-noticees and the lower authorities have not considered the same in the impugned orders passed by them.



- 5.16. that gold was not prohibited goods and is not included in the negative list, hence, absolute confiscation was excessive and unwarranted.

A3 has prayed for reliefs to be granted to him and to set aside the orders passed by the adjudicating authority as well as the appellate authority and to reduce the penalty further.

(IV). Aggrieved, A-D3 in respect of OIA mentioned at sr. no. 5, col. no. (vi) of Table no. 1 above [i.e. CAL-EXCUS-000-APP-317-16-17-CUS dated 30.12.2016] issued to R3, have filed a Revision Application [i.e. 380/05/B/17-RA] on the grounds that;

- 5.18. that the gold and saffron smuggled into the country had been concealed in the vehicle i.e. PY-03-9560 owned by R3.
- 5.19. that the impugned order passed by the appellate authority was illegal, improper and was unsustainable.
- 5.20. that the OIA in respect of R3 had not been accepted by the department and that they had filed a revision application.

A-D3 in their revision application have framed two questions (i) whether decision of the appellate authority was legally correct and proper and (ii). The revision authority should set aside the order of the appellate authority by passing an order under Section 129DD(4) of Customs Act, 1962.

6. Details of the schedule of the personal hearings are as under;

6.1. A personal hearing in the case was scheduled on 13.11.2018. After the change in the revisionary authority, personal hearing through the online video conferencing mode was scheduled for 18.08.2021 / 25.08.2021, 17.09.2021 / 24.09.2021. Shri. Mohammed Zahir, Advocate for A1/R1 appeared online on 25.08.2021 and requested for time after 01.09.2021. Thereafter, he appeared online on 24.09.2021 and reiterated his submissions. He informed that he was appearing on behalf of A1/R1 and R3. Earlier on 23.09.2021 through an email

he had informed that A1/R1 had expired on 12.12.2020 and had attached the copy of the death certificate. During the personal hearing, the advocate informed that nothing had been recovered from the applicants and they have been heavily penalised. He requested to maintain the order of the appellate authority regarding redemption fine for release of the Innova car and requested not to impose any penalty on the applicants. None appeared on behalf of the department.

6.2. A personal hearing in respect of A2 was scheduled 22.10.2018. After the change in the revisionary authority, personal hearing through the online mode of video conferencing on 17.09.2021 / 24.09.2021. A2 did not attend. None appeared for the department. Sufficient opportunity was given to A2 and accordingly, the case is being taken up on the basis of evidence on the records.

6.3. A personal hearing in respect of A3 was scheduled through the online mode of video conferencing on 17.09.2021 / 24.09.2021. A3 did not attend. None appeared for the department. Sufficient opportunity was given to A3 and accordingly, the case is being taken up on the basis of evidence on the records.

6.4. A personal hearing in respect of A-D2 was scheduled for 22.10.2018. Since no one attended, the hearing was again scheduled for 19.11.2018 / 20.11.2018. After, change in the revisionary authority, personal hearing through online vide conferencing mode was scheduled for 17.09.2021 / 24.09.20121. None attended for the department. A2/R2 too did not attend. Sufficient opportunity was given to A-D2 and A2/R2 to attend the hearing and put forth their case. Accordingly, the case is being taken up on the basis of evidence on the records.

7. On the issue of the absolute confiscation of the impugned gold and saffron recovered from A3:

7.1. The Government has gone through the facts of the case, and notes that the applicant (A3) had passed through the green channel and had been intercepted at

the exit gate. Thereafter, he was asked whether he was carrying any dutiable items to which he had replied in the negative. A3 possessed commercial quantity of saffron. However, he chose not to declare the same. A3 had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. Had he not been intercepted, he would have walked away with the impugned goods without declaring the same to Customs. On being queried A3 denied that he did possess any dutiable items which indicates that the applicant did not intend to declare the same to Customs.

7.2. The Hon'ble High Court Of Madras, in the case of Commissioner Of Customs (Air), Chennai-I V/s P. Sinnasamy reported in 2016 (344) E.L.T. 1154 (Mad.), relying on the judgment of the Apex Court in the case of Om Prakash Bhatia v. Commissioner of Customs, Delhi reported in 2003 (155) E.L.T. 423 (S.C.), has held that *" if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. .... Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods."* It is thus clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition, "prohibited goods".

7.3. Further, in para 47 of the said case, the Hon'ble High Court has observed *"Smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment of duty at the rate prescribed, would fall under the second limb of section 112(a) of the Act, which states omission to do any act, which act or omission, would render such*

*goods liable for confiscation.....*”. Thus failure to declare the goods and failure to comply with the prescribed conditions has made the impugned gold “prohibited” and therefore liable for confiscation and the Applicants thus liable for penalty.

7.4. The Government finds no infirmity with the order of the lower adjudicating authorities not granting A3 an option to redeem the seized gold and saffron on payment of redemption fine. He was part of a syndicate and had brought in substantial amount of gold and saffron. Also, gold chains were kept concealed in the socks worn by him. A3 had no intention to pay the Customs Duty and had he not been intercepted would have evaded payment of Customs Duty.

7.5. The Government finds no infirmity with the lower adjudicating authority holding that the applicant was not eligible to import gold under notification no. 12/2012-Customs dated 17.03.2012 or as amended and Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993. The ineligibility of A3 is discussed at great length at para 155 & 165 of the OIO and Government is in agreement with the findings therein.

7.6. Government finds that penalty of Rs. 2,60,000/- had been imposed under Section 112(a) of the Customs Act, 1962 by the Adjudicating Authority which was reduced to Rs. 1,00,000/- by the appellate authority. Penalty of Rs. 2,60,000/- imposed by original authority was quite reasonable considering the role played by A3 in the smuggling activity. The Government finds that the original amount of the penalty was commensurate with the omissions / commissions committed by A3 and accordingly, Government sets aside the reduction in penalty by Appellate Authority, and restores original penalty of Rs. 2,60,000/- (Rupees Two Lakhs Sixty thousand only).

7.7. The penalty of Rs. 1,00,000/- has been imposed under Section 114AA of the Customs Act, 1962. In addressing the issue of penalty under section 114AA of the Customs Act, 1962, Government relies on the observations of the Hon'ble High Court of Karnataka in the case of Khoday Industries Ltd. Vs UOI reported in

1986(23)ELT 337 (Kar), has 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*".

7.8. In view of the above the objective of introduction of Section 114AA in Customs Act as explained in para 63 of the report of the Standing Committee of Finance (2005-06) of the 14th Lok Sabha is reproduced below;

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

7.9. Government therefore observes, penalty under Section 112 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. 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, once the penalty is imposed under Section 112(a), then there is no necessity for a separate penalty under section 114AA for the same act. The penalty of Rs. 1,00,000/- (Rupees One Lakh only) imposed under Section 114AA of the Customs Act, 1962 is liable to be set aside.

7.10. On the issue of request for re-export of the goods, Government observes that this request had not been made before the lower adjudicating authority and has been made first time before the appellate authority. Government finds this request to be an afterthought. Moreover, as pointed out in the aforesaid paras, where it is

held that the applicant is not eligible for the importation of gold on account of period of stay, non-declaration of dutiable goods in the Customs Declaration Form, etc, Government is not inclined to grant the permission for re-export of the seized gold and hence, the request to re-export the gold is rejected. Besides, the impugned gold and saffron have been confiscated absolutely and in such cases, the question of re-export does not arise.

7.11. In view of the aforesaid facts, the Government is inclined to maintain the absolute confiscation of the impugned gold and saffron and the penalty amount of Rs. 2,60,000/- imposed under Section 112(a) of the Customs Act, 1962 passed by the original authority. However, the Government sets aside the penalty imposed under Section 114AA of the Customs Act, 1962.

7.12. The revision application filed by A3 i.e. Shri. Shameej K is partially modified on the above terms.

8. On the issue of the revision applications filed by A1, A-D1 (against A1) and A-D3 (against R3):

8.1. The Government finds that Shri. Mohammed Zahir, the Advocate for A1 has informed that A1 expired on 12.12.2020 and has submitted the death certificate. Government finds that a penalty of Rs. 18 Lakhs under Section 112(a) of the Customs Act, 1962 had been imposed on A1 by the lower adjudicating authority and that the appellate authority vide OIA-1 had reduced the same to Rs. 9 Lakhs. Further, in the OIA-1, the Toyota Innova car had been released to A1 on payment of a reduced redemption fine of Rs. 1,00,000/- for car valued at Rs. 10 lakhs. The contention of A-D1 was that the car did not belong to A1 nor was it owned by A1 and hence, the order of the appellate authority i.e. OIA-1 was illegal and improper and that the original adjudicating authority had redeemed the car to R3 on payment of redemption fine of Rs. 8,37,000/-.

8.2. The Government finds that since A1 has expired, the case against A1 stands abated and consequently, the Government taking recourse to the judgement of the

Apex Court in the case of Shabina Abraham v/s. Collector of C.Ex & Customs [2015(322) ELT 372 (S.C)] finds that the the reduced personal penalty of Rs. 9,00,000/- imposed on A1 under Section 112(a) of the Customs Act, 1962 too stands abated.

8.3. On the issue of the Toyota Innova car having been released by the appellate authority to A1 on the reduced redemption fine of Rs. 1,00,000/- instead of R3 who was the owner of the vehicle, the Government finds that vide OIA-4, the appellate authority had an opportunity to modify OIA-1 which had not been enforced. The original adjudicating authority had not ordered for the absolute confiscation of the Toyota Innova car and had allowed the car to be redeemed by R3 on payment of redemption fine of Rs. 8,37,000/-. The Government finds that the redemption fine of Rs. 8,37,000/- on the car having value of Rs. 10 Lakhs is excessive and the Government is in agreement with the reduction in the quantum to Rs. 1,00,000/- passed by the appellate authority. This reduction has been ordered in OIA-1. In OIA-1, the redemption of the car to A1 has been allowed and in OIA-4, the OIA-1 has been given effect which the Government finds to be improper. Accordingly, the Government is inclined to set right this error and accordingly modifies OIA-4 and the car is redeemed to R3 on payment of redemption fine of Rs. 1,00,000/- (as passed in OIA-1).

8.4. The revision applications filed by A1, A-D1 & A-D3 are disposed of on the above terms.

9. On the issue of the revision applications filed by A2 and A-D2 (against A2):

9.1. Government finds that penalty of Rs. 18 lakhs under Section 112(a) of the Customs Act, 1962 had been imposed on A2 by the original adjudicating authority for his role in abetting the smuggling activity. A2 was not available during the investigations and his role was disclosed by his wife and father-in-law who too were involved in the case and also by the carriers of the impugned gold and saffron. The Government finds that the role of A2 has been dealt in detail by the lower adjudicating authority who has also looked into the corroboration made by the

373/31/B/16-RA & 380/12/B/16-RA  
373/57/B/17-RA & 380/04/B/17-RA  
373/19/B/16-RA  
380/05/B/17-RA

investigating agency with the statements of the other accused. The original adjudicating authority had imposed a penalty of Rs. 18,00,000/- which was reduced by the appellate authority to Rs. 9,00,000/-. The Government finds no merit in the contention of A2 that he had retracted his statement as this aspect has been dealt in detail by the appellate authority and had rightly rejected his pleas. Considering the role played by A2 in abetting the smuggling activity and his role disclosed in detail by the co-noticees, the Government finds that the order of the appellate authority is reasonable and judicious and also finds that the penalty imposed is reasonable. In view of the aforesaid facts, the Government does not find it necessary to interfere in the order passed by the appellate authority. Accordingly, the revision application filed by A2 is dismissed. As a consequence, the revision application filed by A-D2 too is dismissed for the aforesaid reasons as a justifiable case for restoring the original penalty imposed by the original adjudicating authority has not been made out.

10. In view of the aforesaid facts, the decision of the Government in the 6 revision applications is summarized as under;

- (a). Revision application no. (vi). 373/19/B/16-RA is disposed of as detailed at para 7 to 7.12 above.
- (b). Revision applications no. (i). 373/31/B/16-RA (ii). 380/12/B/16-RA and (iii). 380/05/B/17-RA are disposed of as detailed in paras 8 to 8.4 above.
- (c). Revision applications nos (iv). 373/57/B/17-RA and (v). 380/04/B/17-RA are dismissed as detailed in para 9 & 9.1 above.

*Shrawan*  
*26/10/21*

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

*284-289*  
ORDER No. /2021-CUS (SZ) /ASRA/

DATED 26-10-2021

To,

- 1.. Shri. Assainar K, S/o. Abdullah, Baithul Fathima, Panthakkal,  
Mahe, Kerala, Pin : 673 310. [373/31/B/16-RA] &



373/31/B/16-RA & 380/12/B/16-RA  
373/57/B/17-RA & 380/04/B/17-RA  
373/19/B/16-RA  
380/05/B/17-RA

[380/12/B/16-RA]

2. Shri. Muhammed Haneef, 'Firashas', Pandakkal, Mahe, Kerala  
Pin : 673 310. [373/57/B/17-RA] & [380/04/B/17-RA]
3. Shri. Sameej K, S/o. Usman, Kannolimmal House, P.O Kottayampoli,  
Kannur District, Kerala, Pin : 670 691. [373/19/B/16-RA]
4. Smt. Soujath Mohammed Haneef, W/o. Moideen Muhammed Haneef  
Moideen, 'Firashas', Pandakkal, Mahe, Kerala Pin : 673 310.  
[380/05/B/17-RA]
5. The Commissioner of Customs (Prev), 5<sup>th</sup> Floor, Catholic Center,  
Broadway, Kochi - 682031. [380/12/B/16-RA], [380/04/B/17-RA],  
[380/05/B/17-RA], [373/31/B/16-RA], [373/57/B/17-RA] &  
[373/19/B/16-RA] Email : [cusprevhq.ker@nic.in](mailto:cusprevhq.ker@nic.in). [New Address]
6. The Commissioner of Central Excise, Customs and Service Tax, Calicut  
Commissionerate, C.R. Building, Mananchira, Calicut - 673 001.  
Kerala. [380/12/B/16-RA], [380/04/B/17-RA], [380/05/B/17-RA],  
[373/31/B/16-RA], [373/57/B/17-RA] & [373/19/B/16-RA]  
[Old Address]

Copy to:

1. N. Prajeena, Advocate, Chadrasana (H.O), Anavathil, Kunnathara (P.O),  
Koyilandy (via), Kozhikode, Kerala - Pin : 673 620. [373/19/B/16-RA].
2. Shri. Mohammed Zahir, Advocate, 3/57-A, 'Saabir', Nedungadi Gardens,  
West Nadakkavu Calicut - 673 011. [373/31/B/16-RA & 380/12/B/16-  
RA, 380/05/B/17-RA].
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File,
5. File Copy.