

REGISTERED / SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/09,12,36,37,41,42,43/B/17-RA / 2061
373/02-04,05,/B/18-RA

Date of Issue

28.11.2018

ORDER NO. ⁷²⁵⁻⁷⁴⁶ /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.09.2018 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.

Applicants : Commissioner of Customs, Chennai.

Respondents: Shri Mohammed Nasar Mohamed Rayaldeen

- : Smt. Hla Hla Win Fari Da Bi
- : Smt. Sartha Devi Thambirasa
- : Shri Shahul Hameed Segu Mohamed
- : Smt. Shanti Samasundaram
- : Shri Prasad Rajakulasingham, Shri Wajira Kanth
& Shri Manivannan Navratham
- : Shri. Mohammed Nasar
- : Shri. Anbuselvan Mookiah Raju
- : Shri Mary Selveraj Sogaya & Jeya Kumar Kandiah

Subject : Revision Application filed, under Section 129DD of the Customs
Act, 1962 against the Orders-in-Appeal

- : No. C. CUS-I No. 138/2017 dated 25.07.2017
- : No. C. CUS-I No. 139/2017 dated 25.07.2017
- : No. C. CUS-I No. 164/2017 dated 06.09.2017
- : No. C. CUS-I No. 165/2017 dated 06.09.2017
- : No. C. CUS-I No. 178/2017 dated 29.12.2017
- : No. C. CUS-I No. 182-184/2017 dated 28.09.2017
- : No. C. CUS-I No. 190/2017, dated 12.12.2017
- : No. C. CUS-I No. 215/2017 dated 28.09.2017
- : No. C. CUS-I No. 218-219/2017, dt. 29.12.2017

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 Orders in Appeal passed by the Commissioner of Customs (Appeals), Chennai with regard to setting aside the penalty imposed under Section 114AA in Customs Act .

Sr. No.	Name of Applicant & Respondent	OIO	OIA
1	Shri Mohamed Nasar Mohamed Reyaldeen	13/2017, dt. 27.04.2017	138/2017 dt. 25.07.2017
2	Smt Hla Hla Win Fari Da Bi	17/2017-18, dt. 27.04.2017	139/2017, dt. 27.04.2017
3	Smt. Sarthadevi Thambirasa	25/2017, dt. 27.04.2017	164/2017, dt. 06.09.2017
4	Shri Sahul Hameed Segu Mohamed	23/2017-18, dt. 27.04.2017	C.Cus. I. No. 165/2017, dt. 06.09.2017
5	Smt. Shanthi Somasundaram	48/2017-18, dt. 20.05.2017	178/2017, dt. 28.09.2017
6	Shri Prasad Rajakulasingham, Shri Wajira Kanth & Shri Manivannan Navratham	32,33,37/2017-18 dt. 28.09.2017	182-184/2017, dt. 28.09.2017
7	Shri. Mohammed Nasar	108/2017-18, dt. 26.09.2017	190/2017, dt. 12.12.2017
8	Shri. Anbuselvan Mookiah Raju	103/2017-18-Airport, dt. 16.09.2017	215/2017 dt. 28.09.2017
9	Shri Mary Selveraj Sogaya & Jeya Kumar Kandiah	98-99/2017-18-Airport, dt. 11.07.2017	218-219/2017, dt. 29.12.2017

2. Since a common issue is involved in all these Revision Applications and as they are being represented by the same advocate Shri Palanikumar, these Revision Applications are being disposed by a common order.

3. All of the above mentioned Respondents were intercepted on their arrival at the Chennai International Airport on various dates. Examination of their baggage and person resulted in the recovery of gold. As the gold was not properly declared as required under section 77 of the Customs Act, 1962 the Original Adjudicating Authority initiated adjudication proceedings and vide his order in original has held

the impugned gold liable for confiscation and in each of these cases penalty was imposed under section 112 as well as section 114AA of the Customs Act, 1962.

4. Aggrieved with the above order the Respondents have filed an appeal before the Commissioner of Customs (Appeals), Chennai. The Commissioner of Customs (Appeals), Chennai upheld the penalties imposed under section 112 of the Customs Act, 1962 in all the above mentioned cases. The Appellate order however, set aside the penalties imposed under section 114AA of the Customs Act, 1962.

5. Aggrieved with the above impugned orders the Applicants have filed this revision application interalia on the grounds that;

5.1 The passengers had attempted to smuggle the gold by not declaring the gold as required under section 77 of the Customs Act, 1962; The passengers have not declared to the Customs officer about the possession of gold jewellery as required under Section 77 of the Customs act, 1962; Section 114AA of the Customs Act, 1962 states that "If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods".; It can be seen that Section 114AA holds a person liable for penalty if that person intentionally makes a declaration which is false or incorrect in any material particular; He passengers are also liable for penalty under section 112(a) as they attempted to clear gold by way of concealment and non-declaration.

5.2 In view of the Above the Applicant prayed that the order of the Appellate authority with reference to setting aside the penalty imposed u/s 114AA of the Customs Act,1962 may be set aside or such an order as deem fit.

6. A personal hearing in the case was held on 25.09.2018, the Advocate for the respondent Shri Palanikumar attended the hearing, he pleaded that there cannot be two penalties for one contravention. Section 114 follows penalty for attempt to

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export goods improperly and prayed that the Order in Appeal be upheld and the Revision Application be dismissed. Nobody from the department attended the personal hearing.

7. Government has carefully gone through the facts of the case. The Revision Applications have been filed to address the issue of penalty imposed under section 114AA, which has been set aside 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 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*".

8. The Appellate authority has congruently gleaned 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 which states.....

" 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."

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 Government is therefore in full agreement with the above observations of the Appellate authority.

9. In light of observations made in foregoing para, the Government In conclusion therefore finds no reason to interfere with the Orders-in-Appeal on this aspect. The setting aside of the penalty under section 114AA in the impugned Appellate orders is upheld as legal and proper. Hence the instant Revision Applications are liable to be dismissed.

10. Twelve Revision Applications listed above are accordingly dismissed.

11. So, ordered.


(ASHOK KUMAR MEHTA)

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

735-746
ORDER No. /2018-CUS (SZ) /ASRA/MUMBAI

DATED 28.09.2018

To,

1. The Commissioner of Customs,
Anna International Airport,
Chennai.
2. Shri Mohamed Nasar Mohamed Reyaldeen
3. Smt Hla Hla Win Fari Da Bi
4. Smt. Sarthadevi Thambirasa
5. Shri Sahul Hameed Segu Mohamed
6. Smt. Shanthi Somasundaram
7. Shri Prasad Rajakulasingham, Shri Wajira Kanth & Shri Manivannan
Navratham
8. Shri. Mohammed Nasar
9. Shri. Anbuselvan Mookiah Raju
10. Shri Mary Selveraj Sogaya & Jeya Kumar Kandiah

11. C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

Copy to:

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