

**SPEED POST**



F.No. 380/74/B/2019-RA  
F.No. 373/420/B/2019-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue 29/3/23..

Order No. 117-11823-Cus dated 29.03.2023 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Applications, filed under Section 129 DD of the Customs Act 1962, against the Order-in-Appeal Nos. 111-112/2019 dated 25.06.2019, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicants : 1. The Commissioner of Customs, Mangaluru  
2. Sh. Mohammed Safeeque Berka Abdul Khader, Kasargod, Kerala.

Respondent : 1. Sh. Mohammed Safeeque Berka Abdul Khader, Kasargod, Kerala.  
2. The Commissioner of Customs, Mangaluru

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**ORDER**

A Revision Application No. 373/420/B/SZ/2019 dated 01.10.2019 has been filed by Shri Mohammed Safeeque Berka Abdul Khader, Kasargod, Kerala (hereinafter referred to as the Applicant), against the Order-in-Appeal Nos. 111-112/2019 dated 25.06.2019, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 06/2019 (AP) dated 08.01.2019, passed by the Deputy Commissioner of Customs, Mangaluru International Airport, Mangaluru, except to the extent of setting aside the penalty imposed on the Applicant herein under Section 114AA of the Customs Act, 1962. The Commissioner (Appeals) has also rejected the appeal filed by the department in the matter. The original authority had, vide the aforesaid Order-in-Original dated 08.01.2019, ordered for absolute confiscation of 2 gold chains and 2 rings, made of 24 carat purity gold, weighing 261.400 grams, valued at Rs. 7,99,884/-, recovered from the Applicant herein. Penalties of Rs. 2,00,000/- and Rs. 50,000/- were also imposed on the Applicant, under Section 112 and Section 114AA, respectively, of the Customs Act, 1962. The Commissioner of Customs, Mangaluru has also filed the RA No. 380/74/B/SZ/2019-RA dated 07.10.2019 against the said Order-in-Appeal dated 25.06.2019 to the extent it dropped the penalty under Section 114AA ibid and also praying for imposition of higher penalties.

2. Brief facts of the case are that the Applicant herein arrived at Mangaluru International Airport from Dubai, on 21.03.2018. He was intercepted by the Customs officers when he was exiting the Customs area. On verification of his Customs Declaration Form, it was observed that he had not mentioned anything regarding import of dutiable goods. Upon his personal search, it was found that he had, below his feet, secreted small plastic packets wrapped with brown coloured adhesive tape under his socks and shoes. On opening the plastic packets, it was found to contain one crude gold chain and one crude gold ring in each of them. The said two gold chains and two gold rings were seized under Section 110 of the Customs Act, 1962. In his statement dated 23.01.2018, recorded under Section 108 of the Customs Act, 1962, the Applicant herein revealed that he had purchased the said crude gold on loan for his wedding and he was not willing to pay Customs duty and hence concealed the same. He admitted smuggling of gold and factum of concealment and that

he was aware that it is a punishable act to conceal gold. The Applicant also admitted that he did not carry sufficient foreign currency to pay duty on the gold. The original authority, after following the principles of natural justice, passed the Order as mentioned in para 1 above, which has been upheld by the Commissioner (Appeals), except to the extent of setting aside the penalty under Section 114AA.

3.1 The Revision Application dated 01.10.2019 has been filed, mainly, on the grounds that the gold is not 'prohibited goods'; that, in terms of Section 125 of the Customs Act, 1962, goods which are not prohibited goods are to be mandatorily released to the owner on payment of redemption fine and the absolute confiscation is not warranted. Accordingly, it has been prayed that absolute confiscation and imposition of penalty may be set aside and the gold ornaments may be released.

3.2 The Revision Application dated 07.10.2019 has been filed by the Commissioner of Customs, Mangaluru, mainly, on the grounds that the Applicant had made an incorrect declaration under Section 77 of the Customs Act, 1962 and, therefore, penalty under Section 114AA is imposable. It is also contended that the penalties imposed are on a lower side and, therefore, higher penalties may be imposed on the Applicant under Section 112 and Section 114AA of the Act *ibid*.

4. Personal hearings in the matter were fixed on 14.03.2023, 21.03.2023 and 28.03.2023, Sh. Vasudev Naik, AC attended the hearings, in virtual mode, for the department on 14.03.2023 and 21.03.2023. No one appeared for the Applicant on any of the dates fixed for hearing nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for disposal based on records.

5. The Government has carefully examined the matter. There is no effective challenge to the liability to confiscation of the offending goods, under Section 111 of the Act *ibid*. The contention of the Applicant is that the gold is not a prohibited item and, hence, it should be released on payment of appropriate fine. It is observed that import of gold and articles thereof in baggage is allowed subject to fulfillment of certain conditions. In the present

case, these conditions were not fulfilled by the Applicant herein. It is settled by a catena of judgments of Hon'ble Supreme Court that goods, in respect of which conditions subject to which their import/export is allowed are not fulfilled, are to be treated as 'prohibited goods'. [Ref: Sheikh Mohd. Omer {1983 (13) ELT 1439 (SC), Om Prakash Bhatia {2003 (155) ELT 423 (SC)} & Raj Grow Impex LLP {2021 (377) ELT 145 (SC)}]. Further, the Hon'ble Madras High Court has, in the cases of Malabar Diamond Gallery P. Ltd. {2016 (341) ELT 465 (Mad.)} and P. Sinnasamy {2016 (344) ELT 1154 (Mad.)}, taken this view specifically in respect import of gold in baggage. Hence, there is no doubt that the goods seized in the present case are to be held to be 'prohibited goods'. As such, the contention of the Applicant that the offending goods are not 'prohibited goods', cannot be accepted.

6. The original authority has denied the release of seized goods on redemption fine under Section 125 of Customs Act, 1962. The Government observes that, in terms of Section 125 of the Customs Act, 1962, the option to release 'prohibited goods', on redemption fine, is discretionary. This position is confirmed by the Hon'ble Supreme Court in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)]. In the case of Raj Grow Impex (supra), the Hon'ble Supreme Court has held "*that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant considerations.*" Further, in the case of P. Sinnasamy (supra), the Hon'ble Madras High Court has held that "*when discretion is exercised under Section 125 of the Customs Act, 1962, ----- the twin test to be satisfied is "relevance and reason".*" Hon'ble Delhi High Court has, in the case of Raju Sharma [2020 (372) ELT 249 (Del)], relying upon the judgment of Apex Court in Mangalam Organics Ltd. [2017 (349) ELT 369 (SC)], held that "*Exercise of discretion by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motive.*" In the present case, the original authority has for the relevant and reasonable considerations, as specifically brought out in para 38 of his Order, denied redemption. Hence, the Commissioner (Appeals) has correctly refused to interfere with the order of absolute confiscation.

7.1 As regards imposition of penalty under Section 114AA, the said Section reads as under:

- ~ *"Penalty for use of false and incorrect material. – 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 traction of any business for purpose of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

The Government observes that the fact of the Applicant making an incorrect declaration is well established. Since an incorrect declaration was made and which declaration was required to be made for transaction of business as per Section 77 ibid, on a plain reading, the imposition of penalty under Section 114AA is merited.

7.2 The Commissioner (Appeals) has relied upon an earlier Order of revisionary authority at Mumbai wherein the authority referred to the objective of introduction of Section 114AA, as explained in the para 63 of the report of Parliament's Standing Committee on Finance (2005-06), to hold otherwise. It is trite that in construing a statutory provision, the first and foremost rule of interpretation is the literal rule of interpretation {M/s. Hiralal Ratanlal vs. STO, AIR 1973 SC 1034 & B. Premanand & Ors. vs. Mohan Koikal & Ors. (2011) 4SCC 266}. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to other principles of interpretation {Swedish Match AB vs. SEBI AIR 2004 SC 4219}. In the present case, the words of Section 114AA are absolutely clear and unambiguous. There is nothing in the plain language of Section 114AA to even remotely suggest that the provisions thereof are not applicable in baggage cases. Hence, it has to be held that the Commissioner (Appeals) erred by relying upon an Order, which departed from the literal rule of interpretation, without any cause, in the teeth of law settled by the Apex Court.

7.3 Further, Section 112 and Section 114 AA are two independent provisions and they refer to different violations. Therefore, when in a case both provisions are violated, penalty under both the Sections can be imposed. There is no provision in the Customs Act which ousts the imposition of penalty under Section 114 AA if penalty under Section 112 has been

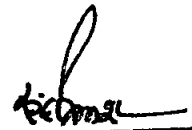
imposed. The Hon'ble Delhi High Court has, in the case of *Commissioner of Customs & Central Excise, Delhi-IV vs. Achiever International {2012 (286) ELT 180 (Del.)}*, held on the same lines.

7.4 As such, as Order of Commissioner (Appeals) setting aside the penalty under Section 114AA cannot be sustained.

8. The case laws cited by the Applicant herein in support of his various contentions are not applicable in the view of the facts of this case and in view of the dictum of the Hon'ble Supreme Court and Hon'ble High Courts as above.

9. In the facts and circumstances of the case, the penalty imposed by the original authority, under Section 112 & 114AA, is just and fair. Therefore, the department's submission to impose higher penalties does not merit consideration.

10. In view of the above, RA No. 373/420/B/SZ/2019 is rejected and RA No. 380/74/B/SZ/2019-RA is partly allowed. Consequently, the penalty imposed by the original authority on the Applicant herein, under Section 114AA *ibid*, is restored.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. The Commissioner of Customs,  
Mangaluru, New Custom House,  
Panambur,  
Mangaluru-575010.
2. Sh. Mohammed Safeeque Berka Abdul Khader  
S/o Shri Abdul Khader Karripalam,  
No. 3/254, Ethirthodu House,  
Edneer, Kasargod,  
Kerala – 671 541.

Order No. 117-118 /23-Cus dated 29.03-2023

Copy to:

1. The Commissioner of Customs (Appeals), 4<sup>th</sup> Floor, BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru – 560 071.
2. Mr. K.P.A. Shukoor, Advocates, United Law Chambers, 2<sup>nd</sup> Floor, Krishnaprasad Building, K.S. Rao Road, Mangaluru – 575 001.
3. PPS to AS(RA).
4. Guard File.
5. ~~Spare copy~~
6. Notice Board.

ATTESTED



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पूनाम गुग्गल / Poonam Guggal