

SPEED POST

F. No. 380/16/B/SZ/2019-RA & others
 GOVERNMENT OF INDIA
 MINISTRY OF FINANCE
 (DEPARTMENT OF REVENUE)

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

Date of Issue. 29/03/2023

Order No. 119-127/23-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 Application(s), as mentioned in Column 'B' of the 'Table-I' below, filed under Section 129DD of the Customs Act, 1962, against the Orders-in-Appeal No(s). as mentioned in Column 'E' of the 'Table-I' below, passed by the Commissioner of Customs (Appeals), Bengaluru, on the common grounds of revision as mentioned in Column "F" of the Table, ibid.

Applicant(s) : 1. Pr. Commissioner of Customs, Airport & Air Cargo Complex, Bengaluru
 2. The Commissioner of Customs, Mangaluru.

Respondent(s) : As mentioned in Column 'C' of Table-I, below.

Table-I

S. No.	File No.	Name of the Respondent (s) S/Sh./Ms.	OIO No./ Date	OIA No./ Date	Common Grounds of Revision
A	B	C	D	E	F
1.	380/16/B/SZ/2019-RA dated 29.01.2019 01 Gold Kada 01 Gold Ring Total weight-111 grams, Value-Rs. 3,38,550/-	Abdul Azeez, Kasargod	09/2018 DC dated- 15.07.2018 DC, Mangaluru	379/2018 30.11.2018	Commissioner (Appeals) set aside the Penalty u/s 114AA of the Customs Act, 1962.

2.	380/17/B/SZ/2019-RA dated 12.02.2019 01 Gold Kada 01 Gold Ring Total weight-110 grams, Value- Rs. 3,35,500/-	Shahul Hameed, Mangaluru	08/2018 DC AP dated- 15.07.2018 & Corrigendum dated 21.07.2018 DC, Mangaluru	377/2018 30.11.2018	Commissioner (Appeals) set aside the Penalty u/s 114AA of the Customs Act, 1962.
3.	380/29/B/SZ/2019-RA dated 01.04.2019 06 Gold Bars-01 Kg each, totally weighing-06 Kg, 02 cut pieces of gold bars-100 gms each, totally weighing-200 grams, 11 nos of gold ornaments studded with stones- totally weighing 255.790 grams, grand total =6455.790 grams, Value- Rs. 2,06,90,857/-	Mohamed Mohideen, Ramanathpur am	11/2018-19 (AP- ADM) dated- 31.07.2018 ADC, Bengaluru	385/2018 30.11.2018	Commissioner (Appeals) set aside the Penalty u/s 114AA of the Customs Act, 1962.
4.	380/32/B/SZ/2019-RA dated 30.04.2019 Gold items and other miscellaneous, totally weighing 493.300 grams, Value- Rs. 14,49,420/-	Shailender Kishinchand Goplani, Ulhasnagar, Thane	23/2018 ADC dated - 31.05.2018 ADC, Mangaluru	13/2019 06.02.2019	Commissioner (Appeals) set aside the Penalty u/s 114AA of the Customs Act, 1962.
5.	380/33/B/SZ/2019-RA dated 30.04.2019 Gold items and other miscellaneous items, totally weighing 133.480 grams, Value- Rs. 4,04,445/-	Muhammad Naufal Mowval, Kasargod	17/2018 DC AP dated- 18.08.2018 DC, Mangaluru	14/2019 06.02.2019	Commissioner (Appeals) set aside the Penalty u/s 114AA of the Customs Act, 1962.
6.	380/43/B/SZ/2019-RA dated 18.06.2019 Cigarettes, Value- Rs. 1,50,000/-	Moiden Najeeb Abdul Khader, Kasargod	25/2018 (AP) dated- 18.10.2018 AC, Mangaluru	46/2019 28.03.2019	Commissioner (Appeals) rejected appeal for imposition of Penalty u/s 114AA of the Customs Act, 1962.
7.	380/47/B/SZ/2019-RA dated 21.06.2019 Cigarettes, Value- Rs. 2,70,000/-	Mohammed Rafik Aboobaker, Kodagu	30/2018 (AP) dated- 29.11.2018 AC, Mangaluru	38/2019 22.03.2019	Commissioner (Appeals) rejected appeal for imposition of Penalty u/s 114AA of the Customs Act, 1962.
8.	380/69/B/SZ/2019-RA dated 20.08.2019 Gold items totally weighing 341.900 grams, Value- Rs. 10,53,052/-	Mohammed Ismail Damaaboo, Bhatkal	01/2019-ADC dated- 14.01.2019 ADC, Mangaluru	69/2019 30.04.2019	Commissioner (Appeals) set aside the Penalty u/s 114AA of the Customs Act, 1962.
9.	380/73/B/SZ/2019-RA dated 04.10.2019 gold wire weighing 233.250 grams, Value- Rs. 7,19,576/-	Mohamed Altaf Abdul Hameed, Kasargod	09/2019 DC AP dated 14.01.2019 DC, Mangaluru	109/2019 24.06.2019	Commissioner (Appeals) set aside the Penalty u/s 114AA of the Customs Act, 1962.

ORDER

Revision Application(s), as mentioned in Column 'B' of the 'Table-I' above, have been filed by the Pr. Commissioner of Customs, Airport and Air Cargo Complex, Bengaluru & the Commissioner of Customs, Mangaluru, as the case may be, (hereinafter referred to as the Applicant department) under Section 129DD of the Customs Act, 1962, against the Orders-in-Appeal No(s). as mentioned in Column 'E' of the 'Table-I' above, passed by the Commissioner of Customs (Appeals), Bengaluru, on the common grounds of revision as mentioned in Column 'F' of the Table, ibid. The Commissioner (Appeals) has, vide the respective Orders-in-Appeal, set aside the penalty imposed under Section 114AA of the Customs Act, 1962, on the Respondents, as mentioned in Column 'C' of the **Table-I**, above or rejected department's appeals for imposition of such penalty. In the cases at Sr. 1-5 & 8-9, the original authorities, i.e., the Additional Commissioner of Customs, Kempegowda International Airport, Bengaluru, & Assistant/Deputy/Additional Commissioner of Customs, Mangaluru International Airport, Mangaluru, vide respective Orders-in-Original as mentioned in column 'D' of **Table-I**, had imposed penalty on the Respondents herein under Section 114AA of the Customs Act, 1962, in addition to orders of absolute confiscation/ confiscation/ redemption (for re-export) of offending goods and imposition of penalty under Section 112 of the Act, ibid. In the cases at Sr. 6-7, the original authorities had not imposed penalty under Section 114AA ibid.

2. Brief facts of the cases are that the Respondents herein had been apprehended smuggling gold/gold articles/Cigarettes of foreign origin, in their baggage, upon arrival at the Bengaluru International Airport/Mangaluru International Airport. They had attempted to remove these gold/ gold articles/Cigarettes from the Customs Area without making any declaration in the 'Customs Declaration Form' and upon oral inquiry also denied carrying any contraband. In the cases at Sr. 1-5, and 8-9, the respective original authority ordered absolute confiscation/ confiscation/ redemption (for re-export) of offending goods and also imposed penalty under Section 112 and 114AA of the Act, ibid on the Respondents. Aggrieved, the Respondents herein filed their respective appeals, which have been partly allowed by the Commissioner (Appeals), by way of setting aside the penalty imposed

under Section 114AA of the Customs Act, 1962. As brought out in para 1 above, in the cases at Sr. 6-7, the original authority ordered absolute confiscation of cigarettes and imposed penalty under Section 112 *ibid* but did not impose penalty under Section 114AA *ibid*. Appeals filed by the department against non-imposition of penalty under Section 114AA *ibid*, in these cases, have been rejected.

3. The Revision Applications, as mentioned in **Column 'B' of the Table-I**, have been filed by the Applicant department, mainly, on the grounds that the Respondents herein had attempted to smuggle goods by making incorrect declarations under Section 77 of the Act, *ibid*; that, therefore, Respondents are liable to penalty under Section 114AA, *ibid*; and that the observation of Commissioner (Appeals) that penalty under Section 114AA is not applicable to baggage cases is without any legal basis.

4. As these revision applications involve identical issue, i.e., imposition of penalty under Section 114AA *ibid*, they are being disposed of by this common order.

5.1 Personal hearings were fixed on 14.03.2023, 21.03.2023 & 28.03.2023. In the hearings held on 14.03.2023 & 21.03.2023, in virtual mode, Sh. Vasudeva Naik, AC appeared for the Applicant department in the cases mentioned at Sr. No. 1,2,4,5,6,7,8 and reiterated the contents of the RAs. No one appeared for the department in the case at Sr. No. 3 on any of the dates fixed for hearing.

5.2 In respect of all the cases, no one appeared for the Respondents on any of the dates fixed for hearing nor any requests for adjournment have been received. Since sufficient opportunities have been granted, the matter is taken up for disposal based on records.

6. The revision application at Sr. 3 of **Table-I** above has been filed with a delay. Delay, which is attributed to administrative reasons, is condoned.

7.1 The Government has carefully examined the matter. As already stated, only issue that arises for consideration in the listed revision applications is whether penalty under Section 114AA of the Customs Act, 1962 is imposable in these cases.

7.2 Section 114AA 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 Respondents making an incorrect declaration is well established. They failed to declare the goods carried by them even when asked to do so orally. 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.

7.3 The Commissioner (Appeals) has relied upon an earlier Order of the revisionary authority at Mumbai, wherein the revisionary authority has 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 provisions thereof shall not be applicable in baggage cases. Hence, it has to be held that Commissioner (Appeals) has erred by relying upon a decision which has been passed by departing from the literal rule

of interpretation, without any reason to do so, and in the teeth of law settled by the Hon'ble Apex Court.

7.4 Further, it bears no reiteration that 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 also 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.)}*, taken an identical view.

7.5 In view of the above, it has to be held that penalty under Section 114AA is imposable in all the cases under consideration. Accordingly, the penalties imposed by the original authorities on the respective Respondents, under Section 114AA *ibid*, in the cases at Sr. 1-5 & 8-9 are restored. In so far as cases at Sr. 6-7 are concerned, though the penalty is imposable under Section 114AA, keeping in view the small value of goods and passage of time, the Government refrains from imposing any penalty under Section 114AA in these cases.

8. The revision applications are disposed of in above terms.



(Sandeep Prakash),
Additional Secretary to the Government of India

1. The Pr. Commissioner of Customs,
Airport and Air Cargo Complex,
Kempegowda International Airport,
Devanahalli, Bengaluru-560300
2. The Commissioner of Customs,
New Customs House, Panambur,
Mangaluru-575010

Order No. 118-127/23-Cus dated 28-03-2023

Copy to:

1. The Respondents:

Name of the Respondent(s) S/Sh./Ms.
Sh. Abdul Azeez, S/o Sh. Moidinabba, Aysha Manzil, Z.M. Road, Udyawar, P.O. Manjeshwar, Kasargod-671323, Kerala
Sh. Shahul Hameed, S/o Sh. Mohammed Kunhi, No. 7-122, Heritage, opposite Rahamaniya Masjid, Someshwara Uchila Post, Someshwara Village, Mangaluru-575023
Sh. Mohamed Mohideen, S/o Sh. Mohamed Sathakathulla, No. 18/127, Middle Street, Kilakarai P.O., Ramanathapuram, Tamil Nadu
Sh. Shailender Kishinchand Goplani, S/o Sh. Kishinchand Kalumal Gopalani, Flat-7, Nickys Nest Apt, Near: 24/C School, Near Gol Maidan, Ulhasnagar, Thane, Maharashtra
Sh. Muhammad Naufal Movval, S/o Sh. Abdul Rehman Movval Mohammed, M M House, Bendichal Thekkil P.O Kasargod-671541, Kerala
Sh. Moiden Najeeb Abdul Khader, Naduhithlu House, Near GHS, Kunjathur P.O. via Manjeshwar, Kasargod-671323
Sh. Mohammed Rafik Aboobaker, S/o Sh. Aboobaker Ceerangan Mohammed, Dhanugala Village & Post, Virajpet Taluk, Kodagu-571213
Sh. Mohammed Ismail Damaaboo, S/o Sh. Abubaker Damba Abu, H.No. 40, Jamia Street, Bhatkal-581320, Karnataka
Sh. Mohamed Altaf Abdul Hameed, S/o Sh. Abdul Hameed Choori Mohammad, Basheer Manzil, Kudlu Ramdas Nagar P.O, Kasargod-671124

2. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
3. PPS to AS(RA)
4. Guard file.
5. Spare Copy.
6. Notice board.

29/03/2023
Praveen Negi
Superintendent (R.A. Unit)
Ministry of Finance
Department of Revenue
Room No. 605, 6th Floor, B-Wing
14, Hudco Vishala Building, Bhikaji Cama Place
New Delhi-110066