



F. No. 380/48/B/SZ/2019 & 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: 31/3/23..

Order No 129-139/23-Cus dated 31.3.2023 of the Government of India passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Applications under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. as mentioned **Column 'F' of Table-I below**, passed by the Commissioner of Customs (Appeals), Bengaluru

Applicants : **As mentioned in Column 'C' of the Table-I, below.**

Respondent : **As mentioned in Column 'D' of the Table-I, below.**

Table-I

S. No.	File No.	Name of the Applicant	Name of the Respondent	OIO No. & Date	OIA No. & Date	Items under import & Value (Rs.)	Penalty under Section 112/114 (Rs.)	Penalty under Section 114AA (Rs.)
A.	B.	C.	D.	E.	F.	G.	H.	I.
1.	380/48/B/SZ/2019 Dated 25.06.2019	Commissioner of Customs, Mangaluru	Abdul Nazar Maheen, Kasargod	23/2018(AP) 06.09.2018	53-56/2019 29.03.2019	Cigarette 254400	35000	15000
2.	380/49/B/SZ/2019 Dated 08.07.2019		Mohammed Junaine Cherukad, Kozhikode	27/2018(AP) 04.11.2018		Cigarette 150000	25000	10000
3.	380/50/B/SZ/2019 Dated 25.06.2019		Moideen, Kasargod	28/2018(AP) 15.11.2018		Cigarette 75000	10000	5000
4.	380/51/B/SZ/2019 Dated 25.06.2019		Farook Muttathodi, Kasargod	32/2018(AP) 09.12.2018		Cigarette 75000	10000	5000

F. No. 380/48/B/SZ/2019 & Others

5.	380/61/B/SZ/2019 Dated 09.08.2019	Commissioner of Customs, Mangaluru	Ateequrrehman, Bhatkal	41/2018ADC 17.12.2018	62/2019 15.04.2019	Gold 1384020	400000	200000
			Liyakat Ali Akbari, Bhatkal			Gold 1598097	475000	240000
			Basit Abdul Kader, Bhatkal			Gold 1384020	400000	200000
			Hajeeb Abdul Wahid Mohamed Jafer, Goa			Gold 1384020	400000	200000
			Abdul Rashid Aydrusa, Bhatkal			0	200000	0
6.	380/65/B/SZ/2019 Dated 14.08.2019	Commissioner of Customs, Mangaluru	Mohammed Asrar, Bhatkal	46/2018ADC 28.12.2018	65/2019 26.04.2019	Gold 1375880	410000	205000
7-8	380/67- 68/B/SZ/2019 Dated 09.08.2019	Commissioner of Customs, Mangaluru	Ahammed Thahir Thalangara Moidu, Kasargod	37/2018ADC 30.11.2018	60-61/2019 12.04.2019	Gold 2417030	600000	300000
			Ambujakshan Kaniyamkulam, Kasargod	21/2018(AP) 05.09.2018		Gold 263198	50000	25000
9.	380/70/B.SZ/2019 Dated 22.08.2019	Commissioner of Customs, Mangaluru	Abdul Azeez, Kasargod	05/2019(AP) 08.01.2019	72/2019 07.05.2019	Gold 717024	200000	50000
10.	380/76/B/SZ/2019 Dated 09.10.2019	Commissioner of Customs, Mangaluru	Smt. Kunhasiya Palat, Kasargod	22/2018(AP) 05.09.2018	118/2019 28.06.2019	Gold 966294	190000	95000
11.	380/78/B/SZ/2019 Dated 05.09.2019	Commissioner of Customs, Mangaluru	Abdul Raheem Gudde Ebrahim, Mangaluru	04/2019-UB 11.01.2019	87/2019 21.05.2019	Misc. Household Articles Value - 351950 Duty - 135501 @38.5% (Baggage Rate) RF - 75000	50000	25000

ORDER

Revision Applications, as mentioned in **Column 'B'** of the Table -I, above, have been filed by Applicants, namely Commissioner of Customs, Mangaluru, as mentioned in **Column 'C' of the Table, ibid** (hereinafter referred to as the Applicant department) against the Orders-in-Appeal as mentioned in **Column 'F'** of the Table-I, above, passed by the Commissioner of Customs (Appeals), Bengaluru in respect of different Orders-in-Original, as mentioned in **Column 'E'** of the Table-I, above, passed by the respective original authorities. The Commissioner (Appeals) has upheld the Orders-in-Original of the original authorities, ordering, thereunder, absolute confiscation/ redemption of seized goods, which were recovered from the Respondents, as mentioned in **Column 'D'** above, under Section 111 of the Customs Act, 1962, as the case may be. Penalties, as mentioned in **Column 'H'** and **'I'** of the Table-1 above, were imposed on each of the Respondents herein, under Section 112 and 114AA of the Act, *ibid*, and which have also been upheld, *vide* the impugned Orders-in-Appeal. The respective appeals filed by the Applicant department have been rejected by the Commissioner (Appeals).

2.1 The common facts of the cases at S. No. 1 to 10 are that the Respondents arrived at Mangaluru International Airport from abroad with offending goods, as mentioned in **Column 'G'** of the Table-I, above but attempted to clear the same, without making any true declaration, as required under Section 77 of the Customs Act, 1962, before the Customs authorities and also without payment of Customs duty. The Respondents in their respective statements, recorded under Section 108 of the Customs Act, 1962, admitted the recovery of offending goods from their baggage/ person and their unsuccessful attempt to clear the same from Customs area, in concealed manner, without making any declaration under Section 77 of the Act, *ibid* and also without payment of Customs duty. The case of each of the Respondents was adjudicated by jurisdictional Deputy Commissioner or Additional/ Joint Commissioner of Customs, as the case may be, *vide* Orders-in-Original No. as mentioned in **Column 'E'** of the Table-I, above whereunder the offending goods were ordered for absolute confiscation under Section 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962 and penalties were imposed, as mentioned in **Column 'H'** and **'I'** of the Table-1 above, on each of the Respondents, herein, under Section 112 & 114AA of the Act, *ibid*.

Subsequently, the Applicant department filed appeals before the Commissioner (Appeals), which have been rejected.

2.2 The facts of the cases w.r.t. the case at S. No. 11, are that the Respondent returned from Saudi Arabia, on 29.09.2021, and filed an un-accompanied Baggage Declaration No. 326/2018 dated 27.12.2018 (herein after referred to as 'BD') on 27.12.2018, claiming thereunder clearance of 461 packages as personal effects/ household articles, under Baggage Rules, 2016. On examination, it was found that on some of the packages, names and address of persons, other than the Respondent, who filed the BD, were mentioned. On enquiry the Respondent informed that he had brought personal belongings (in 350 packages) as well as the belongings of some other persons (in 111 packages). Thus, the Respondent filed a wrong declaration, under Section 77 of the Customs Act, 1962, to claim benefit under Transfer of Residence as per Rule, 6 of the Baggage Rules, 2016. The fact related to bringing of personal belongings of other persons has also been accepted by the Respondent in his affidavit dated 27.12.2018. The original authority, vide Order-in Original No. 04/2019/UB dated 11.01.2019, confiscated the goods under Section 111(m) of the Customs Act, 1962, but allowed redemption on payment of a fine of Rs. 75,000/-. Penalties of Rs. 50,000/- and Rs. 25,000/- were also imposed on the Respondent, under Section 112 and 114AA, respectively of the Act, *ibid*. The Applicant department filed appeal before the Commissioner (Appeals), which has been rejected.

3. The Applicant department has filed the Revision Applications, in the cases at Sr. No. 1 to 10, mainly, on the grounds that adequate penalties have not been imposed on the respective Respondents and prayed for imposition of higher penalties under Section 112 and 114AA. In the case at Sr. No. 11, the redemption of goods on payment of fine and meagre amount of penalty imposed on the Respondent has also been challenged by the Applicant department.

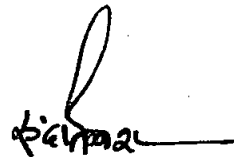
4. Personal hearings in the matter were fixed on 14.03.2023, 21.03.2023 and 28.03.2023. No one appeared for the Respondents herein in either of the hearings held on the fixed dates nor any request for adjournment has been received. Sh. Vasudeva Naik, AC

F. No. 380/48/B/SZ/2019 & Others
appeared for the Applicant department on 14.03.2023 and 21.03.2023. Since sufficient opportunities have been granted, these cases are taken up for disposal

5.1 The Government has carefully examined the matters under consideration. In all these cases it is the contention of the Applicant department that adequate penalties have not been imposed on the Respondents herein. It is observed that in respect of cases at Sr. No. 1 to 10, the respective original authorities have imposed total penalties ranging between 37-44% of the value of contraband (in the cases related to smuggling of gold) and penalties approximating to about 20% of the value of the contraband (in the cases related to smuggling of cigarettes). It is further observed that in all these cases, the offending goods have also been absolutely confiscated. As such, it appears to the Government that the penalties imposed, as upheld by the Commissioner (Appeals), are appropriate.

5.2 In so far as the case at S. No. 11 is concerned, the case is of misdeclaration in as much as excess quantity/ packages were recovered from the unaccompanied baggage. The goods are stated to be in the nature of household articles/ personal belongings. Therefore, the redemption of goods under Section 125 of the Customs Act, 1962, cannot be faulted. In this case the original authority has imposed redemption fine of Rs. 75,000/-, which is about 21% of the value of goods. Penalties imposed also approximate to 21% of the value of the goods. Further, the goods have been ordered to be cleared on baggage rate of duty of 38.5% and TR benefit has not been extended. Therefore, in this case as well no case is made out to enhance the fine and penalties.

6. In view of the above, the revisions applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

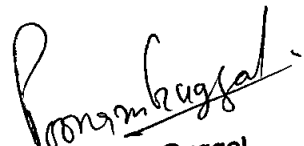
The Commissioner of Customs, Mangaluru,
New Custom House,
Panambur,
Mangaluru-575010.

Order No. 129-139/23-Cus dated 31.3.2023

Copy to:

1. Sh. Abdul Nazar Maheen, S/o Late Shri Maheen, Bedira House, Kallingal House, Pallikkara, P.O. Bekal Fort, Kasargod, Kerala.
2. Sh. Mohammed Junaine Cherukad, Palliyalil House, Srangpadi, Feroke Post, Kozhikode, Kerala – 673631.
3. Sh. Moideen, Uliyathadka House, Bilal Nagar, Madhur PO, Kasargod.
4. Sh. Farook Mutthathodi, S/o Shri Muhammed, H. No. 4/577, Erurumkaddavu House, P.O. Muttathody, Kasargod.
5. Sh. Atteequrrehman, Molana Alimiya Road, Gudihittalshirali, Bhatkal – 581354.
6. Sh. Liyakat Ali Akbari, House No. 118, Akbari House, Magdoom Colony, Bhatkal – 581320.
7. Sh. Basit Abdul Kader, House No. 1282A, Khasresijal, Madina Colony, Jali Bhatkal.
8. Sh. Hajev Abdul Wahid Mohdjafar, House No. 227, Ward No. 7, Angodm, Mapusa Bardez, Goa – 403507.
9. Sh. Abdul Rashid Aydrusa, Thengangundi Cross, Madina Colony Cross, Opp. Metro Steels, National Highway, Bhatkal, Uttara Kanada, Karnatka.
10. Sh. Mohammed Asrar, S/o Shri Abu Mohammed Hyder, H. No. 742, 2nd Cross, Bunder Road, Gandhinagar, Bhatkal – 581320.
11. Sh. Ahammed Thahir Thalagara Moidu, S/o Shri Moidu Kottikulam Mohammed, #14/136, Near Juma Masjid, PO Kalanad, Kasargod – 671317.
12. Sh. Ambujakshan Kaniyamkulam, S/o Shri Kunhambu Kaniyamkulam Veetil, Kaniyamkulam House, Arangadi, Kasargod – 671315.
13. Sh. Abdul Azeez, S/o Shri Abu, Ahmed Manzil, Uppala, Kasargod – 67132.
14. Smt. Kunhasiya Palat, W/o Shri Kunhamed Punjavatalil Punnakal, New P.P. House, Kalavayal P.O., Kasargod – 671531.
15. Sh. Abdul Raheem Gudde Ebrahim, S/o Ebrahim Gudde, D. No. 8-41, Kolangara House, Someshwara Talapady, Mangalore – 574184.
16. The Commissioner of Customs (Appeals), BMTC Building, Above, BMTC Bus Stand, Old Airport Road, Domlur, Bangaluru-560071.
17. PPS to AS(RA).
18. Guard file.
19. Spare Copy.
20. Notice Board.

ATTESTED


पूनम गुग्गल / Poonam Guggal
अधीक्षक / Superintendent (R.A. Unit)
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग