

**SPEED POST**



F. No. 373/310/B/SZ/2019-RA  
F. No. 380/75/B/SZ/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. 140-14/23-Cus dated 29-03-2023 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, filed under Section 129 DD of the Customs Act, 1962, against the Orders-in-Appeal Nos. 115-116/2019 dated 28.06.2019, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : 1. Sh. Manohar Newandram Kamra, Mumbai.  
2. The Commissioner of Customs, Mangaluru.

Respondent : 1. The Commissioner of Customs, Mengaluru.  
2. Sh. Manohar Newandram Kamra, Mumabi.

.....

**ORDER**

Revision Application No. 373/310/B/SZ/2019-RA dated 08.08.2019 has been filed by Sh. Manohar Newandram Kamra, Mumbai (hereinafter referred to as the Applicant), against the Order-in-Appeal Nos. 115-116/2019 dated 28.06.2019, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, upheld the Order-in-Original 47/2018-ADC dated 28.12.2018, passed by the Additional Commissioner of Customs, Mangaluru, except to the extent of setting aside the penalty imposed under Section 114AA of the Customs Act, 1962. The Commissioner (Appeals) has also rejected the appeal filed by the department praying for imposition of higher penalties. The Commissioner of Customs, Mangaluru has filed RA No. 380/75/B/SZ/2019-RA dated 07.10.2019 against the said Orders-in-Appeal seeking restoration of penalty under Section 114AA and for imposition of higher penalties.

2. Brief facts of the case are that the Applicant herein was, on the basis of specific intelligence, intercepted by the Custom officers, while departing for Dubai from Mangaluru International Airport, on 26.12.2017. Applicant was initially enquired as to whether he had anything to declare to Customs to which he replied in negative. On a specific query as to whether he was carrying any foreign currency/contraband, he again replied in negative. However, on search of his baggage, a bundle containing foreign currency of USD 18000/-, equivalent to Rs. 11,37,600/-, was found concealed in brown paper inside two side layers of the bag. The Applicant could not produce any documents towards licit possession of the currency and informed that the recovered foreign currency was given to him by another person to be handed over to his associates in Dubai for monetary consideration of Rs. 5000/-. In his statement dated 26.12.2017, recorded under the provisions of Section 108 of the Customs Act, 1962, the Applicant admitted that he tried to smuggle the foreign currency abroad without any documents and was aware that it was an offence to do so. He also confirmed that the foreign currency was given to him by another person to be handed over to his associates in Dubai for a monetary consideration. A show cause notice dated 11.06.2018 was issued to the Applicant, which was adjudicated by the original authority, vide the aforesaid Order-in-Original dated 28.12.2018. The original authority ordered for absolute confiscation of the foreign currency under Section 113 (d), (e) & (h) of the Customs Act, 1962. Penalties of Rs. 3,40,000/- and Rs. 1,70,000/- were also imposed on the Applicant herein, under Section 114 & 114AA, respectively, of the Customs Act, 1962. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals), except to the extent of setting aside the penalty imposed under Section 114AA. The department's appeal for imposition of higher penalties has also been rejected.

3.1 The revision application dated 08.08.2019 has been filed by the Applicant, mainly, on the grounds that the foreign currency is not 'prohibited goods' and hence, order of absolute confiscation is not sustainable; that the authorities should have, therefore,

granted him an option to redeem the same on payment of an appropriate fine; that penalty of Rs. 3,40,000/- is disproportionate and is not sustainable. Accordingly, it has been prayed that the foreign currency may allowed to be redeemed.

3.2 The department has filed the revision application dated 07.10.2019, mainly, on the grounds that the Applicant had made an incorrect declaration, under Section 77 of the Customs Act, 1962, and hence, penalty under Section 114AA is imposable. It is also submitted that in the facts and circumstances of the case and considering the nature of offence, higher penalties ought to have been imposed.

4. Personal hearings were fixed on 14.03.2023, 21.03.2023 and 28.03.2023. Sh. Vasudev Naik, AC appeared for the department in the personal hearings held on 14.03.2023 and 21.03.2023. No one appeared for the Applicant in the hearings fixed on 14.03.2023 and 21.03.2023. In response to the hearing notice for 28.03.2023, a request for adjournment was received, on 27.03.2023, from the Applicant, which was rejected as this was the last and final opportunity and the Applicant was informed, accordingly, on 27.03.2023 itself. However, the Applicant failed to appear in the personal hearing held on 28.03.2023. Since sufficient opportunities have been granted, the matter is taken up for disposal based on records.

5. The Government has carefully examined the matter. It is not disputed that the foreign currency was recovered from the Applicant. It is also on record that the Applicant had not made any declaration in respect of the currency carried by him. He denied the same even upon being asked to do so orally. Eventually, a large amount of foreign currency was found on him. Thus, it is evident that the Applicant did not make a correct declaration regarding the currency being carried by him as required under Section 77 of the Customs Act, 1962, and also did not have any documents or evidence showing lawful possession of the currency.

6.1 As per Regulation 5 of the Foreign Exchange Management (Export & Import of Currency) Regulations, 2015, "*Except as otherwise provided in these regulations, no person shall, without the general or special permission of Reserve Bank, export or send out of India, or import or bring into India, any foreign currency.*" Furthermore, in terms of Regulation 3(iii) of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015, any person resident in India could retain foreign currency not exceeding US \$ 2000 or its equivalent in aggregate subject to the condition that such currency was acquired by him by way of payment for services outside India or as honorarium, gift, etc. In the present case, the Applicant has failed to show compliance with the Regulations, as above. Thus, it is clear that the conditions in respect of possession and export of the foreign currency (seized from the Applicant) are not fulfilled.

6.2 The Government observes that in the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293}, the Hon'ble Supreme Court has held that for the purpose of Section 111(d) of the Customs Act, 1962, the term *"Any prohibition" means every prohibition. In other words, all types of prohibition. Restriction is one type of prohibition*". The provisions of Section 113(d) are in pari-materia with the provisions of Sections 111 (d). In the case of Om Prakash Bhatia Vs. Commissioner of Customs, Delhi {2003(155)ELT423(SC)}, the Hon'ble Supreme Court has held that *"if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods"*. In its judgment, in the case of UOI & Ors vs. M/s Raj Grow Impex LLP & Ors (2021-TIOL-187-SC-CUS-LB), the Hon'ble Supreme Court has followed the judgments in Sheikh Mohd. Omer (supra) and Om Prakash Bhatia (supra) to hold that *"any restriction on import or export is to an extent a prohibition; and the expression "any prohibition" in Section 111(d) of the Customs Act includes restrictions."*

6.3 Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject foreign currency is 'prohibited goods', as the conditions subject to which the said currency could have been exported are not fulfilled in the present case.

7. The Government observes that the option to release seized goods on redemption fine, in respect of 'prohibited goods', is discretionary. This position has been affirmed 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 UOI & Ors vs. M/s Raj Grow Impex LLP & Ors (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; and has to be based on the relevant considerations"*. Further, *"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."* Thus, the discretion exercised by the original authority can be interfered with, only if it suffered from any of the vices indicated by the Hon'ble Court, as above. In the present case, the original authority has after detailed consideration denied the option of redemption. The reasons recorded by the original authority, specifically in paras 22.6 to 22.9, are relevant, just and appropriate. As such, the Commissioner (Appeals) has correctly refused to interfere in the matter.

8.1 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.

8.2 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 and in the teeth of law settled by the Apex Court.

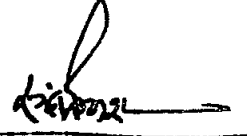
8.3 It bears no reiteration that, Section 112 and Section 114 AA are two independent provisions and they refer to different violations. Therefore, when in a case both provisions are violated, penalty under both the Sections can be imposed. Further, there is no provision in the Customs Act which ousts 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.

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

9. 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.

10. In the facts and circumstances of the case, the penalties imposed by the original authority, under Sections 112 & 114AA, are just and fair. Therefore, no case is made out to increase the penalties as prayed for by the department.

11. In view of the above, RA No. 373/310/B/SZ/2019-RA is rejected and RA No. 380/75/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.

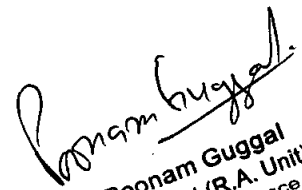
2. Sh. Manohar Newandram Kamra,  
C/302, 3<sup>rd</sup> Floor, Bafna Apartments,  
Mogal Lane, Mahim (W),  
Mumbai-400016.

Order No. 140-141 /23-Cus dated 29-03-2023

Copy to:

1. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bangalore-560071.
2. Sh. Prakash, K. Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra East, Mumbai-400051.
3. PPS to AS (RA).
4. Guard file.
5. Spare Copy.
6. Notice Board.

ATTESTED



पूनाम गुग्गल / Poonam Guggal  
अधीक्षक / Superintendent (R.A. Unit)  
वित्त मंत्रालय / Ministry of Finance  
राजस्व विभाग / Department of Revenue  
Room No. 605, 6th Floor, B-Wing  
14, Hudco Vishala Building, Bhikai C  
New Delhi-110066