

SPEED POST

F. No. 380/52/B/SZ/2020-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 28/4/23

Order No. 164-167/23-Cus dated 28-04-2023 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.

Applicant(s) : The Commissioner of Customs, Panambur, 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	Remarks
A	B	C	D	E	F
1.	380/52/B/SZ/2020-RA dated 09.11.2020 UAE Dirhams 18500	Fasaludheen Chittari Badakan, Kasargod	96/2016 (AP) dated- 29.12.2016 AC, Mangaluru	63/2020 31.07.2020	Commissioner (Appeals) reduced the Penalty u/s 114(i) of the Customs Act, 1962 from Rs. 50,000/- to Rs. 25,000/- and allowed redemption by imposing fine of Rs. 50,000/-.

2.	380/53/B/SZ/2020-RA dated 09.11.2020 USD 4000, KSA Riyals 500, UAE Dirhams 3690	Mohammed Azfar, Uttar Kannada	42/2019 (AP) AC dated - 10.10.2019 AC, Mangaluru	64/2020 dated - 31.07.2020	Commissioner (Appeals) reduced the Penalty u/s 114(i) of the Customs Act, 1962 from Rs. 2,00,000/- to Rs. 25,000/-, set aside the Penalty u/s 114AA of the Customs Act, 1962 and allowed redemption by imposing fine of Rs. 1,00,000/-.
3.	380/62/B/SZ/2020-RA dated 28.12.2020 USD 1640, KSA Riyals 4500, UAE Dirhams 8200, Kuwaiti Dinars 170	Mohammed Shareef Cherangai House, Kasargod	21/2019 dated- 06.06.2019 JC, Mangaluru	114/2020 23.09.2020	Commissioner (Appeals) reduced the Penalty u/s 114(i) of the Customs Act, 1962 from Rs. 2,00,000/- to Rs. 50,000/-, set aside the Penalty u/s 114AA of the Customs Act, 1962 and allowed redemption by imposing fine of Rs. 75,000/-.
4.	380/63/B/SZ/2020-RA dated 28.12.2020 USD 2090, UAE Dirhams 10700, KSA Riyals 12000, Kuwaiti Dinars 525, Qatar Riyals 4500	Abdul Sathar Kadapuram Hassainar, Kasargod	23/2019 dated- 10.06.2019 JC, Mangaluru	115/2020 23.09.2020	Commissioner (Appeals) reduced the Penalty u/s 114(i) of the Customs Act, 1962 from Rs. 2,00,000/- to Rs. 50,000/-, set aside the Penalty u/s 114AA of the Customs Act, 1962 and allowed redemption by imposing fine of Rs. 1,00,000/-.

ORDER

Revision Application(s), as mentioned in Column '**B**' of the '**Table-I**' above, have been filed by the Commissioner of Customs, Mangaluru, (hereinafter referred to as the Applicant department), 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. The Commissioner (Appeals) has, vide the respective Orders-in-Appeal, reduced the penalty imposed under Section 114(i) of the Customs Act, 1962, set aside the penalty imposed under Section 114AA of the Act, *ibid*, on the Respondents (except the case mentioned at Sl. 1 of the table) and allowed redemption, as mentioned in Column '**C**' of the '**Table-I**', above. In all the cases the original authority, i.e., Assistant/Joint Commissioner of Customs, 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 (except in the case at Sl. 1), in addition to orders of absolute confiscation and imposition of penalty under Section 114 (i) of the Act, *ibid*.

2. Brief facts of the cases are that the Respondents herein had been apprehended while smuggling assorted Foreign Currencies, in their baggage, before departure at the Mangaluru International Airport. They had attempted to remove Foreign Currencies without making any declaration in the 'Customs Declaration Form' and upon oral inquiry also denied carrying any contraband. In all the cases the original authority ordered absolute confiscation of offending goods and also imposed penalty under Section 114(i) and 114AA of the Act, *ibid* on the Respondents, except the case mentioned at Sr. 1 wherein penalty only under Section 114(i) has been imposed. 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 (whereby applicable), reducing the penalty imposed under Section 114(i) of the Act, *ibid* and allowing redemption of the foreign currencies.

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 foreign currency in a concealed manner; that the Respondents were carrying foreign currency in excess of the legally permissible limit; that the offending foreign currency is therefore, 'prohibited goods'; that, hence, Commissioner (Appeals) ought not to have interfered in the matter.

4. Personal hearings were fixed on 18.04.2023, 24.04.2023 & 28.04.2023. Sh. Vasudeva Naik, AC appeared for hearing held on 18.04.2023. No one appeared for the Respondents 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.

5. The Government has carefully examined the matter. It is observed that the foreign currency was, admittedly, recovered from the Respondents. It is also on record that the Respondents had not made any declaration in this regard. Further, the Respondents 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."* Further, 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 cases, the Respondents have 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 Respondents) 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 currency is 'prohibited goods', as the conditions subject to which the foreign currency could have been exported are not fulfilled in the cases under consideration.

7. The Government observes that the option to release seized goods on redemption fine, in terms of the provisions of Section 125 of the Customs Act, 1962, in respect of 'prohibited goods', is discretionary. The Hon'ble Supreme Court has affirmed this position 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, in the case of P. Sinnasamy {2016 (344) ELT 1154 (Mad.)}, the Hon'ble Madras High Court has held that *"when discretion is exercised under Section 125, ----- 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 cases, the original authority has, after detailed consideration and for relevant considerations, refused redemption. Therefore, the discretion exercised by the original authority could not have been interfered with. There is no authority in the law for the Commissioner (Appeals) to have supplanted his discretion for that of the original authority, which he seems to have done in these cases. Hence, the orders of Commissioner (Appeals) allowing redemption cannot be sustained.

8.1 The Commissioner (Appeals) has set aside the penalties imposed on the Respondents herein (except in the case at Sl. 1), under Section 114AA, which has been assailed by the Applicant department. 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."

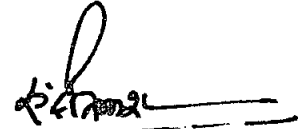
The Government observes that the fact of the Respondents making an incorrect declaration is well established. They failed to declare the foreign currency carried by them even when asked to do so orally. Since an incorrect declaration was made and which declaration was required to be made for transaction of business as per Section 77 *ibid*, on a plain reading, the imposition of penalty under Section 114AA is merited.

8.2 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. 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.

9. The Commissioner (Appeals) has also reduced the penalties imposed, under Section 114 ibid. The Government observes that the amount of penalties imposed by the original authority, in the respective cases, works out to about 20% of the value of the offending goods, which is neither harsh nor excessive. Hence, the Commissioner (Appeals) has again erred by interfering with the penalties imposed.

10. The revision applications are, accordingly, allowed and the Orders-in-Appeal impugned herein are set aside.



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

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

Order No. 164-167/23-Cus dated 28-04-2023

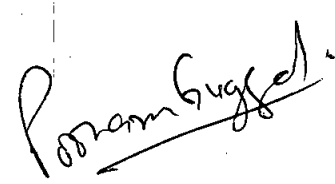
Copy to:

1. The Respondents:

Name of the Respondent(s) S/Sh./Ms.
Sh. Fasaludheen Chittari Badakan, S/o Sh. Mohammed, H.No. XI 276. P.B House, Pallikera, Chittari P.O, Kasargod district, Kerala-671301
Sh. Mohammed Azfar, S/o Sh. Ahamed Tahir Armar, Andalus, Opp. Peningudni Road, NH-17, Uttar Kannada, Karnataka-581320
Sh. Mohammed Shareef Cherangai House, S/o Sh. Seethi Kunhi Cherangai House, H.No. Mpp-X/252 B, Haniya Mahal, Eriyal House, VII/184, Kudlu P.O., Kasargod, Kerala
Sh. Abdul Sathar Kadapuram Hassainar, S/o Sh. Hassainar Kadapuram Backer, H.No. KMC-1/37, Cherangai Kadapuram House, Cherangai, Kudulu P.O., Kasargod District, Kerala-671122

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.

ATTESTED


पूनाम गुग्गल / Poonam Guggal
अधीक्षक / Superintendent (R.A. Unit)
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राजस्व विभाग / Department of Revenue
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