

SPEED POST



F. No. 380/06/B/2017-RA
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...30/1/23

Order No. 29 /23-Cus dated 30-01- 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, filed under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal AIRPORT. C.Cus.I. NO. 156/2017 dated 30.08.2017, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Pr. Commissioner of Customs, Airport, Chennai-I

Respondent : Sh. Prabakaran Mani, Cuddalore

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ORDER

A Revision Application No. 380/06/B/2017-RA dated 27.11.2017 has been filed by the Pr. Commissioner of Customs, Chennai-I Commissionerate, Chennai (hereinafter referred to as the Applicant department) against the Order-in-Appeal AIRPORT. C.Cus.I. NO. 156/2017 dated 30.08.2017, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals), vide the impugned Order-in-Appeal, has upheld the Order-in-Original No. 40/2017-18 dated 19.05.2017, passed by the Additional Commissioner of Customs (Adjudication-Air), except to the extent of the penalty imposed under Section 114AA of the Customs Act, 1962. Vide the aforesaid Order-in-Original, 05 gold bars, all having 24 carat purity, totally weighing 499.5 grams and collectively valued at Rs. 14,86,512/-, have been absolutely confiscated under Sections 111(d) and 111(l) of the Customs Act, 1962. Besides, penalties of Rs. 1,45,000/- & Rs. 5,000/- were also imposed upon Sh. Prabakaran Mani, Cuddalore (hereinafter referred to as the Respondent) under Sections 112(a) and 114AA, respectively, of the Act, *ibid*.

2. Brief facts of the case are that the Respondent arrived, on 24.02.2017, at Anna International Terminal of Chennai airport, from Singapore. He was intercepted by the Customs officers as he was walking out through exit of the arrival hall after clearing Customs Green Channel. Upon being questioned whether he was in possession of dutiable/prohibitive goods, he replied in negative. Upon search of his person, two black coloured bundles of adhesive tape were recovered, which were concealed inside the underwear worn by him. On cutting open the said two bundles, 05 yellow coloured metal bars were recovered. The Government of India approved gold appraiser, certified the recovered 05 nos of yellow colour metal bars to be gold of 24 carat purity each, weighing 99.9 grams each, totally weighing 499.5 grams and appraised the total value to be Rs. 14,86,512/-. Upon being questioned whether he had any valid permit/licence for the legal import of the said gold recovered from him to which he replied in negative. A statement, under Section 108 of the Customs Act, 1962, of the Respondent was recorded immediately after seizure wherein, he inter-alia, stated that

he is a construction worker in Singapore; that he was not in possession of any legal/valid documents for the legal import of the said gold or any foreign/Indian currency to pay customs duty and he deliberately did not declare the gold to evade Customs duty and intended to smuggle the gold by way of concealment and non-declaration for deriving monetary benefit; that the said 05 gold bars were given to him by an unknown person outside Singapore Airport before his arrival to Chennai to be handed over to another unknown person who would identify him outside Chennai airport on his arrival; that he was instructed by unknown person to carry the gold by concealing the same in his underwear and smuggle the same without declaring the same to Customs at Chennai airport; that he was offered Rs. 10,000/- for smuggling the said gold; that the said gold does not belong to him and he would not claim the same at a later date; and that he agreed for the job for monetary benefit.

3. The revision application has been filed, mainly, on the grounds that dropping of the penalty imposed on the Respondent, under Section 114AA of the Customs Act, 1962, by the appellate authority is neither legal nor proper; that the Respondent attempted to smuggle the gold knowing well that he was not an eligible passenger to import gold; and that the passenger had not declared to the Customs officers about the possession of gold as required under Section 77 of the Customs Act, 1962.

4. Personal hearings were granted on 21.11.2019, 05.12.2019, 09.01.2023 & 27.01.2023. In the personal hearing held on 27.01.2023, in virtual mode, Sh. Anburaju, AC appeared for the Applicant department and reiterated the contents of the RA. No one appeared for the Respondent nor any request for adjournment has been received. Since sufficient opportunities have been granted to the Respondent, the matter is taken up for decision based on records.

5.1 The Government has carefully examined the case records. Short point that arises for consideration, in this revision application, is whether penalty under Section 114AA is imposable in this case.

5.2 Section 114 AA 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 transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.'

The Government observes that the Respondent made a false declaration of the contents of baggage when asked to do so orally. This declaration was required to be made or signed, as the case may be, under Section 77 *ibid*. Since a false and 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 114 AA is merited.

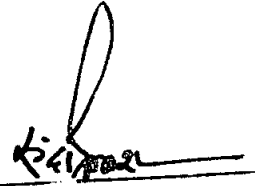
5.3.1 The Commissioner (Appeals) has held that since a penalty has already been imposed under Section 112, the imposition of penalty under Section 114AA is uncalled for. The Commissioner (Appeals) has also relied upon the Report of the Parliamentary Standing Committee on Finance (2005-06, para 63) to set aside the penalty under Section 114AA.

5.3.2 Penalty under Section 112 is imposable for acts and omissions rendering the goods liable for confiscation under Section 111 of the Customs Act, 1962, whereas penalty under Section 114AA arises for making wrong declaration or using false documents. Hon'ble Delhi High Court has, in the case of Achiever International {2012 (286) ELT 180 (Del.)}, held that penalties under Section 112(a) and Section 114AA are imposable when both the provisions are violated, even if the violations are in the course of same transaction. As regards reliance on the Report of the Parliamentary Standing Committee, 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, there was no occasion for the Commissioner (Appeals) to depart from the literal rule of interpretation and take recourse to other principles of interpretation.

5.4 Thus, the Government holds that the Order of Commissioner (Appeals) setting aside the penalty imposed, under Section 114 AA, on the Respondent herein cannot be sustained. However, keeping in view the small amount of penalty involved and time elapsed, the Government refrains from restoring the penalty under Section 114AA.

6. The revision application is disposed of in above terms.



(Sandeep Prakash)

Additional Secretary to the Government of India

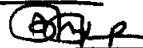
The Pr. Commissioner of Customs, Commissionerate-I
Chennai Airport and Air Cargo Complex,
New Customs House, Meenambakkam,
Chennai-600027

Order No. 29 /23-Cus dated 30.01.2023

Copy to:

1. Sh. Prabakaran Mani, S/o Sh. Mani, O No. 2, N No. 210, Pandian Street, Koraimedu, Chidambaram Tk, Cuddalore, TN-608704.
2. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Custom House, Chennai-600001.
3. PS to AS(RA).
4. Guard File.
5. Spare Copy.
6. Notice Board.

ATTESTED



30.01.2023

(लक्ष्मी राघवन)
(Lakshmi Raghavan)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi