

SPEED POST



F. No. 380/101/B/2018-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. 01/11/22

Order No. 332/22-Cus dated 01-11-2022 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 Application filed, under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 315/2018 dated 07.09.2018, passed by the Commissioner of Customs (Appeals), Bengaluru

Applicant : The Commissioner of Customs (Airport & ACC), Bengaluru

Respondent : Sh. Rakheeb Ulla Baig, Bengaluru

ORDER

A Revision Application No. 380/101/B/SZ/2018-RA dated 17.12.2018 has been filed by the Commissioner of Customs (Airport & ACC), Bengaluru (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 315/2018 dated 07.09.2018, passed by Commissioner of Customs (Appeals), Bengaluru. Commissioner of Customs (Appeals) has modified the Order-in-Original passed by the Joint Commissioner of Customs, Airport & ACC, Bengaluru, bearing no. 43/2017-18(AP-ADM) dated 01.01.2018, to the extent of setting aside the penalty imposed under Section 114AA of the Customs Act, 1962. Vide the aforesaid Order-in-Original, one crude gold chain and two ten tola gold biscuits, totally weighing 333.280 gms, of 24 Karat/99.9% purity gold, totally valued at Rs. 10,45,833/- were confiscated absolutely. The adjudicating authority also imposed a penalty of Rs. 3,50,000/- & Rs. 2,50,000/- under Sections 112(a) & 114AA, respectively, of the Customs Act, 1962 on Sh. Rakheeb Ulla Baig (hereinafter referred to as the Respondent).

2. The brief facts of the case are that the Respondent arrived, on 03.10.2016, at Kempegowda International Airport, Bengaluru from Dubai and was intercepted while exiting through the Customs Area by Customs Officers. After search of his person, one crude gold chain worn around his neck and two gold biscuits, one each in both the socks were recovered from his possession. The crude gold chain and two gold biscuits were found to be 24 Karat/99.9% purity gold, totally weighing 333.280 grams, and were valued at Rs.10,45,833/- by the Approved Gold Valuer. The Respondent, in his statement dated 04.10.2016, recorded under Section 108 of the Customs Act, 1962, stated that since his cousin's marriage was in January, 2017, he thought of purchasing gold from Dubai and bring it to India as there is a profit margin of Rs. 300/- per gram; that he had purchased 333.280 gms of crude gold chain and two gold biscuits from a retail shop at Dubai and carried the same by concealing the said one gold chain around his neck and the two gold biscuits each inside his each socks and reached Bangalore International Airport where he was

intercepted by the Customs Officers; and that he was aware of the fact, that carrying Gold, in concealed manner, without declaring to the Customs Department is an offence under the Customs Law and punishable in India under Customs Act.

3. The revision application is filed, mainly, on the grounds that the Commissioner (Appeals) has erred in setting aside the penalty imposed under Section 114AA by the lower authority as the Respondent intentionally suppressed/not declared the actual facts and attempted to smuggle the impugned goods. A notice dated 21.01.2020 was issued to the Respondent to file his defence, which has remained unreplied.

4. Personal hearing was fixed on 23.03.2022, 30.03.2022, 28.07.2022, 04.08.2022, 23.09.2022, 17.10.2022 and 31.10.2022. In the hearing held on 31.10.2022, Sh. Ratan B., Deputy Commissioner 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, it is presumed that he has nothing to say in the matter.

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.'

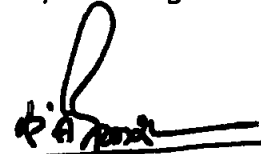
The Government observes that the Respondent made a false declaration of the contents of baggage when asked to do so orally. He also filed a 'NIL' declaration on

the Customs Declaration Slip. 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 The Commissioner (Appeals) 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, there was no occasion for the Commissioner (Appeals) to depart from the literal rule 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.

6. The revision application is allowed and the penalty imposed by the original authority, under Section 114AA *ibid*, is restored.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Rakheeb Ulla Baig
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Order No. 332/22-Cus dated 01-11-2022

Copy to:

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2. Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru- 560071.
3. PA to AS(RA)
4. Guard File.
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ATTESTED



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