



F. No. 380/10/B/17-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..17/11/22

Order No. 349/22-Cus dated 17-11-2022 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 No. CAL-EXCUS-000-APP-315-16-17 dated 30.12.2016 passed by the Commissioner of Central Excise, Customs and Service Tax (Appeals), Calicut.
- Applicant : Commissioner of Customs (Preventive), Cochin.
- Respondent : Sh. K.C. Muhammed Kasim, Palakkad.
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ORDER

A Revision Application No. 380/10/B/2017-RA dated 25.04.2017 has been filed by the Commissioner of Central Excise & Customs, Calicut, presently, the Commissioner of Customs (Preventive), Cochin (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CAL-EXCUS-000-APP-315-16-17 dated 30.12.2016 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals-II), Cochin. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 21/Customs dated 26.11.2014, passed by the Joint Commissioner of Central Excise, Customs and Service Tax, Calicut but modified it, inter-alia, to the extent of dropping penalty imposed on Sh. K.C. Muhammed Kasim, Palakkad (hereinafter referred to as the Respondent), under Section 114 AA of the Customs Act, 1962.

2. Briefly stated, the officers of Air Intelligence Unit, Calicut International Airport, Karipur seized 3980 number of Micro SD Cards, valued at Rs. 6,96,500/- (international value) and Rs. 9,50,000/- (market value), from the Respondent herein on his arrival from Dubai on 12.01.2013. The Micro SD Cards were found secreted inside his checked in baggage in two small plastic packets covered by carbon papers and tightly wrapped with adhesive tapes. The original authority, vide the aforesaid Order-in-Original dated 26.11.2014, confiscated the said goods under Section 111(d), (j), (l) & (m) of the Customs Act, 1962 but allowed it to be redeemed on payment of a fine of Rs. 2,00,000/-, under the provisions of Section 125 of the Act *ibid*. Further, the penalties of Rs. 2,00,000/- and Rs. 95,000/- were imposed on the Respondent herein, under Section 112 (a) and Section 114 AA, respectively. In the Appeal filed by the Respondent herein, the Commissioner (Appeals) upheld the Order-in-Original but reduced the penalty imposed under Section 112(a) to Rs. 1,50,000/-. The Commissioner (Appeals) also dropped the penalty imposed under Section 114 AA.

3. The Revision Application has been filed by the Applicant department on the grounds that the Commissioner (Appeals) has dropped penalty under Section 114 AA merely because penalty under Section 112 has been imposed, treating it as redundant, which is not proper and correct; that the penalty under Section 114 AA arises for making wrong declaration or using false documents; that in the instant case, Respondent had not declared the 3980 Nos. of SD cards brought in by him and made a false declaration before the Customs Officer,

and as such the penalty was correctly imposed by the original authority, under Section 114 AA.

4. Personal hearing was held on 16.11.2022, in virtual mode. Ms. Latha R, AC appeared for the Applicant department and reiterated the contents of the RA. Sh. M.M. Ashraf, Advocate appeared for the Respondent and supported the order of Commissioner (Appeals) regarding dropping of penalty under Section 114 AA. He submitted that the Respondent is a poor person and hence a lenient view may be taken.

5.1 The Government has carefully examined the matter. The present Revision Application is limited to imposition of penalty under Section 114 AA of the Customs Act, 1962. Section 114 AA reads as under;

“ SECTION 114 AA. 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.”

5.2 On a plain reading, it is clear that the penalty under said Section 114 AA is attracted when a person knowingly and intentionally makes a declaration which is false or incorrect in any material particular. It is undisputed in the present case that the Respondent herein had failed to declare the said goods as he was required to do, under Section 77 of the Customs Act, 1962. There is no finding of Commissioner (Appeals) that a false or incorrect declaration was not made by the Respondent herein. Rather the Commissioner (Appeals) has dropped the penalty under Section 114 AA holding it as redundant since penalty has already been imposed under Section 112.

5.3 Therefore, the Commissioner (Appeals) appears to have proceeded on a premise that once a penalty under Section 112 has been imposed, penalty under Section 114 AA cannot/should not be imposed. The Government finds that Section 112 and Section 114 AA are two independent provisions made in the Customs Act, 1962 and they refer to different violations. Therefore, when in a case both provisions are violated, penalty under both the

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Sections can be imposed. 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. Therefore, the order of Commissioner (Appeals) dropping the penalty under Section 114 AA cannot be sustained.

6. In view of the above, the Revision Application is allowed and the penalty of Rs. 95,000/- imposed by the Original Authority on the Respondent herein, under Section 114 AA of the Customs Act, 1962, is restored.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of Customs (Preventive),
5th Floor, Catholic Centre,
Broadway, Cochin-682031

Order No. 349/22-Cus dated 17-11-2022

Copy to:

1. Shri. K.C. Muhammed Kasim, S/o Muhammed Karimbanchola, Karimbanchola House, P.O. Trikkaderi, Palakkad -679502.
2. The Commissioner of Central Excise Customs & Service Tax (Appeals-II), C.R. Building, I.S. Press Road, Cochin-18.
3. PA to AS(RA).
4. Guard File.
5. Spare Copy.

ATTESTED



17-11-22

(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