

SPEED POST



F.No. 380/55/B/SZ/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 24/11/22

Order No. 364 /22-Cus dated 23-11-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under Section 129DD of the Customs Act 1962 against the Order-in-Appeal C.Cus. I. No. 48/2018 dated 28.03.2018, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : The Pr. Commissioner of Customs, Chennai-I Commissionerate.

Respondent : Shri Seyed Ahamad Sathath, Ramanathapuram.

ORDER

A Revision Application No. 380/55/B/SZ/2018-RA dated 18.06.2018 has been filed by the Principal Commissioner of Customs, Airport, Chennai (hereinafter referred to as the Applicant), against Order-in-Appeal C.Cus. I. No. 48/2018 dated 28.03.2018, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has, vide the impugned Order-Appeal, on an appeal filed by Sh. Syed Ahamad Sathath, Ramanathapuram (hereinafter referred to as the Respondent), modified the Order-in-Original No. 197/2017-18-AIRPORT dated 11.01.2018, passed by the Joint Commissioner of Customs (Adjudication-AIR), Chennai to the extent of setting aside the penalty imposed under Section 114AA of the Customs Act, 1962 on the Respondent herein.

2. Brief facts of the case are that the Respondent herein arrived at Chennai Airport from Dubai, on 20.10.2017, and was intercepted at the exit gate by the Customs Officers. On examination of his person, one crude chain gold, totally weighing 548 gms and valued at Rs. 16,25,368/-, was recovered from the underwear worn by him. The Respondent had not declared gold to the Customs and was not in possession of any valid document for legal import of subject gold into India and was also not an eligible passenger. The original authority, vide the aforesaid Order-in-Original dated 11.01.2018, ordered for absolute confiscation of the seized crude gold chain, under Section 111(d) and (l) of the Act *ibid*. Penalties of Rs. 1,60,000/- and of Rs. 20,000/- were also imposed on the Respondent herein under Section 112(a) and Section 114AA, respectively. In the appeal filed by the Respondent herein, the Commissioner (Appeals) upheld the Order-in-Original but set aside the penalty of Rs. 20,000/- imposed under Section 114AA *ibid*.

3. The revision application has been filed, mainly, on the grounds that the Respondent had attempted to smuggle gold by way of ingenious concealment and non-declaration to Customs, as required under Section 77 of the Customs Act, 1962; that the penalty under Section 114AA is attracted if a person intentionally makes declaration which is false or incorrect in any material particular; that in the present case, the Respondent had intentionally suppressed the possession of gold and made a false declaration in the presence of witnesses; that, however, Commissioner (Appeals) has, on the basis of the report of Standing Committee of Parliament on Finance (2005-06), set aside the penalty under Section 114AA, which is not correct. A written reply dated 01.01.2019 has been submitted on behalf of the Respondents.

4. Personal hearing was held in, virtual mode, on 22.11.2022. Sh. Anburaju, AC appeared for the Applicant department and reiterated the contents of the RA. No one appeared for the Respondent. However, a Written Submission dated 21.11.2022 has been

received from the Respondent's counsel requesting to pass the order based on Written Reply.

5.1 The Government has carefully examined the matter. Only issue that arises for consideration in this revision application is whether penalty under Section 114AA is imposable in this case.

5.2 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 Respondent making a false declaration when asked to do so is not disputed. Since a false 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.

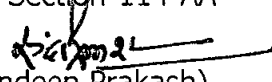
5.3 The Commissioner (Appeals) has referred to the objective of introduction of Section 114AA, as explained in the para 63 of the report of Parliament's Standing Committee on Finance (2005-06), to hold otherwise. It is trite that in construing a statutory provision, the first and foremost rule of interpretation 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 of interpretation and take recourse to other principles of interpretation.

5.4 It may be added here 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. 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.

5.5 Judgments/decisions cited by the Respondents in support of their contention are not applicable in view of the discussion above.

5.6 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. 20,000/- 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 Pr. Commissioner of Customs,
Chennai-I Commissionerate,
New Customs House,
Meenambakkam, Chennai-600027.

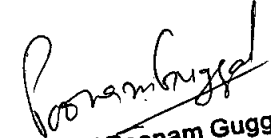
Order No. 364 /22-Cus dated 23-11-2022

Copy to:

1. Sh. Seyed Ahamed Sathath, H. No. 20, 99A1 North Street, Keezhakarai PO, Ramanathapuram, District, Tamilnadu-623517.
2. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Custom House, Chennai-600001.
3. Sh. S. Palanikumar, Advocate, No. 10, Sunk Ram Street, 2nd Floor, Chennai-600001.
4. PA to AS(RA)
5. Guard file.
6. Notice board.

F. Spare Copy.

ATTESTED


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