

**SPEED POST**



F. No. 380/01/B/2019-RA  
F. No. 373/296/B/2018-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 13/02/23

Order No. 48-49/23-Cus dated 13-02-2023 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 Applications, filed under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal No. 319/2018 dated 19.09.2018, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : 1. Smt. Najmunnisa Shanir, Kasargod, Kerala.  
2. The Commissioner of Customs, Mangaluru.

Respondent : 1. The Commissioner of Customs, Mangaluru.  
2. Smt. Najmunnisa Shanir, Kasargod, Kerala.

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**ORDER**

Revision Applications, bearing Nos. 380/01/B/2019-RA dated 11.01.2019 & 373/296/B/2018-RA dated 19.11.2018, have been filed by the Commissioner of Customs Mangaluru (hereinafter referred to as the Department) and Smt. Najmunnisa Shanir, Kasargod (hereinafter referred to as the Applicant), respectively, against the Order-in-Appeal No. 319/2018 dated 19.09.2018, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, upheld the Order-in-Original No. 04/2018 ADC dated 22.01.2018, passed by the Additional Commissioner of Customs, Mangaluru, except to the extent of dropping the penalty of Rs. 1,20,917/- imposed on the Applicant under Section 114AA of the Customs Act, 1962.

2. Brief facts of the case are that the Applicant herein was intercepted at the Mangaluru International Airport upon her arrival from Dubai, on 16.02.2017, while she was exiting the Customs area. On verification of her Customs Declaration Form, it was noticed that she had not mentioned anything regarding import of dutiable goods. However, upon her personal search, one crude unfinished gold chain and crude unfinished gold bangle worn by her underneath the grey colour burqa were recovered. The said crude and unfinished gold chain and bangle found in her possession, weighing 59.600 gms. and 116.640 gms, respectively, were valued at Rs. 8,06,112/- by the authorized jewellery valuer. The gold was seized under Mahazar dated 16.02.2017 and a statement of the Applicant herein was recorded on the same date under Sections 108 of the Customs Act, 1962. The Applicant admitted to her guilt and factum of concealment and that she was aware that it was a punishable offence to conceal and smuggle the gold. She further revealed that she was carrying the gold for another person for a monetary consideration of Rs. 10,000/-. The original authority, vide the aforesaid Order-in-Original dated 22.01.2018, ordered for absolute confiscation of the smuggled gold under Section 111 (d), (i), (l) and (m) of the Customs Act, 1962, and imposed a penalty of Rs. 2,41,834/- under Section 112 (a) and of Rs. 1,20,917/- under Section 114AA on the Applicant herein and an amount of Rs. 1,20,000/- paid by the Applicant, on 16.02.2017, was also appropriated towards the penalty imposed. The Commissioner (Appeals) has upheld the order of the original authority, except to the extent of dropping the penalty imposed under Section 114AA *ibid*.

3.1 The revision application has been filed by the Applicant, mainly, on the grounds the orders passed by the authorities below are wrong, contrary to law and facts of the case; that the Applicant was forced to deposit an amount of Rs. 1,20,000/- for return of her passport; that the release of gold on imposition of redemption fine ought to have been ordered; and, that the penalty under Section 112 (a) should not have been imposed.

3.2 The department has filed the revision application, mainly, on the grounds that the penalty was imposed under Section 114AA as the Applicant had violated the provisions of Section 77 by incorrectly signing the declaration filed; that penalty under Section 114AA is to be imposed when a person has signed false declaration in a transaction under Customs Act, 1962; that 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

that the penalty can be imposed under Section 114AA and Section 112 (a) even if the violations have taken place in the course of same transaction; and that, therefore, the Commissioner (Appeals) has erred in dropping the penalty imposed by the original authority under Section 114AA.

4. Personal hearing in the matter was held on 19.01.2023, in virtual mode. Sh. K.M. Suresh Chandran, Advocate appeared for the Applicant Smt. Najmunnisa Shanir and submitted that, at this stage, he is limiting the prayer to reduction of penalty under Section 112. He stated that an amount of Rs. 1,20,000/- was already deposited, which has been appropriated. Sh. Suresh Chandran requested that in the facts and circumstances of the case, the penalty imposed may be restricted to the amount already deposited, i.e., Rs. 1, 20,000/-. He supported the Order of Commissioner (Appeals) to the extent it dropped the penalty under Section 114AA. Sh. Mithosh Raghvan, DC opposed the averments made by Sh. Suresh Chandran and reiterated the contents of the RA filed by the department.

5. The Government has carefully examined the matter. In view of the submissions made by the learned Advocate for the Applicant, during the personal hearing, the prayer at the revision stage is limited to reduction penalty imposed on the Applicant under Section 112 *ibid*. Further, as per revision application filed by the department, it has to be decided as to whether penalty under Section 114AA was correctly imposed on the Applicant by the original authority.

6.1 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 by filing 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.

6.2 It is observed that the penalty under Section 112 is impossible 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. As correctly pointed out by the department, Hon'ble Delhi High Court has, in the case of Achiever International (*supra*), held that penalties under both Sections, i.e., Section 112(a) and Section 114AA, are impossible when both the provisions are violated, even if the violations are in the course of same transaction.

6.3 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 that the provisions of Section 114AA are not attracted in baggage cases. 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 and there is nothing in the plain language of Section 114AA to even remotely indicate that the provisions thereof are not applicable in baggage cases. Hence, it was incorrect of the Commissioner (Appeals) to depart from the literal rule and take recourse to other principles of interpretation to hold otherwise.

6.4 Thus, the Government holds that the Order of Commissioner (Appeals) setting aside the penalty imposed, under Section 114 AA, on the Applicant cannot be sustained and is set aside to this extent.

7. In the facts and circumstances of the case, the Government finds that the penalties imposed on the Applicant, by the original authority, are on a higher side. Accordingly, the Government reduces the penalty imposed under Section 112 to Rs. 1, 20,000/- and that under Section 114AA to Rs. 60,000/-.

8. The Revision Applications are disposed of in above terms and the impugned Order-in-Appeal is modified to the extent indicated in para 6.4 and para 7 above.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. The Commissioner of Customs,  
New Customs House, Panambur,  
Mangaluru-575010.
2. Smt. Najmunnisa Shanir, W/o Shri Shanir Kottikulam,  
Shanir Manzil, Udma Padinhar Post,  
Kasargod, Kerala-67323.

Order No. 48-49/23-Cus dated 13-02-2023

Copy to:

1. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
2. Sh. K.M. Suresh Chandran, Advocate, 9/426, Court Road, Calicut-673001.
3. PPS to AS (RA).

F. No. 380/01/B/2019-RA  
F. No. 373/296/B/2018-RA

4. Guard file.
- ✓ 5. Spare Copy.
6. Notice Board.

ATTESTED  
2020/01/01

**अश्वनी कुमार लो / Ashwani Kumar Loh**  
अधीक्षक / Superintendent (P.A. Unit)  
राजस्व विभाग / Department of Revenue  
वित्त विभाग / Ministry of Finance  
Room No. 606, 6th Floor, B-Wing  
14, Huda Vihar Building, New Delhi-110006

1. The first part of the document  
is a list of names and addresses  
of the members of the committee.  
The second part is a list of  
the names and addresses of the  
members of the sub-committee.  
The third part is a list of the  
names and addresses of the  
members of the working group.  
The fourth part is a list of the  
names and addresses of the  
members of the advisory board.