

SPEED POST

F. No. 380/22/B/SZ/2018-RA & others
 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 17/02/23

Order No. 57-64/23-Cus dated 17-02-2023 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(s), as mentioned in Column 'B' of the 'Table-I' below, filed by the Applicant Department(s), under Section 129DD of the Customs Act, 1962, against the Orders-in-Appeal No(s). as mentioned in Column 'D' of the 'Table-I' below, passed by the Commissioner of Customs (Appeals-I), Chennai, on the common grounds of Revision as mentioned in Column "E" of the Table, ibid.

Applicant(s) : The Principal Commissioner of Customs, Chennai-I.

Respondent(s) : As mentioned in Column 'C' of Table-I, below.

Table-I

| S. No. | File No. | Name of the Respondent(s) S/Sh./Ms. | OIA No./ Date | Common Grounds of Revision |
|--------|--|--|------------------------|---|
| A. | B. | C. | D. | E. |
| 1. | 380/22/B/SZ/2018-RA 02 Gold Bars 233 gms | Hameed Ali Sampya Aboobakar | 217/2017 29.12.2017 | Commissioner (Appeals) set aside the Penalty u/s 114AA of the Customs Act, 1962. |

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| 2. | 380/25/B/SZ/2018-RA 14 Gold Bangles 661 gms | Shaik Basha | 220/2017 29.12.2017 | Commissioner (Appeals) set aside the Penalty u/s 114AA of the Customs Act, 1962. |
| 3. | 380/33/B/SZ/2018-RA 01 Gold Chain 481.5 gms | Shabbir Shaik | 07/2018 30.01.2018 | Commissioner (Appeals) set aside the Penalty u/s 114AA of the Customs Act, 1962. |
| 4. | 380/34/B/SZ/2018-RA 002 Gold Cust Bits 01 Gold Bar Total 199 gms | Syed Kalesh Mastan Ali | 09/2018 31.01.2018 | Commissioner (Appeals) set aside the Penalty u/s 114AA of the Customs Act, 1962. |
| 5. | 380/35/B/SZ/2018-RA 03 Gold Chains with 02 Pendants 89.7 gms 03 Gold Bits 108 gms | Kasinathan Shanmugan | 12/2018 31.01.2018 21/3 | Commissioner (Appeals) set aside the Penalty u/s 114AA of the Customs Act, 1962. |
| 6. | 380/44/B/SZ/2018-RA 03 Gold Bars 300 gms | Syed Mohammed Ali | 37/2018 19.03.2018 | Commissioner (Appeals) set aside the Penalty u/s 114AA of the Customs Act, 1962. |
| 7. | 380/47/B/SZ/2018-RA 04 Gold Rings 172.2 gms 01 Gold Bit 37.3 gms | Mohamed Thanseel | 17/2018 05.02.2018 | Commissioner (Appeals) set aside the Penalty u/s 114AA of the Customs Act, 1962. |
| 8. | 380/51/B/SZ/2018-RA 02 Gold Bars 224.5 gms | Sahul Hameed Mydeen Batch | 19/2018 06.02.2018 | Commissioner (Appeals) set aside the Penalty u/s 114AA of the Customs Act, 1962. |

ORDER

Revision Application(s), as mentioned in Column 'B' of the 'Table-I' above, have been filed by the Principal Commissioner of Customs, Chennai-I (hereinafter referred to as the Applicant department), under Section 129DD of the Customs Act, 1962, against the Orders-in-Appeal No(s). as mentioned in Column 'D' of the 'Table-I' above, passed by the Commissioner of Customs (Appeals-I), Chennai, on the common grounds of revision as mentioned in Column 'E' of the Table, ibid. The Commissioner (Appeals) has, vide the respective Orders-in-Appeal, set aside the penalty imposed under Section 114AA of the Customs Act, 1962, on the Respondents, as mentioned in Column 'C' of the **Table-I**, above. The original authority, i.e., the Joint Commissioner of Customs, Adjudication-Air, Chennai, vide respective Orders-in-Original, had imposed penalty on the Respondents herein under Section 114AA of the Customs Act, 1962, in addition to orders of absolute confiscation/ confiscation/ redemption (for re-export) of offending goods and imposition of penalty under Section 112 of the Act, ibid.

2. Brief facts of the cases are that the Respondents herein had been apprehended smuggling gold/ gold articles of foreign origin, in their baggage, upon arrival at the Chennai International Airport. They had attempted to remove these gold/ gold articles from the Customs Area without filing 'Customs Declaration Form' and upon oral inquiry also denied carrying any contraband. The original authority ordered absolute confiscation/ confiscation/ redemption (for re-export) of offending goods and also imposed penalty under Section 112 and 114AA of the Act, ibid on the Respondents. Aggrieved, the Respondents herein filed their respective appeals, which have been partly allowed by the Commissioner (Appeals), by way of setting aside the penalty imposed under Section 114AA of the Customs Act, 1962.

3. The Revision Applications, as mentioned in **Column 'B' of the Table-I**, have been filed by the Applicant department, mainly, on the grounds that the Respondents herein had attempted to smuggle gold by concealment; that the Respondents had not made the requisite declaration under Section 77 of the Act, ibid in respect of the gold carried by

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them; that, therefore, Respondents are liable to penalty under Section 114AA, *ibid*; and that the observation of Commissioner (Appeals) that penalty under Section 114AA is not applicable since the goods had crossed international border is without any legal basis. A written reply has been filed, on 05.11.2018, by the Respondent, in the case at Sl. 6 of Table-I, above,

4. As these revision applications involve identical issue, i.e., dropping of penalty under Section 114AA *ibid* by the Commissioner (Appeals), they are being disposed of by this common order. In the case at Sl. 1 of Table-I above, the Commissioner (Appeals) has modified the Order of the original authority and granted further relief, i.e., in addition to dropping of penalty under Section 114AA, to the Respondent concerned. However, as this further relief is not under challenge, the Government refrains from examining the merits of the same.

5.1 Personal hearings were fixed on 02.02.2023, 09.02.2023 and 16.02.2023. Sh. Anburaju, AC appeared for the Applicant department in all the cases and reiterated the contents of the RAs.

107 5.2 In the Personal hearing held, in virtual mode, on 16.02.2023, Sh. A. Ganesh, Advocate appeared for the Respondents in respect of RAs at serial 4, 5, 7 and 8 of the Table-I above and opposed the prayers made in the respective RAs. He submitted that the issue is covered by the earlier order of the revisionary authority at Mumbai which he will be circulating by email. Pursuant to the hearing a written submission dated 16.02.2023 has been received from the learned Advocate.

5.3 In respect of the cases at serial 1, 2, 3 and 6, no one appeared for the Respondents on any of the dates fixed for hearing nor any requests for adjournment have been received. Since sufficient opportunities have been granted, the matter is taken for disposal based on records, in so far as these Respondents are concerned.

6.1 The Government has carefully examined the matter. As already stated, only issue that arises for consideration in the listed revision applications is whether penalty under Section 114AA of the Customs Act, 1962 is imposable in these cases.

6.2 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 Respondents making a false declaration is not disputed. They failed to declare the gold carried by them even when asked to do so orally. 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.

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 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, it has to be held that there was no occasion for the Commissioner (Appeals) to depart from the literal rule of interpretation and take recourse to other principles of interpretation.

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6.4 Further, 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.

6.5 It is already held that the Commissioner (Appeals) ought not have taken recourse to the Report of the Parliamentary Standing Committee on Finance to interpret the provisions of Section 114AA, since they are clear and ambiguous. Even otherwise, it would not be out of place to record that the Commissioner (Appeals) has, in fact, totally misread the report relied upon by him. In the para 63 of the said Report, which has been extracted by the Commissioner (Appeals), the discussion is with reference to the export of goods and, in that background, the Committee has observed that *"there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulations could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various exports incentive schemes."* Thus, it is apparent that the discussion is with reference to the cases of bogus export where goods are not physically exported but only papers are created to obtain advantage of export incentive schemes. By no stretch of imagination, therefore, this Report can be used to infer that penalty under Section 114AA would not be imposable in the cases of imports, where the smuggled goods had physically crossed the Border. Bj

6.6 The judgment of Hon'ble Karnataka High Court, in the case of Khoday Industries Ltd. vs. UOI {1986 (23) ELT 337 (Kar.)}, has been relied upon by the Respondents in the cases of Sl. 4, 5, 7 & 8 of Table-I, above. However, Government observes that in the aforesaid case, Hon'ble Karnataka High Court has stated that one of the principles of interpretation of taxing statutes is that the intention of the amendment can be gathered from the object and reasons which is a part of an amending bill. There is no denying that

the intention of the legislature can be gathered from the object and reasons of the enactment, but, as brought out hereinabove (in para 6.3) that the first rule of interpretation is the literal rule of interpretation and only if the literal rule of interpretation fails that the recourse can be had to other principles of interpretation. Further, the Order of revisionary authority (bearing No. 787-804/2018-Cus(SZ)/ASRA/MUMBAI dated 28.09.2018), cited by the said Respondents, has been passed, without noticing the judgments of Hon'ble Supreme Court, as brought out in para 6.3 above, and by directly taking recourse to interpretation with the assistance of the Report of the Standing Committee, without first resorting to the literal rule of interpretation. Therefore, these decisions are of no assistance to the Applicants herein.

7. In view of the above, the revision applications are allowed and the penalty imposed by the original authority on the Respondents herein, under Section 114AA of the Customs Act, 1962, is restored.



(Sandeep Prakash),

Additional Secretary to the Government of India

17-02-2023

The Pr. Commissioner of Customs,
Chennai-I Commissionerate,
New Customs House,
Meenambakkam, Chennai-600027.

Order No. 57-64/23-Cus dated 17-02-2023

Copy to:

1. The Respondents:

Name of the Respondent(s)
S/Sh./Ms.

Hameed Ali Sampya Aboobakar, S/o Kanhipalli Abdulla Aboobakkar, Al Mubarak Manjil, Rahmaniya Nagar, Alampady Post, Kasargod, Kerala-671123.

Shaik Basha, S/o Sheik Faqrudin, P/A Shaik Mohammed Ali, Door No. 08/1226-1, Agadi Street, Kadappa, YSR District, Andhra Pradesh-516001.

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| Shabbir Shaik, S/o Shaik Sattar, 2544, Matti Masjid Street, Prodattur, Cuddapah District-Andhra Pradesh-516001. |
| Syed Kalesh Mastan Vali, S/o Sayed Ghouse, 681. Khateeb Street, Vaimpalli, Kadapa, Andhra Pradesh-516329. |
| Kasinathan Shanmugan, S/o Late Sh. Shanmugan, Nampuraanipatti K. Royapuram Post, Thirumayam Tk. Pudukkottai, Tamil Nadu-622209. |
| Syed Mohmmed Ali, S/o Late Sh. Syed Ismail, H. No. 8/171, Nabikota, RB Nagar, Kadappa District, Andhra Pradesh-516267 |
| Mohamed Thanseel, C/o Shri A. Ganesh, Advocate, F Block, 179, Anna Nagar, Chennai-600102. |
| Sahul Hameed Mydeen Batcha, C/o Shri A. Ganesh, Advocate, F Block 179, Anna Nagar, Chennai-600102. |

2. The Commissioner of Customs (Appeals-I), Chennai Airport & Chennai Air Cargo, 3rd Floor, New Custom House, GST Road, Meenambakkam, Chennai-600016.
3. Shri A. Ganesh, Advocate, F Block, 179, Anna Nagar, Chennai-600102.
4. PPS to AS(RA)
5. Guard file.
6. Notice board.

7. Spare Copy.

ATTESTED

(Signature)

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(Signature)