

**SPEED POST**



F. No. 380/21/B/SZ/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 28/02/23

Order No. 71/23-Cus dated 28-02-2023 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, filed under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal AIRPORT. C.Cus.I No. 216/2017 dated 29.12.2017, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Pr. Commissioner of Customs, Chennai-I

Respondent : Sh. Shaik Shameer, Kadappa

**ORDER**

A Revision Application, bearing no. 380/21/B/SZ/2018-RA dated 23.03.2018, has been filed by the Principal Commissioner of Customs, Chennai-I (hereinafter referred to as the Applicant department), against the Order-in-Appeal AIRPORT. C.Cus.I No. 216/2017 dated 29.12.2017, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has modified the Order-in-Original passed by the Joint Commissioner of Customs (Adjudication-Air), Chennai Airport, bearing No. 78/2017-18-AIRPORT dated 08.08.2017, by reducing the redemption fine from Rs. 3,25,000/- to Rs. 1,60,000/- and setting aside the penalty of Rs. 50,000/- imposed on Sh. Shaik Shameer, Kadappa (hereinafter referred to as the Respondent), under Section 114AA of the Customs Act, 1962. Vide the aforementioned Order-in-Original, 01 crude gold chain, weighing 243 grams and valued at Rs. 6,51,082/-, recovered from the Respondent, has been confiscated under Section 111(d) & 111(l) of the Act, *ibid*, but was allowed to be redeemed on payment of fine of Rs. 3,25,000/-. Penalties of Rs. 65,000/- & Rs. 50,000/- were also imposed on the Respondent herein, under Section 112(a) & 114AA, respectively, of the Act, *ibid*.

2. Brief facts of the case are that the Respondent arrived at Anna International Airport, Chennai from Kuwait, on 15.06.2017, and was intercepted by the Customs Officers at the exit of the arrival hall after he had passed through the Customs Green Channel. On being questioned about possession of dutiable/prohibited goods, he replied in negative. Upon the search of his baggage, 01 crude gold chain weighing 243 grams was recovered. The Government approved gold appraiser examined and certified the recovered

gold chain to be of 24 carat purity and appraised the value at Rs. 6,51,082/-. He had not declared the gold recovered from him to the customs under Section 77 of the Customs Act, 1962 and had attempted to smuggle the said gold by not declaring the same by way of concealment and also he was not in possession of any valid permit and was not eligible to bring the gold. The original authority ordered confiscation of crude gold chain and also imposed penalty under Section 112 and 114AA of the Act, *ibid* on the Respondent. Aggrieved, the Respondent herein filed appeal, which has been partly allowed by the Commissioner (Appeals), *inter-alia*, by way of setting aside the penalty imposed under Section 114AA of the Customs Act, 1962.

3. The Revision Application has been filed by the Applicant department, mainly, on the grounds that the Respondent herein had attempted to smuggle gold by way of non-declaration; that the Respondent had not made the requisite declaration under Section 77 of the Act, *ibid* in respect of the gold carried by him; that, therefore, Respondent is 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.

4. Personal hearings were fixed on 18.01.2023, 06.02.2023 & 27.02.2023. No one appeared for either side nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for disposal based on records.

5.1 The Government has carefully examined the matter. The issue that has been raised for consideration in the revision application is whether penalty under Section 114AA of the Customs Act, 1962 is imposable in the present 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 is not disputed. He failed to declare the gold carried by him 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.

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 settled law 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.

5.4 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.

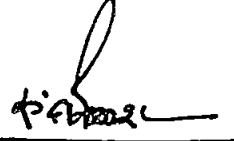
5.5 It is already held that the Commissioner (Appeals) ought not have taken recourse to the Report of the Parliamentary Standing Committee on Finance to interpret the provisions of Section 114AA, since they are clear and unambiguous. Even otherwise, it would not be out of place to record that the Commissioner (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 show export and obtain advantage of export incentive schemes. Therefore, by no stretch of imagination, 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.

5.6 Before parting with the matter, it is to be observed that the matter relates to seizure of one crude gold chain of 24 carat purity, totally weighing 243 grams and valued at Rs. 6,51,082/-. This position has been correctly recorded in para 2 of the OIA. However, immediately thereafter (i.e. in para 3), the Commissioner (Appeals) has recorded the case to be relating to "14 numbers of gold bangles of 24 carat purity totally weighing 661 grams and totally valued Rs. 19,64,492/-." In para 6, it is once again recorded that "I find in the instant case, the appellant brought 14 gold bangles of 24 carat purity weighing totally 661 grams." Further, the case relates to a seizure made on 15.06.2017 from the Respondent when he had landed at Chennai airport from Kuwait whereas the Commissioner (Appeals) has, in para 3 of the OIA, recorded the date of incidence to be 28.03.2017 and the place of origin to be Riyadh. Thus, it is apparent that the impugned OIA suffers from total non application of mind. As such, it would be in the interest of justice that the OIA be set aside in toto and matter may be remanded to Commissioner (Appeals) for de-novo consideration.

6. In view of the above, the revision application is allowed by way of remand to Commissioner (Appeals) for de-novo consideration, keeping in view the observations made

hereinabove in respect of penalty under Section 114AA ibid. All other issues are kept open for consideration afresh.



(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. 71 /23-Cus dated 28-02-2023

Copy to:

1. Sh. Shaik Shameer, Noolivedu Galiveedu, Kadappa, Andhra Pradesh.
2. The Commissioner of Customs (Appeals-I), Chennai Airport & Chennai Air Cargo, 3<sup>rd</sup> Floor, New Custom House, GST Road, Meenambakkam, Chennai-600016.
3. PPS to AS(RA)
4. Guard file.
- ✓ 5. Spare Copy.
6. Notice board

ATTESTED



28.02.2023

(लक्ष्मी राघवन)  
(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptl. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi