

**SPEED POST**



F. No. 380/85&86/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...06/03/23

Order No. 79-80/23-Cus dated 06-03-2023 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-139 & 140/2018 dated 20.03.2018, passed by the Commissioner of Customs (Appeals), Cochin.

Applicant : The Commissioner of Customs (P), Cochin

Respondents : Sh. Anas, Kannur

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## **ORDER**

A Revision Application No. 380/85&86/B/SZ/2018-RA dated 13.08.2018 has been filed by the Commissioner of Customs (P), Cochin (hereinafter referred to as the Applicant department), against the Order-in-Appeal No. CAL-EXCUS-000-APP-139 & 140/2018 dated 20.03.2018, passed by the Commissioner of Customs (Appeals), Cochin. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 14/2014 dated 03.06.2014, passed by the Joint Commissioner of Customs, Airport, Calicut, except to the extent of setting aside the penalty of Rs. 5,000/- imposed on Sh. Anas, Kannur (hereinafter referred to as the Respondent) under Section 114AA of the Customs Act, 1962. Vide the aforementioned Order-in-Original, 01 gold belt buckle alongwith pin, weighing 466 grams and valued at Rs. 11,42,669/-, recovered from the Respondent was confiscated under Section 111(d), (i), (l) & (m) of the Customs Act, 1962. However, the gold belt buckle alongwith pin was allowed to be redeemed on payment of a fine of Rs. 1,30,000/-. Besides; penalties of Rs. 4,00,000/- & Rs. 5,000/- were imposed on the Respondent under Sections 112(a) & (b) and 114AA, respectively, of the Act, *ibid*.

2. Brief facts of the case are that, the Applicant arrived at Calicut airport from Dubai, on 01.06.2014, and was intercepted by the Customs officers at the exit gate while going out of baggage hall through Green Channel. During examination of his baggage/person, 01 leather belt having 01 gold belt buckle alongwith pin, weighing 466 grams and valued at Rs. 11,42,669/-, was recovered. The Respondent had not declared the gold belt buckle alongwith pin before Customs on his arrival. He also did not declare the value of the same in his Customs declaration. He opted for customs clearance through Green Channel and attempted to avoid customs duty. He had stayed abroad only for 41 days during the period of last 06 months. During the personal hearing held before the original authority, the Respondent stated that some person in Dubai arranged for his tickets and promised to pay Rs. 20,000/- only on successful delivery of gold. The original authority ordered for confiscation of the seized gold under Section 111(d), (i), (l) & (m) of the Customs Act, 1962. However, the gold

was allowed to be redeemed on payment of redemption fine of Rs. 1,30,000/-. Penalties of Rs. 4,00,000/- & Rs. 5,000/- were imposed on the Respondent under Section 112(a) & (b) & 114AA, respectively. On appeals filed by the Applicant department & Respondent herein, the Commissioner (Appeals) modified the Order-in-Original as mentioned above.

3. The revision application has been filed, mainly, on the grounds that the goods are liable for absolute confiscation as the Respondent did not comply with Baggage Rules, 1998 wherein only bonafide household goods and personal effects are allowed for import freely; that he did not make a declaration under Section 77 of the Customs Act, 1962; and that he stayed abroad only for 41 days and thus does not have the required minimum period of stay abroad and hence not eligible for free allowance of Rs. 50,000/-.

4. Personal hearing in the matter was granted on 02.02.2023, 15.02.2023 & 01.03.2023. No one appeared for the Applicant department nor any request for adjournment has been received. Sh. Anas, Respondent appeared for personal hearing on 01.03.2023, in virtual mode, and stated that he is willing to redeem the goods on payment of fine and duty as ordered by the lower authorities.

5. The Government has examined the matter carefully. It is observed that the issues of smuggling of gold and liability to confiscation as 'prohibited goods' as well as imposition of penalty under Section 112 stand concluded with the order of Commissioner (Appeals), as these have not been challenged by the Respondent. The questions that, therefore, arise for consideration are: (i) whether the order of Commissioner (Appeals) upholding the order of original authority for release of offending gold on payment of redemption fine is sustainable or not; and, (ii) whether the Commissioner (Appeals) has correctly set aside the penalty imposed on the Respondent, under Section 114AA *ibid*?

6.1 The original authority has released the seized goods on redemption fine under Section 125 of Customs Act, 1962. The Government observes that, in terms of Section 125 of the Customs Act, 1962, the option to release 'prohibited goods', on redemption fine, is discretionary, as held by the Hon'ble Supreme Court in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)]. In the case of Raj Grow Impex {2021 (377) ELT 145 (SC)}, the Hon'ble Supreme Court has held "*that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant considerations.*" Further, in the case of P. Sinnasamy {2016 (344) ELT 1154 (Mad.)}, the Hon'ble Madras High Court has held that "*when discretion is exercised under Section 125 of the Customs Act, 1962, ----- the twin test to be satisfied is "relevance and reason".*" Hon'ble Delhi High Court has, in the case of Raju Sharma [2020 (372) ELT 249 (Del)], relying upon the judgment of Apex Court in Mangalam Organics Ltd. [2017 (349) ELT 369 (SC)], held that "*Exercise of discretion by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motive.*" Thus, the test for review of the discretion exercised by the original authority is that discretion should be exercised for relevant and reasonable considerations and exercise thereof should not suffer from any of the vices indicated in Raju Sharma (supra).

6.2 In the present case, the original authority has recorded no reasons whatsoever, for exercising his discretion in favour of allowing redemption. Therefore, the order suffers from non-application of mind. As such, the Government holds that the order of the original authority allowing redemption of offending goods could not have been sustained.

7.1 Another issue that arises for consideration is whether Commissioner (Appeals) has correctly set aside the penalty imposed on the Respondent, under Section 114AA of the Customs Act, 1962.

7.2 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. 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.

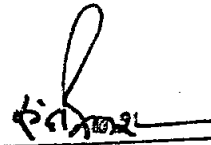
7.3 The Commissioner (Appeals) has referred to the objective of introduction of Section 114AA, as explained in the para 63 of the Report of Parliament's Standing Committee on Finance (2005-06), to hold otherwise. It is settled law that in construing a statutory provision, the first and foremost rule 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, there was no occasion for the Commissioner (Appeals) to depart from the literal rule of interpretation and take recourse to other principles of interpretation.

7.4 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.

7.5 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 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.

8. In view of the above, the revision application is allowed and the offending goods are ordered to be confiscated absolutely. Penalty of Rs. 5,000/- imposed by the original authority, on the Respondent, under Section 114AA, is also restored. The orders of the authorities below are modified to this extent.



(Sandeep Prakash)

Additional Secretary to the Government of India


The Commissioner of Customs (P)  
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Cochin-682031

Order No. 79-80/23-Cus dated 66-03-2023

Copy to:

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2. The Commissioner of Customs (Appeals), C.R Building, I.S Press Road, Cochin-18
3. PPS to AS(RA).
4. Guard File.
5. Spare Copy.
6. Notice Board.

ATTESTED

  
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