

**SPEED POST**



F. No. 373/224/B/2019-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..29/12/23

Order No. 299 /23-Cus dated 29-12-2023 of the Government of India passed by Ms. Shubhagata Kumar, 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 AIRPORT. C.Cus.I No. 68/2019 dated 18.03.2019, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Smt. Shamshad Begum, YSR District

Respondent : Pr. Commissioner of Customs, Chennai-I

**ORDER**

A Revision Application, bearing No. 373/224/B/2019-RA dated 23.03.2019, has been filed by Smt. Shamshad Begum, YSR District (hereinafter referred to as the Applicant), against the Order-in-Appeal AIRPORT. C.Cus.I No. 68/2019 dated 18.03.2019, 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, Anna International Airport, Chennai, bearing No. 48/2018-19 Commissionerate-I dated 12.06.2018 to the extent that the penalty imposed on the Applicant under Section 114AA of the Customs Act, 1962 vide the O-I-O has been set aside and rest of the O-I-O has been upheld. Vide the aforementioned Order-in-Original, 04 crude gold kadas, collectively weighing 466 grams and collectively valued at Rs. 14,43,668/-, recovered from the Applicant, were absolutely confiscated under Sections 111(d) & 111(i) of the Customs Act, 1962. Besides, penalties of Rs. 1,40,000/- and of Rs.15,000/- were also imposed on the Applicant under Section 112(a) and section 114AA respectively of the Act, *ibid*.

2. Brief facts of the case are that the Applicant was intercepted by the Customs officers, at the exit gate of arrival hall, after she had crossed the green channel, on her arrival at Anna International Terminal of Chennai Airport on 27.03.2018. She was questioned in the presence of two independent witnesses as to whether she was in possession of gold/contraband goods, to which the Applicant replied in negative. Thereafter, she was informed about the provisions of the Customs Act, 1962. After understanding the provisions, she consented for search of her person and her baggage. In the consequent search in the presence of independent witnesses, 04 crude gold kadas were recovered from her stroller bag. The recovered gold kadas were certified to be of 24 Karat purity by the Government approved Gold appraiser, collectively weighed 466 grams and valued at Rs. 14,43,668/-. As the Applicant was not an eligible passenger under the Baggage Rules, 1998 nor did she have any valid licence/permit issued by a competent authority for the legal import of gold, the recovered gold items were seized under Section 110 of the Act, *ibid* under a Mahazar drawn on the spot. A voluntary statement of the Applicant was recorded under Section 108 of the act *ibid*, in which the Applicant admitted *inter-alia* that the recovered gold did not belong to her; that the recovered gold was given to her by her son Sh. Fahim Abdul in Riyadh with instructions to keep the gold concealed

and carry it without declaring the same to Customs and hand it over to an unknown person who would collect it from her at her home; that she had attempted to smuggle the impugned gold without declaring it to Customs; that she was aware that smuggling of gold by concealing and not declaring it to the customs is an offence. The applicant vide her letter dated 27.03.2018 requested that her case may be adjudicated without issuance of a show cause notice. After due process of law, the adjudicating authority absolutely confiscated the recovered gold, imposed penalties of Rs. 40,000/- and Rs.15,000/- on the Applicant under Section 112(a) and section 114AA respectively of the Act, *ibid*. Vide the impugned OIA, penalty imposed on the Applicant under Section 114 AA of the act *ibid* was set aside and rest of the OIO was upheld.

3. The revision application has been filed, mainly, on the grounds that the authorities failed to note that the impugned gold was brought for the purpose of Applicant's sister-in-law's marriage; that the gold was purchased by her son at Riyadh and nobody will purchase gold in his own name if he has an intention to smuggle the same; that gold is not prohibited and the same comes under the open general license category; that the authorities ought to have given option of redemption since gold is not prohibited. The Applicant emphasized that under Section 125, an option of redemption is mandatory in case of goods which are not prohibited.

4. Personal hearing in the matter was held on 30.10.2023. Sh. T. Cheziyan, advocate appeared on behalf of the Applicant and submitted that the Applicant was not a carrier, she had brought the impugned gold which was bought by her son who is employed in the software industry, for the marriage of her daughter; that the purchase invoice was submitted to the Customs; that the invoice clearly shows her son's name; that the family details were also provided to the Customs.

5. At the outset, the Government observes that the impugned OIA was received by the Applicant on 23.03.2019, whereas, the RA has been filed on 08.07.2019. Therefore, the RA has been filed beyond the normal period of limitation of three months, as per sub-section (2) of Section 129DD *ibid* and is delayed by 16 days. A request for condonation of

delay has been filed stating that as the Applicant was fasting in the holy month of Ramzan, the revision application could not be filed in due time. Delay is condoned.

6.1 The Applicant has contended that the authorities below failed to consider the fact that the impugned gold kadas were brought by the Applicant for the purpose of her sister-in law's marriage and the same was bought by her son at Riyadh. From the material placed on record, it is found that the Applicant had pleaded before the appellate authority that she brought the impugned gold for her daughter's marriage. Thus, the applicant had different versions on different forums, one before the appellate authority and other before the revisionary authority. Whereas, in her voluntary statement recorded under Section 108 of the Customs act, 1962, she had stated that the said gold kadas were given to her by her son Sh. Fahim Abdul in Riyadh with instruction to keep the gold concealed and carry it without declaring the same to Customs and hand it over to an unknown person who would collect it from her at her home. At the time when the Applicant was intercepted at the Airport and in her subsequent statement she did not state that she had brought the impugned gold for her daughter's marriage, nor did she produce any purchase bill in respect of the impugned gold kadas. In the case of K.I. Pavunny {1997 (90) ELT 241 (SC)}, the Hon'ble Supreme Court has held that the confessional statement of an accused if found voluntary, can form the sole basis for conviction. Further, the Hon'ble Supreme Court has, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}, held that a confession statement made before the Customs Officer, though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. Hence, the subject contention of the Applicant appears to be an afterthought to escape from the penal provisions of the Act, *ibid*, hence, cannot be accepted.

6.2. Another contention put forth by the Applicant is that import of Gold is not prohibited under the Customs Act, 1962. On this contention, the Government observes that the import of gold and articles thereof, in baggage, is allowed subject to fulfillment of certain conditions. In the present case, it is not even contended that these conditions were fulfilled by the Applicant. The issue is no longer *res-integra* in light of various judgments of Hon'ble Supreme Court that goods, in respect of which conditions subject to which their import/export is allowed are not fulfilled, are to be treated as 'prohibited

goods'. [Ref: Sheikh Mohd. Omer {1983 (13) ELT 1439 (SC), Om Prakash Bhatia {2003 (155) ELT 423 (SC)} & Raj Grow Impex LLP {2021 (377) ELT 145 (SC)}]. Further, the Hon'ble Madras High Court has, in the cases of Malabar Diamond Gallery P. Ltd. {2016 (341) ELT 465 (Mad.)} and P. Sinnasamy {2016 (344) ELT 1154 (Mad.)}, taken this view specifically in respect of import of gold in baggage. Hence, there is no doubt that the goods seized in the present case are to be held 'prohibited goods'. In view of the above, the contention of the Applicant that the offending gold item is not 'prohibited goods', cannot be accepted.

6.3 The Applicant claims that under Section 125, an option of redemption is mandatory in case of goods which are not prohibited. 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 (supra), 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 Commissioner of Customs (Air), Chennai-I Vs P. Sinnasamy {2016(344)ELT1154 (Mad.)}, the Hon'ble Madras High Court has held that *"non-consideration or non-application of mind to the relevant factors, renders exercise of discretion manifestly erroneous and it causes for judicial interference."* Further, *"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."* Now in the latest judgment the Hon'ble Delhi High Court in its order dated 21.08.2023 in W.P. (C) Nos. 8902/2021; 9561/2021; 13131/2022; 531/2022; & 8083/2023 held that *".....an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of the Adjudging Officer"*. In the present case, the Order of the original authority

does not suffer from any of these vices. Rather, the original authority has, after due application of mind, ordered absolute confiscation of the impugned goods citing relevant and reasonable considerations, brought out in para 7 of the Order-in-Original. Therefore, in view of the judicial pronouncements above the original adjudicating authority was correct in denying the option of redemption to the Respondent keeping in view the nature of the offence.

7.1 The Government also observes that the Commissioner (Appeals) has set aside the penalty imposed by the lower adjudicating authority under Section 114AA of the Act, *ibid* on the ground that no penalty is imposable under Section 114AA of the Customs Act, 1962 as these provisions are not attracted in the baggage cases. On this issue, the Government observes that Government vide its order GOI order No. 57-64/23-Cus dated 17.02.2023 in the case of Hamid Ali & Others, in para 6.3 has held that *"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"*. The ratio of the judgment cited (*supra*) is squarely applicable to this case.

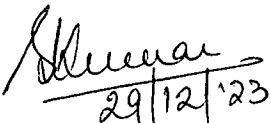
From the provisions of Section 114AA, it is very much clear that penalty under this section is imposable on a person who intentionally declares something, in writing or verbally, which is factually incorrect for the purposes of Customs Act, 1962. There is nothing in the plain language of Section 114AA to even remotely suggest that the provisions thereof are not applicable in baggage cases. Hence, it has to be held that reliance placed by the Commissioner (Appeals) upon an order which departed from the literal rule of interpretation, without any cause and in the teeth of law settled by the Apex Court was erroneous. 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*}.

7.2 It is observed that Section 112 and Section 114AA are two independent provisions and they refer to different violations. Therefore, when in a case both violations are present, penalty under both the Sections can be imposed. Further, there is no provision in the Customs Act which ousts the imposition of penalty under Section 114AA, if a penalty under Section 112 has been imposed. The Hon'ble Delhi High Court has, in the case of *Commissioner of Customs and Central Excise, Delhi-IV vs. Achiever International* {2012 (286) ELT 180 (Del.)}, decided on the same lines.

The Government observes that in the instant matter, the Applicant was not an eligible passenger in terms of the Baggage Rules, 2016 and had brought in gold and gold jewellery valued Rs. 14.43 Lakhs, which does not constitute bona-fide baggage; and the applicant also failed to discharge the onus on her to establish that the impugned gold and gold jewellery brought by her was not smuggled into India, in terms of Section 123 of the Act *ibid*. Moreover, the Applicant made an incorrect declaration, when she was asked by the Customs authorities as to whether she was carrying any dutiable/prohibited goods thereby contravening the provisions of Section 77 the Act *ibid*. Since an incorrect declaration was made by the applicant in contravention of Section 77 *ibid*, the imposition of penalty under section 114AA by the original adjudicating authority was correct.

8. In view of the above, the Government sets aside the impugned O-I-A and restores the O-I-O.

9. The revision application is disposed of on the above terms.

  
29/12/23  
(Shubhagata Kumar)

Additional Secretary to the Government of India

Smt. Shamshad Begum,  
D.No. 8/726-36, Vakkalpet Afsaar Khan colony,  
Kadapa, YSR District,  
Andhra Pradesh-516001.

Order No. 299 /23-Cus dated 29-12-2023

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Chennai Air Cargo, 3<sup>rd</sup> Floor, New Custom House, GST Road, Meenambakkam, Chennai-600016. —
2. The Pr. Commissioner of Customs, Anna International Airport, Meenambakkam, Chennai-600027.

3. Sh. T. Chezhiyan, Advocate, No. 99, 3<sup>rd</sup> Floor, Armenian Street, Chennai-600001.
4. PPS to AS(RA).
5. Guard File.
- ✓ 6. Spare Copy.
7. Notice Board.

ATTESTED

  
सरबजीत सिंह / SARABJEET SINGH  
अधीक्षक / Superintendent (R.A. Unit)  
वित्त मंत्रालय / Ministry of Finance  
राजस्व विभाग / Department of Revenue  
Room No. 605, 6th Floor., B-Wing  
14, Hudco Vishala Building, Bhikaji Cama Place,  
New Delhi-110066