

SPEED POST



F. No. 373/353/B/2019-RA
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..14/2/24

Order No. 44/24-Cus dated 13.02.2024 of the Government of India passed by Smt. 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 No. CAL-EXCUS-000-APP-187-2019 dated 29.03.2019 passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Cochin.

Applicant : Smt. Shakeena Ahammed Thadayil, Kozhikode

Respondent : The Commissioner of Customs, Calicut

ORDER

Revision Application No. 373/353/B/2019-RA dated 28.08.2019, has been filed by Smt. Shakeena Ahammed Thadayil, Kozhikode (hereinafter referred to as the Applicant), against the Order-in-Appeal No. CAL-EXCUS-000-APP-187-2019 dated 29.03.2019, passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Cochin. The Commissioner (Appeals) has upheld the Order-in-Original, passed by the Joint Commissioner of Customs, Airport, Calicut, bearing no. 89/2015-16 dated 29.03.2016 except to the extent of setting aside the penalty of Rs. 1,25,000/- imposed upon the Applicant herein under Section 114AA of the Customs Act, 1962 and allowing redemption of the impugned goods on payment of fine of Rs. 3,60,000/-. Vide the aforesaid Order-in-Original four gold chains of 24 carat purity, totally weighing 440 grams and collectively valued at Rs. 10,85,515/- (Tariff Value) and Rs. 12,08,020/- (Market Value), recovered from the Applicant were confiscated absolutely under Section 111(d), (i), (j), (l), (m) & (o) of the Act *ibid*. Besides, penalties of Rs. 1,25,000/- each were also imposed on the Applicant under Section 112(a) & (b) and 114AA, respectively, of the Act *ibid*.

2. Brief facts of the case are that acting on specific information the Customs officers intercepted the Applicant upon her arrival at Calicut International Airport from Dubai on 08.10.2014 when she was about to cross the baggage hall exit gate. When she was asked whether she was in possession of any non-duty paid gold or any other valuables, she replied in the negative. When she was asked specifically as to whether any item made up of gold was concealed upon her person, she replied in the negative. Thereafter, upon the search of her person, four yellow-coloured metal chains were recovered. Two of them were found hidden under her purdah and two more similar chains were found wrapped around each ankle and hidden under her socks. The goldsmith examined and certified the four gold chains to be of 24 carat purity, totally weighing 440 grams. The market value of the four gold chains was ascertained to be Rs. 12,08,020/-.

In her statement, tendered under Section 108 of Customs Act, 1962, the Applicant stated *inter-alia* that she was staying in Dubai for the last 13 years; that the said four gold chains were purchased by her husband and her; that she neither mentioned about the possession of gold in her Customs Declaration Slip nor declared to the officers at the

Customs counter; that she tried to smuggle the gold to avoid payment of Customs duty; that she concealed the gold in such a way that no one would detect it; and that though she was aware that carrying gold into India without payment of duty is an offence, she had tried to smuggle the same for monetary benefit.

The matter was decided vide the aforesaid Order-in-Original dated 29.03.2016. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which has been modified as above.

3. The Applicant has filed revision application mainly on the grounds that the Applicant is an eligible passenger to import gold at concessional rate in terms of Notification No. 12/2012-Cus dated 17.03.2012 who was staying abroad for more than 13 years; that the total quantity of gold ornaments is only 440 grams and there was no ingenious concealment; that the gold ornaments belonged to her and she was coming for marriage purpose; that she was not given a chance to declare; that gold ornaments worn by passenger cannot be treated as concealment; that RF and PP be reduced; and that penalty cannot be imposed under both clauses of Section 112 of the Customs Act, 1962.

4. Personal hearings were fixed on 13.12.2023 & 03.01.2024, but no one appeared for either side nor has any request for adjournment has been received. As such, it is presumed that neither side has anything to add in the matter. Since, sufficient opportunity has been granted, the matter is taken up for disposal based on available records.

5. The Government has carefully examined the matter. It is observed that the Applicant was intercepted near the exit gate of the Customs Baggage Hall after passing through the Green Channel, therefore it is evident that the Applicant had exhausted the option for declaration and payment of duty thereon. Even after being questioned by Customs, the Applicant denied having any gold or valuables with her. Further, the sequence of events has been recorded in the Mahazar dated 08.10.2014 in the presence of two independent witnesses. Moreover, corroborating the chain of events the Applicant has admitted to her role in smuggling the impugned gold due to the lure of money and she also did not have any document evidencing licit purchase of the impugned gold.

Hence, the contention of the Applicant that she was not given a chance to declare and that the gold items belonged to her are not borne out by evidence.

6. Another contention of the Applicant is that she is an eligible passenger. However, as observed by the original authority, one of the conditions of the aforesaid notification is that duty has to be paid in convertible foreign currency and as sufficient foreign currency was not found on the Applicant, the benefit of notification could not have been granted to her. Further, as per proviso to condition 35, the Applicant was also required to make a declaration in this regard, which has also not been done in this case. Hence, the contention of the Applicant in this regard cannot be accepted.

7. Another contention made by the Applicant is that the gold ornaments worn by the passenger cannot be treated as concealment and there was no ingenious concealment. In this connection, it is observed that the Applicant had filled in and signed the Customs Declaration Form without declaring the gold. Secondly, she was intercepted near the exit gate of the Customs Baggage Hall after passing through the green channel and even after the specific query of the officers, the Applicant denied having with her any gold or other valuables. Further, several Hon'ble High Courts have upheld allegations of contravention of Section 77 when the person concerned failed to declare the gold kept by him/her on his body or in the clothes worn by him/her. In the case of *Commissioner of Customs (Preventive), Lucknow vs. Deepak Bajaj* {2019 (365) ELT 695 (All.)}, the Hon'ble Allahabad High Court has held that the person concerned was required to make a declaration under Section 77 of the Act *ibid* in respect of gold recovered from his jeans, vest, coat and shoes. Similarly, the Hon'ble Delhi High Court has, in the case of *Air Customs vs. Begaim Akynova* {WP (CrI.) 1974/2021}, *vide* judgment dated 03.01.2022, upheld the punishment imposed in a case where the passenger was found carrying gold concealed inside the body around the waist and thigh wherein the department had, *inter-alia*, alleged contravention of Sections 77 & 79 of the Customs Act, 1962. In light of the above, I find no substance in the above contentions of the applicant.

8. As per Section 123 of Customs Act 1962, in respect of the gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the person, from whom goods are recovered. The Applicant did not declare the gold items, as stipulated under Section 77 of the Act, *ibid*. No documents evidencing ownership and licit purchase were produced at the time of interception. Further the Applicant exhausted the options to declare as she was intercepted near the exit gate of the Customs Baggage Hall. Hence, the intent to smuggle is obvious. The Applicant has, thus, failed to discharge the burden placed on her, in terms of Section 123, *ibid*. Keeping in view the facts and circumstances of the case and as the Applicant has failed to discharge the onus placed on her in terms of Section 123, the Government is in agreement with the lower authorities that the seized gold items were liable to confiscation under Section 111 *ibid* and, consequently, the Applicant is liable to penalty.

9. SECTION 112 of the Customs Act, 1962 reads as under:-

Penalty for improper importation of goods, etc.-

Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

9.1 As far as the contention of the Applicant that Sections 112 (a) and (b) both are not simultaneously applicable is concerned, there is no bar in the Customs Act upon simultaneous levy of penalty under Sections 112 (a) and (b). Bringing into India goods which contravene the provisions of the Customs Act and omitting to declare the same under Sections 77 of the Customs Act, 1962 are clearly covered under "*does or omits to do any act which act or omission would render such goods liable to confiscation under*

section 111, or abets the doing or omission of such an act". Carrying/smuggling goods in an ingeniously concealed manner is clearly covered under Sections 112(b) of the Customs Act, 1962.

9.2 The Government finds that not declaring dutiable goods as required under Section 77 of the Customs Act, 1962 is an offence under the Customs Act, 1962 and Rules & Regulations made thereunder. The Applicant had attempted to smuggle the said gold, by deliberately not declaring the same upon arrival, with the willful intent to evade Customs duty. Further, the statement of the Applicant on record reveals that she is a carrier and has attempted to smuggle the impugned gold for monetary benefit. Therefore, the Applicant has contravened the provisions of both Section 112(a) and 112(b) of Customs Act, 1962 making her liable for penalty under both these provisions. The Customs Act does not preclude simultaneous imposition of penalty under Section of Section 112(a) and 112(b) when both these have been violated.

10. 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 in the instant case, the Applicant was well aware that she was in possession of gold and was also aware that she was bringing the same into India from Dubai which was against the law. Yet she filed a false declaration in Customs Declaration Form and denied possession of the same when specifically asked by Customs officers. Thus a false and incorrect declaration was made, whereas on a plain reading of Section 77 of the Customs Act, 1962, the imposition of penalty under Section 114 AA is merited.

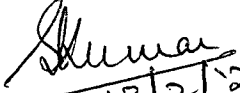
11. The Commissioner (Appeals) has referred to the objective of introduction of Section 114AA, as explained in the para 63 of the report of Parliament's Standing Committee on Finance (2005-06), to hold that the provisions of Section 114AA are not attracted since in

the present case smuggled goods had 'physically crossed the border'. 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 suggest that the provisions thereof are not applicable in case smuggled goods had physically crossed the border. Hence, there was no occasion for the Commissioner (Appeals) to depart from the literal rule and take recourse to other principles of interpretation to hold otherwise.

12. 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 and the order in original is upheld.

13. In the facts and circumstances of the case, the Government finds that the penalties imposed on the Applicant by the original authority are just and fair.

14. In view of the above, the revision application is rejected.


13/2/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

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Order No. 44 /24-Cus dated 13.02.2024

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2. The Commissioner of Central Excise, Customs & Service Tax, C.R Building, Mananchira, Calicut-673001.
3. PPS to AS(RA).
4. Guard file.
5. Spare Copy.
6. Notice Board.

ATTESTED


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