

SPEED POST



F. No. 373/227/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. 15/02/24

Order No. 47/24-Cus dated 15-02-2024 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-144-2019 dated 22.03.2019 passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Kochi.

Applicant : Sh. Kuttukkan Mansoor Ali, Kannur

Respondent : The Commissioner of Customs, Calicut

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ORDER

Revision Application No. 373/227/B/2019-RA dated 26.06.2019, has been filed by Sh. Kuttukkan Mansoor Ali, Kannur (hereinafter referred to as the Applicant), against the Order-in-Appeal No. CAL-EXCUS-000-APP-144-2019 dated 22.03.2019, passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Kochi. The Commissioner (Appeals) has upheld the Order-in-Original, passed by the Joint Commissioner of Customs, Airport, Calicut, bearing no. 36/2015-16 dated 21.01.2016 except to the extent of setting aside the penalty of Rs. 2,50,000/- imposed upon the Applicant under Section 114AA of the Customs Act, 1962. Vide the aforesaid Order-in-Original gold rods/hooks having 24 carat purity, weighing 840 grams and valued at Rs. 20,53,061/- (international value) & Rs. 24,94,800/- (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. 2,50,000/- each were also imposed on the Applicant under Section 112(a) and 114AA, respectively, of the Act *ibid*.

2. Brief facts of the case are that acting on specific information, Customs officers intercepted the Applicant upon his arrival at Calicut International Airport from Dubai on 05.01.2014 when he was about to cross the exit gate of the baggage hall through the green channel clearance. He was enquired whether he was in possession of gold or any other valuables, he replied in the negative. The Customs Declaration Form signed by him did not show value of dutiable goods imported. Thereafter his baggage was subjected to thorough examination, whereupon 723 grams of gold converted into thin rod form and coated with silver colour were found concealed by clipping along the frame of the trolley bag and 117 grams of gold converted into 4 black coloured hooks concealed by fixing the same in the handles of a ladies bag found in his checked in baggage. No foreign or Indian currency was recovered either from his person or from his baggage. The said gold rods/hooks were subjected to purity check by Sh. N.V Unnikrishnan, Aswathy House, P.O. Kondotty, Malappuram and it was certified by the assayer that the said metal rods and hooks totally weighing 840 grams are of gold of 24 carat purity. The tariff value for import of the said gold recovered was arrived at Rs. 20,53,061/- in terms of Notification No. 36/2001-Cus (N.T) dated 03.08.2001 as amended from time to time and last amended by

Notification No. 134/2013-Cus (N.T) dated 31.12.2013 read with Notification No. 01/2014-Cus. (N.T) dated 02.01.2014.

In her statement, tendered under Section 108 of Customs Act, 1962, the Applicant stated inter-alia that he had been working in a readymade shop in Dubai for last one and half years as a salesman; that when he was about to visit India, a person named Sh. Niyas, a native of Kuthuparampu, came to know of the same and approached him with an offer of reward of Rs. 30,000/- if he were to carry some gold concealed in a strolley bag and a ladies hand bag; that the bags containing gold were to be smuggled into India without declaring before Customs and without payment of duty. They were then to be taken to his house at Thaliparamby, where his (Shri Niyas') friends would come and collect the said bags on payment of the agreed upon amount of Rs. 30,000/-; that he accordingly received a strolley bag and a ladies hand bag, in which gold was concealed, from Sh. Niyas; that he had carried the said strolley bag as one of his checked-in baggage and had travelled and arrived at Calicut; that he had collected his checked in baggage after hand baggage examination and had tried to leave the Customs baggage hall through green channel clearance without declaring gold in his possession, whereupon the officers of customs intercepted him near the exit gate.

The matter was decided vide the aforesaid Order-in-Original dated 21.01.2016. 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 he was not aware of the contents of the trolley entrusted from abroad; that he is not the owner of the gold; that imposition of penalty of Rs. 2,50,000/- on him is heavy as he is not the owner of the gold and is only a victim of circumstances and financially poor person. It is prayed that penalty be set aside or reduced.

4. Personal hearings was held on 22.11.2023. JC Airport, Calicut and Ms. R. Latha, AC appeared for the side of Respondent and submitted that the OIA has already set aside the penalty under section 114AA when there is no reason for according leniency, in view of the fact that there was ingenious concealment of gold and a false declaration was made

by the applicant when specifically questioned about carrying dutiable goods. The applicant's stand taken later, i.e. that he was ready to pay the duty does not have merit as he was found to be carrying only 150 Dirhams amounting to Rs. 3,000/- approx. whereas the value of the impugned goods exceeded Rs. 20 lakhs. The intent to evade duty is manifest as he was intercepted at the exit gate and all his contentions are an afterthought. None appeared for the side of Applicant. The hearing was again fixed on 22.12.2023, however, no one appeared from either side.

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 him. Further, the sequence of events has been recorded in the Mahazar dated 05.01.2014 in the presence of two independent witnesses. Moreover, corroborating the chain of events the Applicant has admitted to his role in smuggling the impugned gold due to the lure of money and he also did not have any document evidencing licit purchase of the impugned gold. Hence, the contention of the Applicant that he was not aware of the contents of the trolley entrusted from abroad is not acceptable.

6. 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 he was intercepted near the exit gate of the Customs Baggage Hall. Moreover, the impugned gold was ingeniously concealed. Hence, the intent to smuggle is obvious. The Applicant has, thus, failed to discharge the burden placed on him, 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 him 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.

7. 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 he was in possession of gold and was also aware that he was bringing the same into India from Dubai which was against the law. Yet he 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.

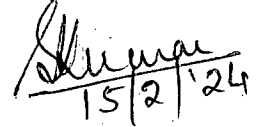
8. The Commissioner (Appeals) has referred to the objective of introduction of Section 114AA, as explained in the para 63 of the report of Parliament's Standing Committee on Finance (2005-06), to hold that the provisions of Section 114AA are not attracted since in the present case smuggled goods had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

9. Thus, the Government holds that the Order of Commissioner (Appeals) setting aside the penalty imposed under Section 114AA, on the Applicant cannot be sustained and is set aside to this extent and the order in original is upheld.

10. 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.

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


15/2/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Sh. Kuttukkan Mansoor Ali
S/o Sh. Muhammed Kunhi Koovan
Kuttukkan House, 409 (34/120)1
P.O Thaliparamba, Pulimparamba
Kannur District, Kerala-670141

Order No. 47/24-Cus dated 15-02-2024

Copy to:

1. The Commissioner of Central Tax, Central Excise & Customs (Appeals), Central Revenue Building, I.S Press Road, Kochi-682018.
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


15/2/24
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