

**SPEED POST**



F. No. 380/08/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. 3/4/23.

Order No. 143/23-Cus dated 3.4.2023 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. 340/2018 dated 09.10.2018, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : The Pr. Commissioner of Customs, Airport & Air Cargo Complex, Bengaluru

Respondent : Sh. Kulenthirarajah, Jaffna, Sri Lanka

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## **ORDER**

A Revision Application No. 380/08/B/2019-RA dated 15.01.2019 has been filed by the Pr. Commissioner of Customs, Airport & Air Cargo Complex, Bengaluru (hereinafter referred to as the Applicant department) against the Order-in-Appeal No. 340/2018 dated 09.10.2018, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, modified the Order-in-Original No. 48/2017-18 (AP-ADM) dated 18.04.2018, passed by the Additional Commissioner of Customs, Kempegowda International Airport, Bengaluru. Vide the aforesaid Order-in-Original, 01 gold chain with round pendant and 01 gold chain with heart shaped pendant of 24 carat/99.50%, totally weighing 200 grams and collectively valued at Rs. 5,89,000/-, recovered from Sh. Kulenthirarajah, Jaffna, Sri Lanka (hereinafter referred to as the Respondent), have been confiscated under Sections 111(d), 111(i), 111(l) & 111 (m) of the Act<sup>ibid</sup>. However, the Respondent was given an option to redeem the same for re-export on payment of redemption fine of Rs. 1,25,000/-. Besides, penalties of Rs. 75,000/- & Rs. 50,000/- were also imposed upon the Respondent under Sections 112(a) and 114AA, respectively, of the Act, <sup>ibid</sup>. The Commissioner (Appeals) has reduced the redemption fine to Rs. 20,000/- and the penalty imposed under Section 112 to Rs. 25,000/-, while the penalty imposed under Section 114AA has been set aside.

2. Brief facts of the case are that the Respondent arrived, on 10.02.2017, at Bengaluru airport, from Colombo. He was intercepted by the Customs officers while he was exiting the Customs Area. On verification of his Customs Declaration Form, it was found that he had not mentioned anything against the value of dutiable goods being imported. On enquiry, he informed that he did not have any valuable items to declare to Customs. However, upon the search of his person, two gold chains, one with round shaped pendant and other with heart shaped pendant were found on his neck. On further enquiry, he admitted that he had brought the said gold chain by concealing around his neck under the collar of his shirt to avoid detection by Customs and to evade payment of customs duty. The approved Gold Appraiser examined and certified the said gold chains to be of 24 carat/99.50% purity, totally weighing 200 grams and valued at Rs. 5,89,000/-. In his statement dated 11.02.2017, recorded under Section 108 of the Customs Act, 1962, the Respondent, inter-alia, stated that he learnt that there is a big demand for Indian barber chairs in Srilanka; that he started purchasing Indian made barber chairs in Chennai and carried the same to Jaffna, Srilanka to sell for profit; that as he was about to travel from Colombo, Srilanka, he was befriended with some Indian Company persons in the same business; that he came to know that he can make profit of Rs. 20,000/- if he could carry gold without payment of Customs duty and sell the same in Chennai and, accordingly, he purchased

the two gold chains from M/s. Asari Gold Shop at Inuvel, Jaffna, and was instructed by his friends to carry the said gold chains by concealing around the neck under the collar of the shirt, in order to avoid detection by Customs authorities at Bengaluru International Airport and accordingly, he landed at Bengaluru International Airport where he was intercepted by the Customs officers. The original authority, vide the aforementioned Order-in-Original, confiscated the said gold chains and imposed penalties as mentioned above. However, the Respondent was allowed to redeem the said gold chains on payment of redemption fine. Aggrieved, the Respondent filed an appeal before the Commissioner (Appeals), who modified the order of original authority as mentioned above.

3. The revision application has been filed, mainly, on the grounds that reduction of redemption fine and penalty imposed under Section 112 ibid by the appellate authority is not justified; that the Appellate Authority reduced the Redemption Fine and penalty without appreciating the nature of the offence; and that setting aside of penalty imposed under Section 114AA is not proper considering the fact of non-declaration of the imported goods in the Customs Declaration Form.

4. Personal hearings were granted on 14.03.2023, 21.03.2023 & 28.03.2023. No one appeared for either side on any of the dates nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for decision based on records.

5. The Government has carefully examined the case records. The issues that arise for consideration, in this revision application, are:

- i) Whether the Commissioner (Appeals) was justified in reducing the redemption fine and penalty imposed under Section 112?; and
- ii) Whether the penalty under Section 114AA is imposable in the present case?

6.1 As regards imposition of penalty under Section 114AA, the said Section 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 the fact of the Applicant making an incorrect declaration is well established. Since an incorrect 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.

6.2 The Commissioner (Appeals) has relied upon an earlier Order of revisionary authority at Mumbai wherein the authority 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 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. 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 the Commissioner (Appeals) erred by relying 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.


6.3 It bears no reiteration that Section 112 and Section 114AA 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. 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.)}, held on the same lines.

6.4 As such, as Order of Commissioner (Appeals) setting aside the penalty under Section 114AA cannot be sustained.

7. As already held, in the present case a true declaration was not made, as required under Section 77 *ibid*. A true declaration under Section 77 *ibid* is a sine-qua-non for allowing re-export under Section 80 of the Act *ibid*. [Ref. Commissioner of Customs (Prev.), Lucknow vs. Deepak Bajaj {2019 (365) ELT 695 (All.)}]. Hence, re-export could not have been allowed in this case. However, as the department has not been aggrieved, the Government does not interfere with this part of the orders of the authorities below.

8. Considering the facts and circumstances of the case, the Government finds that the redemption fine and the penalties imposed by the original authority are just and fair and the Commissioner (Appeals) has erred by interfering in the matter.

9. In view of the above, the revision application is allowed by way of setting aside the Order-in-Appeal impugned herein. Consequently, the Order-in-Original dated 18.04.2018 is restored.



(Sandeep Prakash)

Additional Secretary to the Government of India

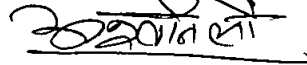
The Pr. Commissioner of Customs,  
3<sup>rd</sup> Floor, AI SATS Cargo Terminal,  
Air Cargo Complex, Devanahalli,  
Bengaluru-560300.

Order No. 143/23-Cus dated 3.4.2023

Copy to:

1. Sh. Kulenthirarajah, S/o Sh. Sinnathurai, SJV Lane, Kondavil East, Kondavil, Jaffna, Sri Lanka
2. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
3. Sh. Pradyumna G.H, Advocate, BVC & Company, 1<sup>st</sup> Floor, No. 371, 8<sup>th</sup> Main, Sadashiv Nagar, Bengaluru-560080.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED



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