



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, Centre-I, World Trade Centre, Cuff Parade, Mumbai- 400 005

F NO. 373/144/DBK/13-RA | 1328

Date of Issue: 15-03-2018

ORDER NO. 103/2018-Cus (SZ)/ASRA/Mumbai Dated 15-03-2018
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT,
1962.

Applicant : M/s. R. Kishin & Co. 208, Bherumal Hse, 149 Zaveri Bazar,
Mumbai - 400 002.

Respondent : The Commissioner of Customs, Customs House, Cochin-
682009.

Subject : Revision Applications filed, / under Section 129DD of the
Customs Act, 1962 against the Orders-in-Appeal No. 77/2013
dated 19.09.2013 passed by the Commissioner of Customs
(Appeals), Customs House, Cochin - 682 009.



ORDER

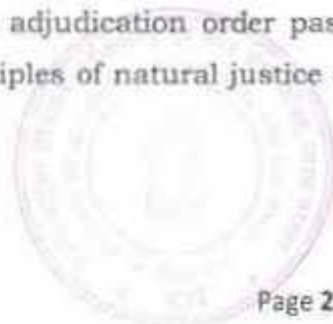
This Revision Application has been filed by M/s R. Kishin & Co. against the Orders in Appeal issued by the No. 77/2013 dated 19.09.2013 passed by the Commissioner of Customs (Appeals), Customs House, Cochin - 682 009.

2. The Applicants had filed Shipping Bills through Cochin Port for the clearance of goods declared as "Inflatable footballs made of Polyurethane (shiny surface)." The declared value of the goods in all the cases was \$14.75 per piece which worked out to Rs. 762.81 per piece and duty drawback was claimed @ 13.7% of the FOB value on all these bills subject to a value cap of Rs. 104/- per piece. The export prices were compared for the same product and the same destination through other ports in India. It was noticed that identical goods were exported through Nhava Sheva Port, Mumbai at the rate of Rs. 491.93 per piece. It was also noticed that the exporter and the consignee in those exports were the same. Based on these findings the Original Adjudicating Authority vide Order-in-Original No. 56/2012 dated 05.12.2011 rejected the declared value of the goods and re-fixed the value of the goods at Rs. 491.93 per piece and process drawback accordingly. Aggrieved by the said order, the Applicant filed an appeal with the Commissioner of Customs (Appeals) who vide Order in Appeal No. 77/2013 dated 19.09.2013 rejected the appeal and upheld the impugned Order-in-Original.

3. Aggrieved by the order of Commissioner (Appeals) the Applicants have filed this Revision Application inter alia on the following grounds;

3.1 The Commissioner (Appeals) erred in rejecting the appeal of the Applicant and the impugned order is mis-conceived both on facts and in law and therefore, the same cannot be sustained.

3.2 The impugned order has been passed without considering the submissions made by the Applicants in the appeal, including the documentary evidence produced by the Applicant. In the present case, no such efforts were taken by the Department before rejecting the declared value. Moreover, there is no dispute on the authenticity of the price mentioned in the purchase invoices produced by the Applicant. Further, it held that an adjudication order passed without considering evidence is also violative of principles of natural justice and is hence liable to be set aside.



3.3 It is further submitted that the goods so purchased by the Applicant's company are at a local price of Rs.750/- per ball, and had sold the same at a rate of US 14.75 per piece which worked out to Rs.762.81 C and F basis. No reason is forthcoming to reject the Invoices under which the goods were procured. Since no reasons for doubting the value have been furnished, the impugned order is liable to be quashed.

3.4 The Commissioner (Appeals) ought to have appreciated that all the exports were carried out as per the contract entered between the Applicant and buyer firm. These contracts were made well before the date of export. Moreover, the price of the goods is calculated considering the escalation in price of raw material also. Therefore, there would most definitely be a change in raw material costs, manufacturing costs, transportation costs etc. within the time gap of two different contracts, hence the cost of the goods of two contracts cannot be compared even if the exports have taken place within a short time period. Without considering any of these submissions and documents, the legitimate drawback claim of the Applicant has been reduced.

3.5 The order issued by the original Adjudicating authority and appellate authority are contrary to the Customs Valuation (Determination of Value of Export Goods) Rule, 2007 and principles of Natural Justice and are unsustainable.

3.6 The adjudicating authority and appellate authority failed to appreciate the evidence regarding advance remittance statements and the remittances sheets from Applicant's bankers. There is no reason forthcoming or the impugned order for as to why the adjudicating authority did not consider the evidences regarding advance Remittance statements before rejecting the claim.

3.7 The adjudicating authority and appellate authority failed to follow principles of natural justice and have arbitrarily re-fixed the price of the footballs from US\$ 14.75 to US\$ 9.50, which in turn has adversely affected the Applicants drawback claim.

3.8 The adjudicating authority and appellate authority failed to appreciate that the value of the goods will include exchange rate fluctuations, Freight charges, C & F charges, local insurance, cost of packing material etc. It is submitted that, looking at all the cost factors in the present matter, costs for carrying out export activity have gone up.

3.9 The adjudicating authority and appellate authority failed to consider that as per the Transaction value of the goods, all payments are received in advance and all the documents pertaining to the shipment under above shipping bills are negotiated with Banks and the Invoices/ SDF Form and LEO Shipping bills are negotiated as per the advance remittance received from their buyers. The adjudicating authority and appellate authority failed to consider that the Applicant had submitted all the remittance advices received for payments with export documents.

3.10 The adjudicating authority and appellate authority failed to consider that the Applicant had also produced the local procurement invoices of the goods exported. The Commissioner (Appeals) ought to have appreciated that the local procurement invoices were third party documents, and the Applicant had no control as to how the said invoices were prepared and what particulars were mentioned therein.

3.11 The adjudicating authority and appellate authority failed to appreciate all the evidence placed before them and have erred in applying the Valuation Rules mechanically without considering the commercial aspects of the present case. Therefore, it is submitted that the impugned order is bad in law and is liable to be quashed.

4. In view of the above the Applicants most respectfully prays that the Order-in-Appeal No. 77/2013 dated 19/09/13 passed by Hon'ble Commissioner (Appeal), Cochin arising out of Order - in -Original No.56/12 dated 05/12/12 passed by Assistant commissioner of Customs (DBK), Cochin may be set aside. The Department may be directed to pass 100% claim of Drawback refund and further reliefs as the nature and circumstances of the case may require.

5. Personal hearing in the case was held on 27.02.2018 which was attended by Shri Kishin Loungani, Proprietor of M/s R. Kishin and Co. He reiterated submissions made in the revision application and pleaded that the impugned orders of the Commissioner (Appeals) be set aside and the impugned Revision Applications be allowed.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Appeal and the order of the Original Adjudicating Authority. The issue to be addressed is whether the orders of the lower authorities were right in

rejecting the value declared by the Applicant and refixing the value of the impugned goods.

7. Government observes that the Original Adjudicating Authority expressed his doubts on the transaction value declared by the exporter as the goods of the same identical description ie "Inflatable footballs made of Polyurethane (shiny surface)." were also cleared through Nhava Sheva port during the same period for a lower value of Rs. 491.93 per piece as compared to Rs. 762.81 per piece in the impugned Shipping Bills. The exporter and the consignee were also the same in both the exports. A notice was therefore issued to the Applicant requesting them to furnish evidences in support of their declared value. In reply the Applicant submitted that there has been an escalation in the cost of input material as compared to the previous year which has led to the increase in the cost of the exported goods. Addressing the submission the Order in original notes the escalation costs have been derived comparing the present costs to the previous year. Therefore, the cost escalation over the past one year should have affected both the exports, ie the exports made from Nhava Sheva as well as the impugned exports made from Cochin, as the exports have been executed from both the ports within the same month ie October-November 2012 and therefore rejected the transaction value.

8. The Applicant has also submitted local invoices showing purchase of similar goods, however, in this case the adjudicating authority has arrived at the value by comparison of like goods, under Rule 4 of the Customs Valuation (Determination of Value of Export goods) Rules, 2007. The prices of the local invoices could be considered if the value was determined using "Computed value method" under Rule 5 or "Residual method" under Rule 6. Not being convinced with the submissions of the Applicant the Original Adjudicating Authority has rightly rejected the transaction value and refixed the value at Rs. 491.93, as declared in the contemporaneous exports.

9. Further, the Original Adjudicating Authority has rightly questioned the valuation as a price escalation of identical goods exported during the same period, from the same exporter to the same consignee, naturally raises doubts. Especially when similar consignments were exported at much lesser value during the same period. It is also observed that the exports of the goods at the price of Rs. 491.93 were all made form Nhava Sheva port, and that the exports at the higher price ie Rs. 762.81 were all made from Cochin. It sounds suspicious as to why the diversion was done specifically done to avoid the scrutiny through contemporaneous exports? In

arriving at the above conclusion the Original Adjudicating Authority has rejected the transaction value of the impugned goods under Rule 8 of the Customs Valuation (Determination of Value of Export goods) Rules, 2007 as the transaction value of the exported goods declared under Rule 3(1) was higher than identical goods exported by the very same exporter to the same consignee during the same period albeit through another port. Government also notes that the drawback has been sanctioned at contemporaneous prices.

10. Under the circumstances Government observes that the grounds of the Revision Application have been adequately addressed in the impugned order in original, Government does not find any infirmity in the said orders. The Order in Appeal has also rightly upheld the order of the Original Adjudicating Authority. The Order in Appeal is therefore liable to be upheld and the instant Revision Application is liable to be rejected.

11. The Government of India accordingly upholds the Order in Appeal and dismisses the instant Revision Application being devoid of merits.

12. So, ordered.

Ashok K. Mehta
 (ASHOK KUMAR MEHTA)
 Principal Commissioner & ex-Officio
 Additional Secretary to Government of India

ORDER No. ¹⁰³ /2018-CX (SZ) /ASRA/Mumbai

DATED 15.03.2018.

M/s R. Kishin and Co.
 208, Bherumai Hse,
 149 Zaveri Bazar,
 Mumbai - 400 002.

True Copy Attested

Sankarsan Munda
 SANKARSAN MUNDA
 Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Custom House, Cochin-682 009.
2. Commissioner of Customs (Appeals), Custom House, Cochin-682 009.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File
5. Spare Copy.

