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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, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No. 371/65/DBK/16-RA / 1951
F.No. 371/64/DBK/16-RA

Date of Issue: 19/05/2022

ORDER NO.\82-\83/2022-CUS (WZ)/ASRA/MUMBAI DATED \8.5:2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE
CUSTOMS ACT, 1962.

Applicant : i) Kavish Impex Pvt. Ltd.
ii) Shri Deepak Lalwani

Respondent: Commissioner of Customs, Nhava Sheva, Maharashtra

Subject : Revision Applications filed, under Section 129DD of the
Customs Act, 1962, against the Order-in-Appeal No. 125-
127(Adj-Exp)/2016(JNCH) dated 24.08.2016 passed by the
Commissioner of Customs(Appeals-I&II), JNCH,Nhava
Sheva,Mumbai-II.

ORDER

This Revision Application has been filed by M/s. Kavish Impex Pvt. Ltd. (hereinafter referred to as "the applicant-1"), 65-C,J Block,Phase-I,Ashok Vihar ,New Delhi-110052, and M/s. Deepak Lalwani, Director, M/s. Kavish Impex(hereinafter referred to as "the applicant-2"),) against the Order-in-Appeal No. 125-127(Adj-Exp)/2016(JNCH) dated 24.08.2016 passed by the Commissioner of Customs(Appeals-I&II), JNCH,Nhava Sheva,Mumbai-II.

2. Brief facts of the case are that the applicants had filed 7 shipping Bills for export of Viscose Shawls involving DBK of Rs. 22,68,139/-. The officers of SIIB, on the basis of some intelligence that the said viscose shawls being exported by the Applicants were overvalued to get the undue DBK, had examined the export goods on 05.07.2012 and 10.07.2012. On suspicion that the export goods are also overvalued to avail higher DBK, the said goods were seized on 05.07.2012 and 13.07.2012. On the basis of market enquiry and various statements recorded from all concerned the department had concluded that the Applicants had inflated the value of the export goods as the market value of the said goods was Rs. 86,11,239/- (ascertained through the market Enquiry on 26.07.2012) instead of the declared value of Rs. 2,49,24,672/-; that the admissible DBK on the re-assessed value of Rs. 86,11,239/- was Rs. 7,83,623/- in place of the initial claimed DBK of Rs. 22,68,139/-; that an amount of Rs. 14,84,516/- towards DBK was claimed in excess. Therefore, on the basis of the above findings, the department has issued the notice. The Adjudicating authority then passed the Order-In Original no. 259/2014-15 dt 15.01.2015 as under:-

- (a) the declared FOB Value of impugned goods covered under said Seven Shipping Bills was re-determined as Rs. 86,11,239/- in terms of provisions of Rule 8 of the Customs valuation (Determination of value of export goods Rules, 2007).
- (b) The drawback claim was re determined as Rs. 7,83,623/-

- (c) Since, the impugned goods had been allowed back to Town on the applicant's request, redemption fine of Rs. 15,00,000/- (Rupees Fifteen Lakhs only) under Section 125 of the Customs Act, 1962 was imposed.
- (d) imposed a penalty of Rs. 3,00,000/- (Rupees Three lakhs only) each, upon the Exporter, M/s Kavish Impex Private Limited, Delhi and Shri Deepak Lalwani, Director under Section 114 (iii) of the Customs Act, 1962.

Being aggrieved by the aforesaid order-in-original the applicant filed appeal before Commissioner of Customs (Appeal-I), Mumbai-II who vide Order-in-Appeal No. 125-127 (Adj-Exp) 2016 (JNCH) Appeal-I dt 24.08.2016 has reduced the RF to Rs. 8 lacs and Penalty to Rs. 2 lacs.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application under Section 129 DD of the Customs Act, 1962 before the Government.
4. Personal hearing in the case was held on 14.10.2021, the hearing was attended online by Shri R. K. Jain, Consultant on behalf of the Applicants and reiterated their earlier submissions. He submitted that their purchase invoice was not accepted, market inquiry report is not correct. He also submitted that goods were not exported, hence RF and penalty be set aside. Penalty on the Director has been imposed without any ground, hence requested for quashing the same.
5. Government has carefully gone through the relevant case records available in case files, perused the impugned Order-in-Original, Order-in-Appeal. It is observed that the applicant is aggrieved by Order-in-Appeal No. 125-127 (Adj-Exp) 2016 (JNCH) Appeal-I dt 24.08.2016 passed by the Commissioner of Customs (Appeal-I), Mumbai-II and the Revision application is filed against the same.

6. Government reproduces the text of Section 129DD here for easy reference:

“ SECTION 129DD : Revision by Central Government.- (1) The Central Government may, on the application of any person aggrieved by any order passed under section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129A, annul or modify such order.

Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.

Explanation. - For the purposes of this sub-section, "order passed under section 128A" includes an order passed under that section before the commencement of section 40 of the Finance Act, 1984, against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

(1A) The Commissioner of Customs may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 128A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made :

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months:

(3) An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of, -

(a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is one lakh rupees or less;

(b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is more than one lakh rupees :

Provided that no such fee shall be payable in the case of an application referred to in sub-section (1A).

(4) The Central Government may, of its own motion, annul or modify any order referred to in sub-section (1).

(5) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section, -

(a) in any case in which an order passed under section 128A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value, and

(b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.

(6) Where the Central Government is of opinion that any duty of customs has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 28 "

7. Government finds that Section 129 DD read with proviso to Section 129 A (1) of Customs Act, 1962 empowered the Central Government to revise or review the appellate orders passed by Commissioner of Customs (Appeals) if such order related to:-

- i) Any goods imported or exported as baggage;
- ii) Any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at the destination;
- iii) Payment of drawback as provided in Chapter X and the rules made there under.

8. In the instant case Government observes that the issue involved is related to fraud wherein SIIB had examined and seized the goods while acting on specific intelligence on suspicion of overvaluation by the applicants to avail higher drawback .Drawback means the refund of duty of customs and duty of central Excise that are chargeable on imported and indigenous materials used in the manufacture of exported goods. Since the goods were not exported and were allowed back to the town on the applicants' request, matter of drawback claim ceased to exist. Therefore Government holds that the question of availment of drawback claim does not arise in the case in hand and is entirely related to the fraud. It is pertinent to note that the Revisionary Authority derives powers from section 129DD only the extent of the cases involving the payment of drawback as provided in Chapter X and the rules made there under. In the result, the revision application filed by the Applicant are not maintainable under Section 129DD of the Customs Act, 1962.

9. In view of the above discussion, the Government is of the opinion that the issue involved in this case does not fall within the jurisdiction of this authority and the application is not maintainable for want of jurisdiction in terms of Section 129DD of the Customs Act, 1962.

10. In view of the above discussions, the revision applications filed by the Applicant are dismissed as non-maintainable due to lack of jurisdiction.


(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

182-183
ORDER No. /2022-CUS (WZ)/ASRA/Mumbai DATED 18.5.2022

To,

- 1) M/s. Kavish Impex Pvt. Ltd.
65-C,J Block,Phase-I,Ashok Vihar ,New Delhi-110052.

- 2) M/s. Deepak Lalwani, Director of M/s. Kavish Impex
65-C,J Block,Phase-I,Ashok Vihar ,New Delhi-110052.

Copy to:

1. The Commissioner of Customs, JNCH,Nhava Sheva,Tal: Uran,Dist.-Raigad,Maharashtra-400707.
2. The Commissioner of Customs(Appeals-I&II), JNCH,Nhava Sheva,Tal: Uran,Dist.-Raigad,Maharashtra-400707.
3. The Joint Commissioner of Customs(Exports), JNCH,Nhava Sheva,Tal: Uran,Dist.-Raigad,Maharashtra-400707.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file.