

REGISTERED SPEED POST



**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. 371/81/DBK/15-RA

2871

Date of Issue:

18.07.2022

ORDER NO. 210/2022-CUS (WZ) /ASRA/MUMBAI DATED 15-07-2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDE SECTION 129DD OF CUSTOMS ACT, 1962.

Applicant : M/s Santosh Patil.

Respondent : Commissioner of Customs, (Appeals-I) Mumbai-II.

Subject : Revision Applications filed under Section 129DD of Customs Act, 1962 against Order in Appeal No. 79 (DBK) 2015 JNCH-Appeal-I dated 09-07-2015 passed by Commissioner of Customs, (Appeals-I), Mumbai-II.

ORDER

This Revision Application has been filed by Shri Santosh Patil, having his address at 22-A, Churchwadi Gokhale Road, Dadar (West), Mumbai-28 (hereinafter referred to as the "applicant") against Order-in-Appeal No. 79(DBK)/2015(JNCH)-Appeals-I dated 9-07-15 passed by Commissioner of Customs (Appeals-I), Mumbai-II.

2. The brief facts of the case are that based on intelligence that 'Common Salt' was being attempted to be exported as 'Organic Dye Intermediate G-Salt' a high value chemical claiming ineligible drawback, the officers of Customs at Tuticorin Port, India, identified the consignments to be exported under Shipping Bills filed by M/s Max International. On the basis of intelligence passed on by the Tuticorin Customs, DRI, Mumbai initiated the investigation in the case of fraudulent exports under drawback scheme by M/s Max International. From the perusal of IEC Certificate issued by DGFT in the name of M/s Max International, it was found that the said firm had office address declared as B-10-3-15, Sector 46, Nerul (West), Navi Mumbai and the name of the proprietor is Shri Jaykumar Nair. In his statement dated 10.02 2005 before Supdt, Customs (Tuticorin), he stated, interalia, that he was running the business of M/s. Max International from the address of Shri Santosh Patil (applicant) B-10, 3/15 Nerul, Mumbai. He had kept blank cheque leaves signed by him with the Santosh Patil (applicant). He further stated that the transactions were handled by Shri Santosh Patil and he was paid a salary only. He disclosed that Santosh had earlier exported nearly 80 consignments of same product through Nhava Sheva. DRI, Mumbai, therefore, initiated investigation against the exports made by M/s. Max International through JNCH Nava Sheva.

3. The Investigation revealed that Shri Jaykumar Nair and Shri Santosh Pandurang Patil formed clandestine alliance and floated various firms including M/s Max International with themselves and their friends as the proprietors. They obtained IEC certificates in the name of these firms by producing the necessary documents to the DGFT. They carried out fraudulent

activities of export various mis-declared commodities in the name of these firms and earned drawback which was otherwise inadmissible to them. These two persons opened the bank accounts in the names of these firms by taking signatures of the declared proprietors on account opening forms. They also obtained signatures of the declared proprietors on the blank cheque foils and then indiscriminately operated these bank accounts themselves to launder the illegally obtain drawback amounts. Shri Jaykumar Nair and Santosh Pandurang Patil fraudulently obtained Import Export Code (IEC) from Jt DGFT, Mumbai in the name of M/s. Max International. They declared that commodity exported as 'Organic Dye Chem-G salt which was obtained by them from Dragon Drugs Ltd., Boisar, Thane under the cover of AR-4/ARE-1. However, enquiries made with the Central Excise Authorities revealed that no such AR-4/ARE-1 was issued by any of the Units located under their jurisdiction. Statements of the Suppliers also confirmed that common salt was processed by the appellant and was mis-declared as 'G-Salt' in the Shipping bills. Exports under Drawback scheme under 49 shipping bills of following commodities were made in the name of Max International. The total FOB value in respect of these 49 S/Bills was Rs. 11,04,60,472/- and drawback amounting Rs. 76,79.078/- was claimed.

4. M/s Max International, Shri Jaykumar Nair, Proprietor of M/s Max International, Shri Santosh Patil, one of the main accused and also acting proprietor of M/s. Max International, CHA M/s. Smita International and CHA M/s. J.B. Udhani were issued a SCN proposing confiscation of export consignments covered under the above 49 shipping bills with declared FOB value at Rs. 11,04,60,472/- under section 113(d), 113 (h)(ii) and 113(i)(ii), recovery of drawback claimed and availed against these 49 shipping bill amounting to Rs.76,79.078/- under section 28(1) read with Rule 16A of the Drawback Rules and Section 76 alongwith interest under Section 28 AB read with Section 75 A(2) and imposition of penalty under Section 114(iii) and 114A of the Customs Act, 1962. The adjudicating authority, after completing the adjudication proceedings, confiscated the goods covered under 49 shipping bills with declared FOB value at Rs. 1104,60,472/- without imposing any

redemption fine, ordered recovery of duty drawback amounting to Rs.76,79,078/- from proprietor of M/s. Max International, imposed a personal penalty of Rs 20,00,000/- on Shri Jaykumar Nair, Rs 20,00,000/- on appellant Shri Santosh Patil Rs. 15,00,000/- on M/s. Max International u/s 114(ii) of the Customs Act. 1962.

5. Aggrieved with the impugned order, the applicant filed the appeal with the Commissioner Appeals. Vide O-1-A No. 278 (Ad) Export)/2012(JNCH)/Exp-50 dtd. 25.5.2012, the then Commissioner (Appeals) concluded that the appellant had misdeclared the description as well as the value of the goods which has been proved beyond doubt by the said statements & the documents. He maintained the O-1-0 No. 116/2010-11dtd. 30.03.2011 passed by the Addl. Commissioner of Customs, Adjudication (Export), JNCH, Sheva and rejected the appeal filed by the applicant.

6. Subsequently, the applicant filed appeal in Hon'ble CESTAT vide Appeal No. C/872/12 MUM, against the impugned order No. 278 (Adj Export)/2012(JNCH)/Exp-50 dtd. 25.5.2012 passed by the Commissioner of Customs (Appeals). The Hon'ble CESTAT vide Order No. A/1014/13/STB/C-I/S/721/13/CSTB/C-1 dtd. 6.5.2013 remanded the case back to the Commissioner (Appeals) to pass an appropriate order, in accordance with law, after giving a reasonable opportunity of hearing to the applicant to defend their case.

7. As per the directions of the Hon'ble CESTAT, Vide Order in Appeal no. 79(DBK)/2015(JNCH)-Appeals-I dated 9-07-15, Commissioner Appeals held that the department has made a strong case in favour of revenue and the original authority has rightly imposed penalty for an attempt to defraud the department by availing wrong drawback benefit by misdeclaring the goods exported by the applicant and therefore upheld the Order in Original and rejected the applicant's appeal.

8. Aggrieved by the said Order, the Applicant had again filed Appeal before the Hon'ble CESTAT, Mumbai. The said Appeal was filed on 23.10.2015. Thereafter, the Applicant received a letter informing him the date of hearing having been fixed on 23.11.2015, on point of maintainability. Thereafter, on 23.11.2015, at the time of hearing the Advocate of the Applicant had withdrawn the said Appeal since the present case pertains to Drawback claim and therefore, a Revision Application had to be filed. The applicant submitted that the Applicant by mistake, inadvertently filed the Appeal before the Hon'ble CESTAT, Mumbai. The Applicant has withdrawn the said Appeal and is filing a Revision Application along with the condonation of delay and stay application against the Commissioner Appeal's Order dated 9-07-15.

9. The Revision Application had been filed on the following grounds:

(a) The applicant submitted that the order of Appellate authority is bad in law and on facts. It is in violation of the principles of natural justice, fairplay and equity governing the conduct of the adjudication proceedings.

(b) The Commissioner of Customs (Appeals-I) failed to appreciate the fact that the Applicant was not the Proprietor of the firm known as Max International, who alleged to have exported common salt by misdeclaring it to G-Salt. That claim of drawback could have been obtained only by the Proprietor the actual exporter of the consignment. The Applicant was not the exporter, therefore, the drawback claim, if any, could not have been obtained by the present Applicant.

(c) The Commissioner of Customs (Appeals-1) failed to appreciate that the Applicant has been agitating right from the beginning that he had been denied fair opportunity and such prayer for fair opportunity cannot be termed as delay tactics as the Adjudicating Authority has observed in this case

(d) The Commissioner of Customs (Appeals-I) erred in observing request for cross-examination of witnesses observations substance as are delay baseless

tactics and without any Substance. The Commissioner of Customs (Appeals) failed to consider the pleas advanced in his reply dated 09.03.2015. The Applicant requested for cross-examination of witnesses as well as the Investigating Officers as he was challenging the truthfulness of the alleged statements on record as well as the irrelevant documents on record. It is respectfully submitted that request for cross-examination ought not be branded as delay tactics. The observation in paragraph 11 of the order are baseless and without any substance.

(e) The Commissioner of Customs (Appeals-I) erred in ignoring the fact that the Investigating Agency has not carried out any independent investigation with respect to the exporter on record who alleged to have exported the goods by misdeclaration. This fact, shows non application of mind on the part of the adjudicating authority. The Applicant submits that he ought to have been permitted to cross examination of the Investigating Officers and others to unearth the truth in the matter. The Applicant, thus, had been denied the fair opportunity to vindicate his innocence.

(f) The entire Adjudication Order is nothing but reproduction of the earlier order passed in the matter. This shows non-application of mind on the part of the Adjudicating Authority. This has resulted into mis-carriage of justice.

(g) The Commissioner of Customs (Appeals-1) erred in placing heavy reliance on the alleged statements of the Applicant. The said statements were obtained under force and coercion. The Applicant had also filed retraction to this alleged statement which is on record. The Applicant submits that the Commissioner ought not to have placed such heavy reliance on the alleged statements of the Applicant specially in the absence of any independent evidence to corroborate the same.

(h) The Commissioner of Customs (Appeals-1) erred in placing heavy reliance on the alleged statements of other co-accused in this case. The Applicant submits that the other statements of co-Noticees ought not to have been relied

as their statements are in the nature of co-Accused. The said statements of co-noticees ought to have been discarded in the absence of any corroboration.

(i) The Applicant submits that in the instant case it is alleged that one M/s. Max International attempted to export 'Common Salt' mis-declaring it as G-Salt. The Commissioner failed to appreciate that one Jay Kumar Nair was the Proprietor of the said firm. The Applicant submits that he was neither the Exporter nor the Claimant of Drawback. Therefore, the Commissioner ought not to have imposed such heavy penalty on him.

(j) The Applicant submits that the Commissioner of Customs (Appeals-1) erred in deciding the entire Appeal on the basis of alleged retracted statement of the Applicant and others. There is no independent evidence on record to substantiate the charges as levelled against the Applicant. In the absence of any cogent, independent evidence, the Commissioner ought not to have held the Applicant guilty and also ought not to have imposed such harsh penalty on him.

(k) The Applicant submits that the Commissioner of Customs (Appeals-I) has erred in not adopting judicious approach free from pre conceived mind and prejudice.

(l) The Commissioner in any case ought not to have imposed much harsh and excessive penalty on the Applicant. The quantum of penalty is exorbitant and deterrent.

10. Personal hearing was granted to the applicant on 6-04-2022. Shri G. B. Yadav, Consultant appeared for the hearing on behalf of the applicant. He reiterated their earlier submissions and submitted that applicant is not the proprietor as held in the Order in Original and the Order in Appeal. He further submitted that penalty has been imposed on proprietor as well on proprietorship firm. He requested for leniency in the case.

11. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

12. Government observes that the applicant's issue in this case is that the penalty imposed on him under Section 114(iii) of Customs Act, 1962 is excessive and harsh as there is no independent evidence to hold them guilty. Further penalty has been imposed on Proprietor and on Proprietary firm for the same offense.

13. Government observes that the investigations and the statements recorded of various people, revealed the following:

- a) Santosh Pandurang Patil formed a clandestine alliance and floated various firms with his friends as the proprietors including M/s. Max International (with Jaykumar Nair).
- b) Santosh Pandurang Patil carried out fraudulent activities of export of various mis-declared commodities in the name of these firms and earned drawback which was otherwise inadmissible.
- c) He opened the bank accounts in the names of these firms by taking signatures of the declared proprietors on account opening forms.
- d) He also obtained signatures of the declared proprietors on the blank cheque foils and then indiscriminately operated these bank account himself to launder the illegally obtained drawback amounts.
- e) Santosh Patil alongwith Jaykumar Nair fraudently obtained the Import Export Code from Jt DGFT, Mumbai in the name of M/s Max International.
- f) He declared that commodity exported as Organic Dye Chem- G Salt was obtained from M/s. Dragon Drugs Pvt. Ltd., Boisar, under cover of AR-4/ARE-1. It was confirmed by Central Excise Authorities no such AR-4/ARE-1 were issued by any of the Units located under their jurisdiction.

- g) The statements of the supplier viz., M/s. Dragon Drugs Pvt. Ltd., Boisar confirmed that common salt was processed by Santosh Pandurang Patil and mis-declared as G-Salt.
- h) These actions of Santosh Pandurang Patil have been corroborated separately by the declared proprietors in their statements before DRI, Mumbai
- i) Santosh Pandurang Patil himself returned the ATM cards taken from these proprietors to DRI, Mumbai which clearly shows that he was solely operating all these accounts and fraudulently removing the drawback amounts.
- j) The employees of Santosh Pandurang Patil have also corroborated the above misdeeds of Santosh Pandurang Patil in their statements before DRI, Mumbai.
- k) **Santosh Pandurang Patil operated a current account in ICICI Bank, Prabhadevi Branch, Dadar West in name of M/s. Max International as proprietor and effected transactions of about Rs. 84 lakhs through this account.**
- l) No foreign exchange or payments were received from any of the consignees towards these exports.
- m) The statements of the proprietors of the firms, employees of Santosh Pandurang Patil, Manufacturers/Suppliers of Common Salt & CHAs clearly corroborates the complicity of Santosh Pandurang Patil in the fraudulent transactions.

14. The above points clearly show the applicant's intention to defraud the Government and claim ineligible drawback. Such act of the applicant attracts penal provisions under Section 114(iii) of the Customs Act which is reproduced below.

"Section 114. Penalty for attempt to export goods improperly, etc. - Any person 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 113, or abets the doing or omission of such an act, shall be liable, -

- (i) *in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;*
- (ii) *in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded or five thousand rupees, whichever is the greater;—*
- (iii) *in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.”*

15. Government finds that the applicant had complete knowledge of fraudulent nature of export. It was applicant only who obtained IEC, opened and operated bank accounts, procured goods, filed shipping bills and misdeclared the export goods. As such, he is held to have knowingly involved with Shri Jaykumar Nair, thereby he is responsible for fraudulent export with the sole aim of claiming undue benefit of drawback from Customs Department.

16. With respect to the applicant's contention regarding disallowance of cross-examining and order based on retracted statements, Government finds that the Commissioner Appeal has rightly held that the applicant is trying to prolong the proceedings so as to delay the liability and that the statement given by the applicant had been corroborated by the statements of other persons involved in this fraud. Though the applicant submitted that the statements given by him were under coercion, government does not find any evidence of the retraction of the statement by any other person in this case. Further, instant case is not based on merely statements. Documentary evidences clearly establish the fraud carried out by the applicant in order to claim fraudulent and inadmissible drawback.

17.1 In view of the above Government finds that Commissioner (Appeals) has rightly held the applicant to be responsible in indulging in premeditated, organized and planned fraudulent export of the goods with the sole aim of claiming the inadmissible drawback benefits from Customs Department and

does not find any reason to interfere with the Commissioner Appeal's Order except for penalty on Proprietary firm.

17.2. It is settled position of law that Proprietor and Proprietorship firm are one and the same. Therefore penalty for the same offence under the same provision cannot be imposed on both separately. Once penalty under Section 114(iii) of Customs Act has been imposed on the applicant, the penalty of Rs.15 Lakh under Section 114(iii) on M/s Max International does not survive.

18. In view of the above, Government finds no infirmity in Order-in-Appeal No. 79(DBK) 2015 (JNCH) dated 09-07-2015 passed by the Commissioner of Customs (Appeals-I), Mumbai-II and rejects the appeal filed by the applicant except for the penalty under Section 114(iii) of Customs Act on M/s Max International, which is set aside.

19. The Revision Application is disposed off on above terms.

Shrawan
15/7/22
(SHRAWAN KUMAR)

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

ORDER No. 210 /2022-CUS(WZ)/ASRA/Mumbai dated 15-07-2022
To,

Shri Santosh Patil,
22-A, Churchwadi Gokhale Road,
Dadar (West), Mumbai-28

Copy to:

1. Commissioner of Customs, Jawaharlal Nehru Customs House, Nhava Sheva, Tal Uran Dist Raigad, Maharashtra-400707.
2. Additional Commissioner of Customs (Export), Mumbai-II, Jawaharlal Nehru Customs House, Nhava Sheva, Tal Uran Dist Raigad, Maharashtra-400707.
3. St. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.