

REGISTERED  
SPEED POST



**F.No. 380/15/DBK/10-RA**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 22/8/15

**Order No. 23/2015-Cus dated 19.08.2015** of the Government of India,  
passed by Smt. Rimjhim Prasad, Joint Secretary to the Government of India,  
under Section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under Section 129 DD of  
the Customs Act 1962 against the Order-in-Appeal  
No.535/2009/Commr(A)KDL dated 14.12.2009 passed  
by the Commissioner of Customs (Appeals), Kandla.

Respondent : Commissioner of Customs, Kandla.

Respondent : M/s India Art, Jaipur.

\*\*\*\*\*

**ORDER**

This revision application is filed by the Commissioner of Customs, Kandla against the Order-in-Appeal No.535/2009/Commr(A)KDL dated 14.12.2009 passed by the Commissioner of Customs (Appeals), Kandla with respect to Order-in-Original No.KDL/JC/VR/644/DBK/2009 dated 27.03.2009 passed by the Joint Commissioner of Customs, Kandla in the case of M/s India Art, Jaipur who is the respondent in this case.

2. Brief facts of the case are that the respondent had been sanctioned and paid drawback of Rs.39,085/- for exports made vide Shipping Bill No.6082239 dated 08.09.2006 under drawback scheme declaring the export goods as "Indian Wooden Furniture" falling under CTSH 94033010 (Drawback Schedule Sr.No.940302A at the rate 5.3%). It has been detected by Directorate of Revenue Intelligence that there has been excess avilment of drawback and that vide Notification No.81/2006-Cus (NT) dated 13.07.2006 the eligibility of duty drawback for the subject export goods was restricted to 1.7% under Sr.No.940303A of Drawback schedule. The respondent had paid back the excess amount of drawback of Rs.25,995/- along with interest Rs.4,550/- received by them. Thereafter, Show Cause Notice dated 09.04.2008 was issued to the respondent proposing confiscation of the export goods under Section 113(h)(ii) and imposition of penalty under Section 114 of the Customs Act, 1962. The case was adjudicated vide the impugned Order-in-Original wherein, based on the findings that the goods are not available for confiscation, the adjudicating authority refrained from ordering actual confiscation of the goods and imposing redemption fine, but imposed penalty of Rs.15,000/- on the respondent under Section 114(iii) of the Custom Act 1962 apart from confirming the demand of drawback of Rs.25,995/- along with interest under Rule 6 of the Drawback Rules, 1995 read with Section 75A(2) of the Act.

3. Being aggrieved by the said Order-in-Original, the respondent filed appeal before Commissioner (Appeals), who modified the impugned Order-in-Original to the extent that confirmation of demand of duty was upheld, but, the penalty of Rs. 15,000/- imposed by the original authority was set aside.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant Department has filed this revision application under Section 129 DD of Customs Act, 1962 before Central Government on the following grounds:

4.1 The finding & conclusion of Commissioner (Appeals) is erroneous and without any legal basis. Section 113 reads as under:-

**Section 113 Confiscation of goods attempted to be improperly exported etc. –**

The following export goods shall be liable for confiscation:-

..... (h)(i) "any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act....."

This means that any wrong entry of material particular in Shipping Bill (filed under Section 50) can render the goods liable for confiscation. In other words for confiscation of export goods establishment of any act or omission on the part of a person/party is not an essential ingredient.

4.2 For export of goods, a Shipping Bill is required to be filed in terms of Section 50 of the 'Act'. Sub-Section (2) of Section 50 states that "the exporter of any goods while presenting a Shipping Bill or bill of export, shall at the foot thereof make and subscribe to a declaration as to the truth of its contents". Hence any wrong material particular made in Shipping Bill will be violation of sub-section (2) of Section 50 and will amount to mis-declaration, making the export goods liable for confiscation under Section 113 and as a consequence make the person liable for penalty under Section 114. In the present case the exporter by filing wrong drawback serial No. in order to claim higher drawback rendered the goods liable for confiscation u/s. 113 of the Act & made himself liable for penalty u/s. 114 of the Act.

4.3 For export of goods, a Shipping Bill is required to be filed in terms of Section 50 of the 'Act'. Sub-Section(2) of Section 50 states that "the exporter of any

goods while presenting a Shipping Bill or bill of export, shall at the foot thereof make and subscribe to a declaration as to the truth of its contents". Hence any wrong material particular made in Shipping Bill will be violation of sub-section (2) of Section 50 and will amount to mis-declaration, making the export goods liable for confiscation under Section 113 and as a consequence make the person liable for penalty under Section 114. In the present case, the exporter by filing wrong drawback serial number in order to claim higher drawback rendered the goods liable for confiscation u/s. 113 of the Act and made himself liable for penalty under Section 114 of the Act.

4.4 Commissioner (Appeals) in his findings in para 5.3 of Order-in-Original has tried to shift the onus of correcting the wrong declaration of drawback serial no. made by the exporter on Customs Officers. This observation of Commissioner (Appeals) is mis-placed and improper. Over a period of time with liberalization having ushered in the Customs administration, clearance of goods is being permitted mostly on the basis of self-declaration made by the exporter on the Shipping Bill. Such self-assessment scheme necessarily cast the responsibility on the exporter to make up his mind at the time of filing Shipping Bill as to under which drawback serial no. he wanted to claim the benefit. Because of this reason exporter has to take full responsibility for any wrong declaration/claim and thus he is liable for consequential penal action. Exporter cannot take shelter in the argument that it is the duty of Customs Officers to catch mis-declaration/wrong entry. It cannot be said that if Customs Officers failed to match mis-declaration, it absolves exporter of all the penal action under Customs Act.

4.5 After the introduction of EDI in Customs, the assessment of documents having low amount of drawback claim is not done by Customs officer and is processed directly by the Computer Systems. Even the examination order is issued by the system and the percentage of goods actually order for examination by EDI systems is very low and that too is based on risk analysis i.e. quantum of drawback, sensitivity of goods etc. In the present case, the amount of drawback is less than Rupees two lakhs and hence the Shipping Bill would

not have gone for assessment by AC/DC of Customs. Hence, the contention of Commissioner(Appeals) that officer of Customs at the exit port were at liberty to raise the query at the time of permitting clearance is wrong.

5. Personal hearings were scheduled in this case on 12.5.11, 23.6.11, 1.4.15, 21.4.15, 13.5.15 & 29.6.15. Nobody appeared for personal hearings. Department vide letter dated 23.6.15 stated that they do not want hearing and case be decided on merit. Hence, Government proceeds to decide the case on merits on the basis of available records.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. Upon perusal of records, Government observes that the respondent was initially sanctioned and paid drawback of amount of Rs. 39085/- under Drawback Schedule serial no. 940302A at the @5.3% for exports made by them. On investigation by Directorate of Revenue Intelligence, it was revealed that goods were wrongly classified and there was excess availment of drawback as vide Notification No.81/2006-Cus(NT) dated 13.07.2006 the eligibility of duty drawback for subject export goods was restricted to 1.7% under Sr. No. 940303A of Drawback Schedule. Accordingly, the respondent paid back excess availed drawback amounting to Rs. 25,995/- along with interest of Rs. 4,550/- Subsequently, the original authority confirmed the demand of excess the drawback of Rs. 25,995/- alongwith interest thereon. Penalty of Rs. 15,000/- on the applicant under Section 114(iii) of the Customs Act, 1962 was also imposed. Commissioner (Appeals) modified the impugned the Order-In-Original in as much as confirmation of demand of duty was upheld, however, the order of imposition of penalty was set aside. Now, the applicant department has filed this Revision Application on grounds mentioned in para (4) above.

8. Government observes that upon detection by Directorate of Revenue Intelligence that the impugned goods are classifiable under Sr. No. 940303A of the Drawback Schedule instead of Sr. No. 940302A, as claimed by the

respondent, the respondent paid back excess amount of drawback of Rs.25,995/- along with interest of Rs. 4,550/- out of total drawback of Rs. 39,085/-availed by them. In this regard, the appellate authority has held that in the impugned export invoice cum pricing list No. 02606 dated 28.08.2006, the export goods were declared as wooden furniture falling under Drawback Schedule's Sr. No. 940303 eligible for drawback @ 1.7%;that the said declaration was examined and certified by the Customs officers at Jaipur at the time of stuffing and sealing of the container; that the CHA has wrongly entered drawback Sr. No.940302 in the impugned shipping Bill instead of 940303 and that there is no statement of the CHA that such wrong entry was made on instruction of the respondent that mismatch in entry in serial number could have been easily detected by the Customs officers at the exit port and also that respondent paid back excessive paid drawback amount with interest when the matter was brought to their notice. Thus, the appellate authority held that it could not be established that the act or omission on the part of the respondent had rendered the goods liable for confiscation under Section 113 of the Customs Act, 1962 and it follows that respondent cannot be held liable for penal action under Section 114 of the Customs Act, 1962. In this regard, Government thus observes that the fact that excess drawback was claimed by the respondent by entering drawback Sr. No.940302 instead of 940303 in the Shipping Bill is not in dispute. The limited point of dispute is whether penalty under Section 114 of the Act has been rightly set aside or not by the Commissioner (Appeals).

9. Government notes that in the export invoice cum packing list No.02606 dated 28.08.2006 as mentioned in impugned Order-in-Appeal, the export goods were declared as Wooden Furniture. The Customs authorities examined the goods based on these documents at the time of stuffing and sealing as mentioned in the impugned Order-in-Appeal. It is subsequently in the Shipping Bill that the wrong entry of the Drawback Schedule serial number has been made. Moreover, the excess drawback was not paid back by the respondent on his own volition. It was only after detection was made by the Directorate of Revenue Intelligence that there has been excess avilment of Drawback and that

vide Notification No.81/2006-Cus(NT) dated 13.07.2006, the eligibility of duty drawback for the subject export goods was restricted to 1.7% instead of 5% and 5.30% that the exporter paid up the amount claimed in excess. The exporter knew that the subject furniture was wooden and yet claimed higher rate of drawback applicable to furniture of steel/plastic by entering the wrong Drawback Schedule serial number in the Shipping Bill.

10. Government further notes that with the system of self-declaration and self-assessment in place for the clearance of goods, the responsibility is primarily cast on the exporter to ensure that the right declaration is made by him. Also it cannot be said that the CHA filed the Shipping Bill and, therefore, exporter cannot be held responsible. The CHA is not working as an independent entity but is merely representing the exporter. Also Government finds force in the contention of the applicant that after introduction of EDI system in Customs, the assessment of documents bearing low amount of drawback claim is systems assessed. Therefore, the Commissioner (Appeals) has erred in holding that officer of Customs at exit port were at liberty to raise query or that the CHA was responsible and Government holds that the exporter cannot be absolved of the responsibility of making correct declaration/entries under Section 50 of the Act.

11. Thus Government finds that the impugned export goods admittedly do not tally with the description in the Shipping Bill and have been wrongly declared by the exporter under heading pertaining to furniture of Steel/Plastic, while in the invoice cum packing list they are declared as Wooden Furniture and has thereby availed higher rate of duty drawback. The impugned goods are thus liable for confiscation under Section 113 of the Act which renders any goods entered for exportation which do not correspond in any material particular with the entry made under the Act or with entry made under this Act in relation to fixation of rate of drawback under Section 75, liable for confiscation. The respondent is, therefore, liable to penalty under Section 114 (iii) of the Act.

12. In view of the above discussions, Government holds that the Commissioner(Appeals) has erred in holding that it is not established that the impugned goods are liable for confiscation under Section 113 of the Act and the respondent is not liable for penalty under Section 114 of the Act. Government thus sets aside the impugned Order-in-Appeal and restores the penalty of Rs.15000/- (Rupees Fifteen thousand) imposed under the impugned Order-in-Original.

13. Revision Application is allowed as above.

14. So, ordered.



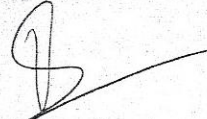
(RIMJHIM PRASAD)

Joint Secretary to the Government of India

(i) Commissioner of Customs  
Custom House,  
Near Balaji Temple,  
Kandla-370210.

(ii) Pr. Commissioner of Customs  
Customs House, PUB Bldg.,  
Mundra, Kutch,  
Gujarat.

ATTESTED



(B.P. Sharma)  
OSD (Revision Application)



**Order No. 23/2015-Cus dated 19.08.2015**

**Copy to :-**

1. M/s India Art, Sitapur Industrial Area, Sanganer, Jaipur, Rajasthan.
2. The Commissioner of Customs (Appeals), Kandla, 7<sup>th</sup> Floor, Mridal Tower, Behind Times of India, Ashram Road, Ahmedabad-380009.
3. The Joint Commissioner of Customs, Custom House, Kandla, Near Balaji Temple, Kandla.
4. PA to JS(RA).
5. ✓ Guard File.
6. Spare Copy.

ATTESTED



(B.P.Sharma)  
OSD (Revision Application)

11

THE UNIVERSITY OF CHICAGO

1954

THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY  
58 CHEMISTRY BUILDING  
CHICAGO, ILLINOIS 60637

1954

1954

1954

1954