



**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. 371/50/DBK/13-RA / 6474

Date of Issue: 15.11.2021

ORDER NO. 291 /2021-CUS (WZ) /ASRA/Mumbai DATED 10.11.2021 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 : M/s Allen & Alvan Pvt. Ltd.
14/7, Achal Road,
Aligarh, Pin - 202001.

Respondent : Commissioner of Customs (Export),
Jawaharlal Nehru Customs House,
Nhava Sheva, Uran
Raigad, Maharashtra - 400707.

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No.166 (P Conware)/ 2013/ JNCH/Exp-33 dated 28.02.2013 passed by the Commissioner of Customs (Appeals), Mumbai - II, JNCH, Sheva.

ORDER

This Revision Application is filed by M/s Allen & Alvan Pvt. Ltd. 14/7, Achal Road, Aligarh, Pin - 202001 (here-in-after referred to as 'the applicant') against the Order-in-Appeal No. 166 (P Conware)/2013/ JNCH/ Exp-33 dated 28.02.2013 passed by the Commissioner of Customs (Appeals), Mumbai - II, JNCH, Nhava Sheva. The said Order-in-Appeal dated 28.02.2013 decided an appeal against the Order-in-Original dated 10.01.2012 passed by the Additional Commissioner (Export), JNCH, Nhava Sheva.

2. Brief facts of the case are that the applicants filed Shipping Bill No.6757189 dated 20.12.2011 through Clearing Agent M/s Runicha Freight Forwarders, Mumbai under claim for Drawback for the export of 'brass builders hardware/aluminum hardware/Iron Builders hardware/plastic hardware' as detailed below:

Sl. No. in the checklist	Description of goods	Drawback serial number	Drawback amount claimed (Rs.)
1 -12	Brass builders hardware	830201 A	119718.96
13 - 25	Aluminum hardware	83020199 A	211690.96
26 - 27	Iron Builders hardware	7326009 A	3156.15
28	Plastic hardware	3925 A	1445.67

On scrutiny, it was noticed that the claim of Drawback amount of Rs.2,11,690.96 @ 11% on item number 13-25, i.e. 'Aluminum Hardware' under Drawback serial number 83020199 A, was incorrect as the said serial number was meant for 'Brass Builder Hardware' and that the correct serial number was 830299A, as applicable to articles 'other than brass', which

allowed for Drawback of 6% on the FOB Value. Thus, it was alleged that the applicant had attempted to claim excess Drawback of Rs.96,224.22.

3. The original Adjudicating Authority vide Order-in-Original dated 10.01.2012 held that the exporter had mis-declared the said Drawback serial number with a view to avail excess Drawback and hence the goods attempted to be exported vide Shipping Bill no.6757189 dated 20.12.2011 were liable to confiscation under Section 113(1) read with Section 50(2) of the Customs Act, 1962 and Rule 11 of the Foreign Trade (Regulation) Rules, 1993. Accordingly, the Adjudicating Authority confiscated the goods covered by the said Shipping Bill dated 20.12.2011 and gave an option to the applicant to redeem the same on payment of a redemption fine of Rs.75,000/- under Section 125(1) of the Customs Act, 1962 and also imposed a penalty of Rs.25,000/- under Section 114 (iii) of the Customs Act, 1962.

4. Aggrieved, the applicant preferred an appeal against the said Order-in-Original dated 10.01.2012 before the Commissioner of Customs (Appeals), Mumbai - II, JNCH, Nhava Sheva resulting in Order-in-Appeal dated 28.02.2013. The Commissioner (Appeals) held that the applicant was liable for fine and penalty under the Customs Act, 1962, however, he also found that the mistake was a bonafide error and hence took a lenient view and reduced the redemption fine and penalty to Rs.50,000/- and Rs.20,000/-, respectively.

5. Aggrieved, the applicant has filed the present Revision Application against the Order-in-Appeal dated 28.02.2013 on the following grounds:-

(a) That they had forwarded the Invoice with the Packing list and there was no discrepancy in either the description or value of the said goods in either of the said documents. The Shipping Bill was filed by their Customs House Agent (CHA) on the basis of the above documents and that it was an error on the part of their CHA who had inadvertently mentioned the incorrect Drawback Serial Number; that as per the earlier Drawback

schedule 'Aluminum Hardware' was mentioned against DBK Sr. No.83020199 A; that the Drawback schedule was changed from 22.09.2011 vide Notification no.68-NT and under the new Drawback schedule the Sr. No. had changed to '830299 A' and hence due to oversight the checklist filed by the CHA mentioned the DBK. S. No.83020199 A against the item 'Aluminum Hardware'. They submitted that the error was bonafide and solely attributable to oversight on the part of the CHA and that there was no act of omission on their part.

(b) That Section 113 (i) of the Customs Act, 1962 provided that any goods entered for exportation which do not correspond in value or any material particular with the entry made under the said Act shall be liable for confiscation; that however, in the present case the goods had been correctly described by them in terms of value as well as description and had also been correctly classified under CSH 83024110 and hence there being no mis-declaration on their part, there was no basis to hold the subject goods liable for confiscation under Section 113 (i) of the Customs Act, 1962 and the Adjudicating Authority had erred in imposing a redemption fine of Rs.75,000/- in lieu of confiscation. They further submitted that given the facts and circumstances of the present case Rule 11 of the Foreign Trade (Regulation) Rules, 1993 would not be attracted and that the same had been erroneously invoked against them.

(c) That there was no contumacious conduct or deliberate defiance of the law on their part and hence there was no justification in imposing penalty or fine on them; that the fine and penalty imposed were excessive and incommensurate with the purported violation and that even assuming fine and penalty was imposable on them for the lapse on the part of their CHA, the same should have been minimal.

In light of the above submissions, they prayed that the impugned Order-in-Appeal imposing fine and penalty be set aside with consequential relief.

6. Personal hearing in the matter was granted to the applicant on 26.07.2018, 11.10.2019, 08.01.2020, 08.01.2021 and 25.02.2021, however,

no one appeared for the same. Sufficient opportunity having been given to the applicant to be heard in person, the case is now taken up for decision.

7. Government has carefully gone through the relevant case records available in the case file, the written submissions and also perused the impugned Order-in-Original dated 10.01.2012 and the Order-in-Appeal dated 28.02.2013.

8. Government finds that the issue involved is that of mis-declaration of the Drawback Serial Number with respect to one item, viz. 'Aluminum Hardware' in a Shipping Bill which covered four different items. The result of such mis-declaration resulted in an excess Drawback claim of Rs.96,224.22.

9. Government has examined the Invoice No. LB/1736 dated 09.12.2011 and the corresponding Packing List and finds that the description of the goods mentioned therein has not been disputed by either the original Adjudicating Authority or the Commissioner (Appeals). Government also notes that CHA, M/s RUNICHA Freight Forwarders vide their letter dated 02.01.2012 to the Deputy Commissioner of Customs, Nhava Sheva had admitted that they had inadvertently mentioned the incorrect Drawback Serial No. in the Shipping Bill and that the same occurred because of the changes in the Drawback schedule.

10. Government finds force in the arguments put forth by the applicant as the documents prepared by the applicant had no mis-declaration and save for the Drawback serial number, all the other details, including the description of the goods in question, in the Shipping Bill, is not in dispute. However, the applicant cannot absolve themselves of the erroneous contents appearing in a Shipping Bill covering their export consignment by shifting the blame to their Customs House Agent. It is an admitted fact that there was an error in the Shipping Bill filed before the Customs Authorities and such error resulted in an excess Drawback claim of Rs.96,224.22. It is also a fact that had the said error would have remained unnoticed had the same not been pointed out at the time of examination by the Customs Authorities.

Given the above, the Government finds that Section 113 (i) and Section 114 of the Customs Act, 1962 providing for confiscation and imposition of penalty have been rightly invoked by the Commissioner (Appeals). However, given the facts of the case and the amount of Drawback erroneously claimed, i.e. Rs.96,224.22, Government finds that the redemption fine of Rs.50,000/- and penalty of Rs.20,000/- is a bit harsh and needs to be reduced to serve the ends of justice.

11. In view of the findings recorded above, Government modifies the Order-in-Appeal No.166 (P Conware)/ 2013/ JNCH/Exp-33 dated 28.02.2013 passed by the Commissioner of Customs (Appeals), Mumbai – II, JNCH, Sheva, to the extent of reducing the Redemption fine imposed under Section 125 of the Customs Act, 1962 from Rs.50,000/- to Rs.30,000/- (Rupees thirty thousand only) and penalty imposed under Section 114 ibid from Rs.20,000/- to Rs.10,000/- (Rupees ten thousand only).

12. The Revision Application stands disposed of in the above terms.


10/11/21

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 291 /2021-CUS (WZ) /ASRA/Mumbai dated 10.11.2021

To,

M/s Allen & Alvan Pvt. Ltd.
14/7, Achal Road,
Aligarh, Pin – 202001.

Copy to:

1. The Commissioner of Customs (Export), JNCH, Nhava Sheva, Uran, Maharashtra - 400 707.
2. The Commissioner (Appeals), Mumbai – II, JNCH, Nhava Sheva, Uran, Maharashtra – 400 707.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.