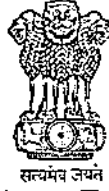


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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

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. 371/46/B/2017-RA

Date of Issue: 14.12.2022

ORDER NO. 371/2022-CUS (WZ)/ASRA/MUMBAI DATED 12-12-2022  
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 : Shri Raju S. Pathare

Respondent: Pr. Commissioner of Customs, Mumbai-II.

Subject : Revision Applications filed, under Section 129DD of the  
Customs Act, 1962, against the Order-in-Appeal No. 34(Adj-  
Exp)/2017/JNCH-Appeal-I dated 31.03.2017 passed by the  
Commissioner of Customs(Appeals-I),Mumbai-II.

**ORDER**

This Revision Application has been filed by Shri Raju S. Pathare (hereinafter referred to as "the applicant"), against the Order-in-Appeal No. 34(Adj-Exp)/2017/JNCH-Appeal-I dated 31.03.2017 passed by the Commissioner of Customs(Appeals-I),Mumbai-II.

2. Brief facts of the case are as follows :

2.1. On an intelligence developed by the officers of R&I, Mumbai it is revealed that M/s. Jaldhara Exports, Ludhiana had imported Acrylic Waste and blended yarn vide 12 Bills of Entry under Advance Licenses. This import of raw material, was done duty free in terms of Customs Notification No. 93/2004-Cus dated 01.09.2004 in respect of licenses issued under FTP, 2004-09. In this regard, exporter submitted a Bond/Undertaking to the Customs that the imported goods would be used in the manufacture of final products, which would be exported for fulfilment of export obligation and the same shall not be disposed off in any manner other than for the manufacture of the final product and that in the event of failure to do so they would pay the differential duty along with interest. These conditions also stipulated in Para 4.1.3. 4.1.4 and 4.1.5 of the FTP, 2004-09 read with Para 4.7.5. of the handbook of Procedures, Vol. I, 2004-09. As per these provisions, an Advance License/Advance Authorization is granted for import of raw material, duty free which are to be physically incorporated in the export product.

2.2 The intelligence further revealed that the exporter M/s. Jaldhara Exports indulged in fraudulent export of Acrylic Shawls to complete the export obligation under the Advance License (DEEC) Scheme. In order to confirm the same officers of R&I visited CFS/GDL in the month of March, 2006. On enquiry from CMC, CFS/GOL it was revealed that M/s. Jaldhara Exports has exported two consignments vide S/Bills dated 11.03.2006 of Acrylic Shawls in two 40' containers. On further enquiry with CFS/GDL it is revealed that neither the goods were carted in their shed nor the aforementioned containers moved in their premises. In the instant case,

both the containers were said to have been loaded in the vessel "Maersk Merlon". On enquiring with Shipping Line M/s. Maersk Shipping it was learnt that the said vessel sailed on 20.03.2006 and these containers were not loaded on the said vessel. They further informed that these containers did not belong to them. Further investigations revealed that apart from these 02 S/Bills, two more S/Bills were filed by the exporter in the month of February, 2006. It is noticed that total six Shipping Bills were filed at JNCH in order to show fulfilment of export obligations under Advance Licenses by M/s. Jaldhara Exports purported to be filed through two CHAs namely M/s. Atash Trading Co. (11/1067) and M/s. Mishra & Mishra (Agencies) Enterprises (11/1166).

2.3. On the basis of above information, enquiries were made with JNPT, NSICT about the export of goods by M/s. Jaldhara Exports, in reply JNPT and NSICT reported that the containers declared in the 06 S/Bills had never been exported and they didn't even enter the port for the very purpose of export. Hence, it is evident that all the export consignments had been exported on the paper and not in real.

2.4. Investigations revealed that Applicant working as Export Operation Manager with M/s. K.M. Paul & Sons Agency(P) Ltd. (11/1273) was involved in filing of the S/Bills. His statement was recorded u/s 108 of the Customs Act, 1962 wherein he, inter-alia, admitted that he had undertaken customs clearance work for the export of factory-stuffed containers of M/s. Jaldhara Exports at the instance of one Shri Feroz Mulla and there would not be any actual export cargo; that on behalf of the Invoice and Packing List provided by Shri Feroz Mulla, he prepared Check List in the name of CHA M/s. Mishra & Mishra (Agencies) Enterprises and signed the checklist purportedly on behalf of M/s. Mishra & Mishra Enterprises. He further stated that after obtaining S/Bills for these fictitious factory stuffed containers he completed the passing at GDL. Thereafter, he accompanied Shri Feroz to Container Gate, where Shri Feroz, taking advantage of huge

rush at the Gate Officer's room, put the endorsement stamp and the officers name stamp without knowledge of the officer and forged the signature of the gate officer; that thereafter he got the S/Bills endorsed by the JNCH officer and obtained "Let Export Order". He further admitted that he handled all six export consignments at CFS-GDL in the same manner during the period of February-March, 2006 for monetary consideration. He stated that he was not aware whether EP copy was passed or EGM was filed for all the six S/Bills. It is revealed that Applicant and Shri Feroz were actively involved in filing of the said fictitious S/Bills and was very well aware of the fraud. The statement of Applicant further corroborated with the statement of Shri Feroz Mulla, to substantiate his active participation in the said fraud.

2.5 The premises of M/s. K.M. Paul & Sons Agency (P) Ltd. (11/1273) as well as residence of Shri Raju Pathare (Applicant) were searched by the officers of R&I. However, no incriminating documents w.r.t. export of M/s. Jaldhara Export were recovered therefrom.

2.6 In view of the aforementioned facts, a show cause notice dated 22.10.2010 was issued to all concerned including the Applicant who was called upon to show cause to the Adjudicating Authority, as to why penalty u/s. 114, 114A, 114AA & 117 of the Customs Act should not imposed on him for violation of Section 113(k) of the Customs Act, 1962. The Adjudicating Authority passed an Order-in-Original dated 31.12.2015 whereby Shri Raju Pathare (Applicant) was imposed a total penalty of Rs. 7,00,000/- (Rs. 3 Lakh us 114 (i) + Rs. 3 Lakh u/s. 114AA+ Rs. Lakh us. 117) under the provisions of the Customs Act 1962.

2.7 Being aggrieved by the aforesaid order-in-original the applicant filed appeal before the Commissioner of Customs (Appeals-I), Mumbai-II, who vide Order-in-Appeal No. 34(Adj-Exp)/2017/JNCH-Appeal-I dated 31.03.2017 uphold the OIO except setting aside the penalty imposed under Section 117 of the Customs Act, 1962.

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 on the following grounds:

- a) The Adjudicating Authority failed to appreciate that Applicant has only assisted Mr. Feroz Mulla in completing the export formalities and as such, the Applicant was not aware of the fictitious nature of exports.
- b) The Adjudicating Authority failed to appreciate that the statements of various persons including Proprietor of M/s. Jaldhara Exports was recorded by the investigating agency and nobody has implicated the applicant in any manner.
- c) The Adjudicating Authority failed to appreciate that the statement of Mr. Feroz Mulla was recorded on 14.12.2006 in the Central Prison u/s. 108 of the Customs Act, 1982 and he clearly denied of handing over any documents or cash to the Applicant. Mr. Feroz Mulla further stated that the Applicant had not handed over any forged documents after customs formalities to him.
- d) The Adjudicating Authority failed to appreciate that the penalty can be imposed u/s. 117 of the Customs Act when there is no other provisions and as such, imposing penalty u/s 114 (ii) and also u/s. 114AA, then u/s 117 even if it is invoked in the show cause notice, it does not mean that the Adjudicating Authority has to impose penalty.
- e) The Adjudicating Authority failed to appreciate that on perusal of the SCN it is observed that the Applicant has only signed the Check List and there is no evidence that he was aware about the fictitious nature of the export and even if we go through the statements, then the imposition of such a huge penalty of Rs. 7 Lakh is absolutely unjustified, illegal, unwarranted and bad in law.
- f) The Adjudicating Authority failed to appreciate that from the residential premises and office premises of the Applicant nothing incriminating was found or recovered, which itself indicates the

Applicant was not having any knowledge about the fictitious nature of exports.

- g) The Adjudicating Authority failed to appreciate that the Applicant had not played any role as far as the import is concerned and as such, he was not aware whether party had already affected the duty free imports under the license.
- h) The Adjudicating Authority failed to appreciate that the Applicant was working as an Operational Manager with CHA firm and his financial status ought to have been considered before imposing such huge penalty of Rs. 7,00,000/-.
- i) In view of above applicant requested to:
  - a) set the impugned Order-in-Appeal.
  - b) set aside the Order-in-Original.
  - c) refund the pre-deposit amount.

4. Personal hearing in this case was scheduled on 23.03.2022,30.03.2022,28.07.2022,04.08.2022, 13.09.2022 and 27.09.2022. However, neither the applicant nor respondent appeared for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

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. 34(Adj-Exp)/2017/JNCH-Appeal-I dated 31.03.2017 passed by the Commissioner of Customs (Appeals-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 the exporter was indulged in fraudulent export of Acrylic Shawls to complete the export obligation under the Advance License (DEEC) scheme. Applicant assisted the exporter in attempting above fraudulent export. 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 it is an admitted fact that the goods were not exported in present case, the matter of drawback does not arise at all. 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 application filed by the Applicant is dismissed as non-maintainable due to lack of jurisdiction.

  
(SHRAWAN KUMAR)

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

ORDER No. 374 /2022-CUS (WZ)/ASRA/Mumbai DATED 12.12.2022

To,

1. Shri Raju S. Pathare, Room No. 145, Ground Floor, Laxmanwadi Mithanagar, Wadala(E), Mumbai- 400037.
2. The Pr. Commissioner of Customs, Jawaharlal Nehru Custom House, Nhava Sheva, Tal-Uran, Raigad, Maharashtra – 400707.

Copy to:

1. The Commissioner of Customs(Appeals-I),Mumbai-II, Jawaharlal Nehru Custom House, Nhava Sheva, Tal-Uran, Raigad, Maharashtra – 400707.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.