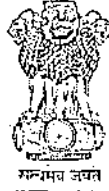


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**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. No. 371/31-32/DBK/14-RA / 1953 Date of Issue: 31.03.2023

ORDER NO. 33-394 /2023-CUS (WZ) /ASRA/Mumbai DATED 27.03.2023 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.

- Applicants : 1. M/s L.D. Suitings Private Limited,  
H-182 to 184 7G-175 to 176,  
4<sup>th</sup> Phase, RICO Indl. Area, Bhilwara,  
Rajasthan - 311 001.
2. Shri Ramchand Dadlani,  
Director of M/s L.D. Suitings Private Limited.
- Respondent : Commissioner of Customs (Export), Mumbai - II.  
JNCH, Nhava Sheva, Uran, Raigad,  
Maharashtra - 400 707.
- Subject : Revision Applications filed under Section 129DD of the  
Customs Act, 1962 against the Orders-in-Appeal No.1177  
(ADJN-EXP.) 2013 (JNCH)/EXP-250 dated 21.11.2013  
and No.03 (Adj-Exp) /2014(JNCH)/EXP-01 dated  
08.01.2014, both passed by the Commissioner of  
Customs (Appcals), Mumbai - II.

**ORDER**

The subject Revision Applications have been filed M/s L.D. Suitings Pvt. Limited and Shri Ramchand Dadlani, Director of M/s L.D. Suitings Pvt. Limited (here-in-after referred to as 'the applicants') against the Order-in-Appeal No.1177 (ADJN-EXP.) 2013 (JNCH)/EXP-250 dated 21.11.2013 and No.03(Adj-Exp)/2014(JNCH)/EXP-01 dated 08.01.2014, respectively, both passed by the Commissioner of Customs (Appeals), Mumbai - II. The said Orders-in-Appeal decided appeals filed by the applicants against the Order-in-Original dated 28.01.2023 passed by the Additional Commissioner of Customs (Exp), Adjudication Cell, JNCH, Sheva.

2. Brief facts of the case are that the applicants were issued a Show Cause cum Demand Notice seeking to recover Drawback of Rs.2,32,615/- erroneously claimed by them. Investigation carried out by the Directorate of Revenue Intelligence indicated that the applicant had exported blended woven fabrics and had claimed a higher rate of Drawback under Serial No.551502A as against the proper Sl.No.551202A of DBK Schedule. The said Show Cause Notice was adjudicated by the original authority wherein the allegations against the applicants were upheld and Rs.2,32,615/- paid by the applicant firm during investigation appropriated. The original authority also levied penalty of Rs.1,00,000/- on the applicant firm and Rs.50,000/- on its Director, Shri Ramchand Dadlani under Section 114(iii) of the Customs Act, 1962.

3. Aggrieved, the applicants filed appeal before the Commissioner (Appeals) along with applications for waiver of pre-deposit of penalty and stay of recovery. The Commissioner (Appeals) vide interim Order-in-Appeal No.160(Adj-Exp.)/2013(JNCH)/EXP-93 dated 30.07.2013 found that the instant case involved a pre-meditated modus-operandi leading to excess claim of drawback by the applicant firm which was uncarthed by an investigative agency and hence in terms of Section 129E of the Customs Act, 1965, ordered the applicant firm to make a pre-deposit of Rs.50,000/- within three weeks, failing which the appeal would be disposed of for non-compliance. The Commissioner (Appeals), on the same grounds, vide Order-in-Appeal No.160(Adj-Exp.)/2013(JNCH)/EXP-93 dated 30.07.2013 ordered Shri Ramchand Dadlani to make a pre-deposit of Rs.12,500/-.

4. Thereafter, the Commissioner (Appeals) vide the subject Orders-in-Appeal dated 21.11.2013 and 08.01.2014 found that the applicants had neither obtained any stay from the appellate authority in respect of the Interim Orders which ordered them to make the pre-deposit nor had they paid the pre-deposit amount ordered by the said Interim Orders. In view of the same, the Commissioner (Appeals) dismissed the appeals filed by the applicant firm and its Director for non-compliance with the provisions of Section 129E of the Customs Act, 1962. Aggrieved, the applicants filed appeals before the Hon'ble Tribunal against the Orders-in-Appeal dated 21.11.2013 and 08.01.2014. The Hon'ble Tribunal vide its Order dated 11.04.2014 found that the case related to payment of Drawback under Section 129A of the Customs Act, 1962 and hence dismissed the same as non-maintainable before it and granted liberty to the applicants to approach the appropriate authority within 30 days from the date of the Order.

5.1 Accordingly, the applicant firm and its Director, preferred the subject Revision Applications along with applications for Stay on the following grounds: -

(a) That there was no delay in filing the subject Revision Applications as it had been held by the Apex Court that the time taken to pursue a remedy at a wrong forum is to be excluded while computing the period of limitation; and that they had preferred the present applications within 30 days from the date of the Order of the Tribunal;

(b) That the Commissioner (Appeals) should have heard the matter on merits particularly in view of the fact that the entire drawback along with interest had already been paid by the applicant firm; that Section 114 of the Customs Act, 1962 had no application to the facts of their case;

(c) That there is no suppression or mis-representation by them in the present case and that the responsibility of proper classification is on the revenue; that hence the entire demand was time barred; that their conduct was bonafide and they had not abetted the doing or omission of any act which rendered the goods liable for confiscation and hence submitted that no penalty ought to have been imposed on them; they cited several decisions in support of the above arguments put for by them.

In view of the above the applicants requested that the impugned Orders-in-Appeal be set aside and their applications be allowed in full with consequential relief.

5.2 The second applicant, Shri Ram Chand Dadlani, Director of the applicant firm made submissions similar to that made by the applicant firm and finally submitted that no penalty ought to have been imposed on him and made prayers similar to that made by the applicant firm.

6. Personal hearing in the matter was granted to the applicants on 24.01.2023. Shri Akhilesh Kangsia and Ms Madhura Khandekar, both Advocates, appeared online on behalf of the applicants. They submitted that Commissioner (Appeals) had incorrectly dismissed the appeal for non-compliance of Section 129E of the Customs Act, 1965. They submitted that as duty drawback was paid, there was no requirement of pre-deposit of penalty; that appeal had been wrongly rejected. They requested to set aside penalty or substantially reduce the same.

7. Government has carefully gone through the relevant case records, the written and oral submissions and also perused the impugned Order-in-Original and the Orders-in-Appeal.

8. Government notes that the Commissioner (Appeals) vide the impugned Orders-in-Appeal has rejected the appeals filed by the applicants without going into the merits of the case as the applicants failed to make the pre-deposit in terms of Section 129E of the Customs Act, 1962. Government notes that the Commissioner (Appeals) had ordered for the pre-deposit of the 50% of the penalty imposed by the original authority on both the applicants as he found that the applicants were involved in a pre-meditated modus operandi to claim drawback in excess to what they were legally eligible for and that prima facie the case was in favor of Revenue.

9. In this context, Government finds it pertinent to examine Section 129E of the Customs Act, 1962 as it then stood: -

***“ 129E. Deposit, pending appeal, of [duty and interest] demanded or penalty levied. -***

*Where in any appeal under this Chapter, the decision or order appealed against relates to any [duty and interest] demanded in respect of goods which are not under the control of the customs authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the [duty and interest] demanded or the penalty levied:*

*Provided that where in any particular case, the [Commissioner (Appeals)] or the Appellate Tribunal is of opinion that the deposit of [duty and interest] demanded or penalty levied would cause undue hardship to such person, the [Commissioner (Appeals)] or, as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue:*

*[Provided further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty and interest demanded or penalty levied under the first proviso, the [Commissioner (Appeals)] shall, where it is possible to do so, decide such application within thirty days from the date of its filing.]”*

A reading of the above, makes it is clear that the applicants were required to either deposit the penalty levied by the original authority or abide by the conditions imposed by the Commissioner (Appeals) which he found fit to safeguard the interests of Revenue. Government finds that it is not in dispute that the applicants failed to make the pre-deposit ordered by the Commissioner (Appeals) vide the Interim Orders both dated 30.07.2013 till date. Government notes that the applicant has not adduced any evidence during the course of these proceedings or before the Commissioner (Appeals) indicating that they had filed appeals against the Orders of the Commissioner (Appeals) requiring them to make the pre-deposit for their cases to be heard on merit. Government has examined the submissions of the applicants and finds that no case has been made out therein as to why they did not file any appeal against the Interim Orders of the Commissioner (Appeals) requiring them make the pre-deposit. Given the above, Government finds that the Interim Orders dated 30.07.2013 passed by the Commissioner (Appcals) have attained finality as the same have not been appealed against or set aside by a higher authority. Government notes that entertaining the subject Revision Applications filed by the applicants would render the Orders dated 30.07.2013 of the Commissioner (Appcals) otiose,

which cannot be the intent of the legislation governing the requirement of pre-deposit as deemed fit by the appellate authority. In view of the above, Government finds the decision of the Commissioner (Appeals) in both the impugned Orders-in-Appeal to dismiss the appeals of the applicants as non-maintainable for not having complied with his directions to make the pre-deposit of 50% of the penalty imposed by the original authority to be proper and legal and accordingly holds so.

10. The subject Revision Applications are rejected. The Stay applications also stand disposed of.

*Shrawan*  
27/3/23  
(SHRAWAN KUMAR)

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

ORDER No. *393-394*/2023-CUS (WZ) /ASRA/Mumbai dated *27*.03.2023

To,

1. M/s L.D. Suitings Private Limited,  
H-182 to 184 7G-175 to 176, 4<sup>th</sup> Phase, RICO Indl. Area, Bhilwara,  
Rajasthan - 311 001.
2. Shri Ramchand Dadlani,  
Director of M/s L.D. Suitings Private Limited  
H-182 to 184 7G-175 to 176, 4<sup>th</sup> Phase, RICO Indl. Area, Bhilwara,  
Rajasthan - 311 001.

Copy to:

1. Commissioner of Customs (Export), Mumbai - II, JNCH, Nhava Sheva,  
Uran, Raigad, Maharashtra - 400 707.
2. Commissioner of Customs (Appeals) Mumbai - II, JNCH, Nhava Sheva,  
Taluka Uran, Dist. Raigad, Maharashtra - 400 707.
3. M/s Lakshmikumar & Others, 104, Kakad Chambers, 132, Dr. Annie  
Besant Road, Worli, Mumbai - 400 018.
4. S.P.S. to AS (RA), Mumbai.
5. Notice Board.