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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.371/05/DBK/2018-RA / 4092 Date of issue: 08.06.2023

ORDER NO. 471/2023-CUS (WZ)/ASRA/MUMBAI DATED 06.6.2023
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.

Applicant : M/s. Shree Venkateswara Export.

Respondent : Commissioner of Customs, NS-II, JNCH, Nhava Sheva

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
124(SIIB(Export)/2017(JNCH)/Appeal-I dated 04.10.2017
passed by the Commissioner of Customs (Appeals-I),
Mumbai-II.

ORDER

This Revision Application alongwith application for condonation of delay is filed by M/s. Shree Venkateswara Export, (hereinafter referred to as "the Applicant") against the Order-in-Appeal (OIA) No. 124(SIIB(Export)/2017 (JNCH)/Appeal-I dated 04.10.2017 passed by the Commissioner of Customs (Appeals-I), Mumbai-II.

2. In the application for condonation of delay, the Applicant has submitted that the impugned OIA was received by them on 15.10.2017 and the instant Revision Application was filed on 15.01.2018. Thus, there was a delay of 1 day in filing the Revision Application. However, they had taken proper care to file the Revision Application by dispatching it via speed post on 11.01.2018. They prayed that the delay was unintentional and may be condoned. The Government, finding the grounds for delay reasonable, is condoning this delay and is taking up the matter for deciding on merits.

3. Brief facts of the case are that the applicant had filed 6 shipping bills to export 'Decorative Handicraft Brass Artware' claiming drawback of Rs.23,60,147.73. On the basis of an intelligence, an investigation was carried out by SIIB and it was found that the weight of consignment was not declared correctly as the total weight was found to be 13309.4 Kgs instead of declared 14762.16 Kgs. Further, on market verification, the FOB value of the consignment was found to be overvalued, i.e. Rs.1,89,76,278/- instead of the declared Rs. 2,05,51,433.70.

4. The consignment was seized and a Show Cause Notice was issued to the applicant to show cause as to why: (i) the declared FOB value of Rs. 2,05,51,433.70 covered under shipping Bill no. 4764635, 4764651, 4764570, 4764562, 4764634 and 4764652 all dated 17.12.2015 should be rejected and redetermined to Rs. 1,89,76,278/-, (ii) the claimed Drawback of Rs. 23,60,147.73 on said 6 Shipping Bills all dated 17.12.2015 should not be rejected and re-determined to Rs. 21,82,272/-; (iii) the MEIS benefit available on declared FOB value of said 6 Shipping Bills all dated

17.12.2015 should not be rejected and re-determined to Rs.3,79,525,56/- under the provisions of Custom Valuation Rules and Customs Act,1962, (iv) the total net Declared value of 14762.16 kg of said 6 Shipping Bills all dated 17.12.2015 should be not be rejected and re-determined to 13309.4 kgs;(v) the said impugned export goods, covered under said 6 Shipping Bills all dated 17.12.2015 having total declared FOB value of Rs. 2,05,51,433.70 found to be mis-declared w.r.t weight and value should not be confiscated under the provisions of Section 113(i) and 113(ii) of the Customs Act, 1962;(vi) penalty under Section 114(iii) of the Customs Act, 1962 should not be imposed upon the applicant.

5. The Adjudicating Authority vide Order-in-Original (OIO) No. 312/2016-17/ADC-NS-II/JNCH dated 20.09.2016:- (i) rejected the declared FOB value of Rs.2,05,51,433.70 and re-determined it to Rs.1,89,76,278.30 ; (ii) rejected the claim of Drawback of Rs.23,60,147.73 and re-determined it to Rs.21,82,272.00; (iii) re-determined the amount of MEIS benefit of Rs.3,79,525.56 based on re-determined FOB value of Rs. 1,89,76,278.30; (iv) rejected the total declared net weight of 14762.16 kgs and ordered the same to be amended as 13309.40 kgs (v) confiscated the impugned goods under section 113(i) and (ii) of the Customs Act,1962 with an option to redeem the same on payment of redemption fine of Rs.7,00,000/-; and (vi) imposed penalty of Rs.3,00,000/- under section 114 (iii) of the Customs Act, 1962.

6. Aggrieved, the Applicant filed an appeal with the Commissioner (Appeals) who vide impugned Order-in-Appeal upheld the OIO as regards mis-declaration of weight of consignment while setting aside the charge of mis-declaration of FOB value. Accordingly, he modified the OIO to the extent that the claim of Drawback was re-determined to Rs.21,82,272/-, redemption fine was reduced to Rs.2,00,000/- and penalty to Rs.50,000/-

7. Hence, the Applicant has filed the instant revision application mainly on the following grounds:

- a) The impugned modified order is partially a non-speaking Order with respect to the upheld paragraphs 23(ii) and 23(iv) of the Order in Original dated 20.09.2016, as it does not give any findings in respect of the various submissions made by the applicant.
- b) The Ld. Commissioner has rightly appreciated the evidence on recorded in the proceedings and accordingly has held that "*a difference of the FOB value of less than 10% as arrived at by the department on the basis of such market enquiry does not clearly establish mis-declaration in value of the Export goods, further held that the declared FOB of around Rs.1042/- per piece in the shipping bill is reasonable, hence he has opined that the valuation done by the Original Authority is an arbitrary manner. Accordingly, the charge of mis-declaration of FOB value of export goods on the basis of market enquiry cannot sustain*". Hence has Set aside the redetermined FOB Value of Rs.1,89,76,278.30Ps. In the circumstances the declared FOB value of Export goods is Rs.2,05,51,433.70 is the transaction value which is to be determined under Rule 3 of the Customs Valuation Rule-2007 read with Section 14 of the Customs Act, 1962.
- c) The Ld. Commissioner has erred in his finding by concluding that the weight calculated by the original authority is supported by Panchanama. The panchnama was never challenged by the applicant, so plea that weight was correctly declared is not acceptable. Hence confiscation of the goods on that count is upheld. The Ld. Commissioner ought to have held that the Adjudicating Authority has erred in holding that the declared total Net weight has been mis-declared, on the basis of the examination practice followed by SIIB to ascertain the average net weight in Kgs of the total Export consignment which was done by weighing 10 pieces each from the lot on prorata under panchanama for all the 6 Export Consignments, was a test check, thus the subject goods were not subjected to 100% weighment on net to net basis.
- d) The Ld. Commissioner has erred to appreciate that the net wt. of the consignment ascertained on prorata reported in the panchanama was

13296.63kgs. against the declared in the Export documents 14265.16kgs. net wt. The Total shortage ascertained on prorated basis is 968.53 kgs Net weight. Therefore 6.79% difference in wt. is a marginal difference, which cannot clearly establish misdeclaration in wt. of the export goods.

- e) The Ld. Commissioner has failed to appreciate that the Applicant had not insisted for 100 % weightment on net to net basis, for the reasons that it would have spoiled the packing of the goods and it would have been impossible to repack the same in any export worthy marketable packing in the Docks. Thus, in the circumstances applicant has shown his bonafide duty towards his obligation for the interest of the Importer, (Purchaser of the Export Goods), to avoid litigation, payment problems and damage to the goods, applicant had accepted the ascertained alleged shortage in weight of the goods estimated on prorated basis by the department and the same should not to be construed as a mis-declaration of the weight and or an admission of the same.
- f) The Applicant submits that the goods were sold on quantity basis and value of each piece is declared in the invoices and the shipping bills and thus the weight of the goods is of no material importance in particular for arriving at the FOB value of the goods and thus the goods should not have been held as mis-declared on this ground. Further, the drawback on export of brass-ware is subject to a CAP value Rs 160 per Kgs. Since the drawback is admissible at 11.5%, hence the claim of drawback per piece cannot exceed the cap and therefore the allegation of any mis-declaration to claim drawback illegally, and redetermination of the claimed Drawback of Rs.23,60,147.73Ps, to Rs.21,82,272.00Ps, is improper, not correct and is not maintainable in law.
- g) The Applicant submits that the goods of value of more than 2 crores were exported by Applicant on which drawback amount to Rs. 23,60,148/- is claimed and the original Authority has reduced the drawback amount by an amount of Rs.1,77,876/- which is less than 1

% of the FOB value. The FOB value of the goods is being disputed without any basis by the Original Authority. The Ld. Commissioner has erred in upholding para 23(ii) of the Order in Original dated 04.10.17, as the claim of Drawback of Rs. 23,60,147.73Ps is available on the FOB Value of the Export goods. As the learned Commissioner has 'Set aside the re-determined FOB Value of Rs.1,89,76,278.30 on which drawback determined was Rs.21,82,272.00Ps. In the circumstances the declared FOB value of Export goods of Rs.2,05,51,433.70 is the transaction value which is to be determined under Rule 3 of the Customs Valuation Rules,2007, read with Section 14 of the Customs Act, 1962, on which drawback of Rs. 23,60,147.73 would be eligible for claim as Drawback by the Applicant.

- h) The Applicant submits to appreciate the fact that the applicant had to suffered heavy losses on account of illegal detention of the goods on account of false allegation of mis-declaration of goods. The applicant had to pay detention and demurrage charge of more than Rs. 3 lacs because of the illegal detention of the goods.
- i) The Ld. Commissioner has erred in his order dated 04.10.2017, to appreciate the fact that the declared FOB Value of the export goods re-determined by the Original Authority has been 'Set aside' in the circumstances the applicant has not mis-declared w.r.t. value and weight, to attract the provisions of Section 113(i) & 113(ii) of the Customs Act, 1962. For imposition of Redemption Fine of Rs. 7,00,000/- (Seven Lakhs only) as held in Para 23(v) by the original Authority in the Order in Original is reduced to Rs. 2,00,000/- (Two Lakhs only) in Para 12. of order dated 4.10.2017, thus imposition of Redemption fine is unwarranted, unjustified bad in law and needs to be set aside.
- j) The Ld. Commissioner has erred in his Order dated 04.10.17, to appreciate the fact that the export goods do not render to be liable for confiscation and imposition of penalty of Rs.3,00,000/- (Three Lakh only) as held in Para 23(vi) by the Original Authority in the Order in original is reduced to Rs. 50,000/- (Fifty Thousand only) in Para 12.d

of order dated 4.10.2017, thus imposition of Penalty on Proprietor of the Exporter, M/s. Shree Venkateswara Export under Section 114(iii) of the Customs Act, 1962, is unwarranted, unjustified bad in law and needs to be set aside.

In view of above submissions, the applicant prayed to set aside the impugned Order-in-Appeal; declared FOB value and Net wt. be ordered to be accepted; the Drawback claim be ordered to be allowed on the same as claimed; reduced redemption fine and reduced penalty be set aside; and to provide any other relief as deemed fit.

8. Several personal hearing opportunities were given to the applicant and the respondent viz. on 04.01.2023, 18.01.2023, 09.02.2023 and 16.02.2023. However, both of them did not attend on any date nor have they sent any written communication. Since sufficient opportunities have been given, the matter is therefore taken up for decision based on available records.

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

10. Government observes that the issue involved in the instant matter is whether the Applicant had mis-declared the quantity of consignment exported by them to claim higher drawback?

11. Government observes that the applicant had filed 6 Shipping Bills all dated 17.12.2015 for export of the product, 'Decorative Handicraft Brass Artware' classifiable under CTH 7419. On verification by the department, the weight of consignment was found to be mis-declared i.e. 14762.16 kgs against actual weight of 13309.40 kgs. Therefore, the drawback claim of the applicant was reduced to Rs.21,82,272/- against original claim of Rs.23,60,147.73 and a redemption fine of Rs.2,00,000/- was imposed along with penalty of Rs.50,000/-.

12. Government observes that the applicant had vide their letter dated 30.12.2015 addressed to the department under the subject 'Clarification of your all query for export of our brass subject' inter alia submitted that:-

In invoice and packing list we have mentioned weight randomly on bases of per piece weight which is correct as the best of our knowledge. If you have any doubt on this please do 100% examination & weighment of cargo. If you found some changes in the weight than please consider your weight and it will be accepted. Thus, please do the need full and please amend in our shipping bill also. It will be accepted.

Government observes that the above letter was issued by the applicant before the impugned export consignment was seized by the department vide Panchnama dated 05.01.2016. Thus, the applicant had candidly admitted that the weighment of the impugned export consignment was done by them randomly and was therefore not precise. This suggests that the difference in weight of the export consignment was not on account of any malafide intention on the part of the applicant. In their submissions before the Original authority, the applicant had contended that the mistake in the weight was due to breakdown of weighing scale and there was no intention to avail undue duty drawback. Further, no corroboratory evidence has been put on record to prove malafide intention of the applicant to mis-declare the weight of the export goods for claiming excess drawback. Therefore, Government finds that the grounds for confiscation of impugned export consignment to be insufficient.

13. Government observes that as per the relevant entry in the drawback schedule pertaining to serial number 741901A, the applicant was eligible for drawback @ Rs.160/- per kg of the total net weight of the consignment exported, which has been rightly allowed by the lower authorities.

14. In view of the above findings, Government amends the Order-in-Appeal No. 124(SIIB(Export)/2017(JNCH)/Appeal-I dated 04.10.2017 passed by the Commissioner of Customs (Appeals-I), Mumbai-II. The redemption fine of Rs.2,00,000/- and penalty of Rs.50,000/- is set aside. Rest of the OIA regarding sanction of drawback amount vis-à-vis the weight of export consignment ascertained during investigation by the department is upheld.

15. The Revision Application is disposed of on the above terms.


(SHRAWAN KUMAR)

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

ORDER No. 471 /2023-CUS (WZ)/ASRA/Mumbai dated 06.6.23

To,
M/s. Shree Venkateswara Export,
16/87, Gali Bhatte Wali,
Patti Mehar, Baraut,
Distt.- Baghpat (U.P.) – 260 611.

Copy to:

1. Commissioner of Customs,
Nhava Sheva-II,
Jawaharlal Nehru Custom House,
Nhava Sheva, Taluka: Uran,
Dist.: Raigad, Maharashtra – 400 707.
2. Dr. CAB Rebello
Flat No. 2, Fantasia,
Sherly Rajan Road,
Bandra (West), Mumbai – 400 050.
3. Sr. P.S. to AS (RA), Mumbai
- ~~4. Guard file.~~