

REGISTERED SPEED POST



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  
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Mumbai- 400 005

F. NO. 371/311/DBK/2018-RA  
F. NO. 371/312/DBK/2018-RA / 4506  
F. NO. 371/313/DBK/2018-RA  
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Date of Issue: 05.07.2023

ORDER NO. 509-512 /2023-CUS (WZ) /ASRA/Mumbai 30.6.23 DATED  
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 : 1) M/s Kashish Textiles Pvt. Ltd.  
Plot No K-17 & 18, City Industrial Estate,  
B/h Swami Harayan Temple, Udhna Main Road,  
Udhna, Surat, Gujarat-394210  
2) M/s Kashish Textiles Pvt. Ltd.  
3024, World Trade Centre,  
Ring Road, Surat  
3) Shri Sanjay Tarachand Agarwal,  
A-301, Shivdarshan Plaza,  
Near Gayatri Temple, Udhna Gam,

Surat, Gujarat-394210

4) Shri. Sanjay Tarachand Agarwal,  
B-1105, Ashirwad Park,  
City Light Road,  
Surat.

5) M/s. Rishi Silk Art,  
501, Devprayag Appt.,  
Opp. Terapanth Bhavan,  
City Light, Surat,  
Gujarat.

6) Shri Sureshkumar Sohanlal Goyal,  
(Director of M/s Kashish Textiles P. Ltd. & Prop of M/s  
Rishi Silk Art),  
501, Devprayag Appt.  
Opp. Terapanth Bhavan, City Light,  
Surat, Gujarat

Respondent : Pr. Commissioner Customs(G), Mumbai.

Subject : Revision Applications filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTOM-SMX-22,23,24&25 /2018-19 dated  
27.04.2018 passed by the Commissioner of Customs  
(Appeals), Mumbai - I.

## ORDER

This Revision Application has been filed by M/s. Kashish Textiles Pvt. Ltd. Plot No. K-17 & 18, City Industrial Estate, B/h Swami Narayan Temple, Udhna Main Road, Udhna, Surat, Gujarat-394210 (hereinafter referred to as "the applicant/applicant No. 1") & Shri Sanjay Tarachand Agarwal, Ex-Director, M/s. Kashish Textiles Pvt. Ltd., A-301, Shivdarshan Plaza, Near Gayatri Temple, Udhna Gam, Surat, Gujarat-394210 (hereinafter referred to as "the applicant No. 2") M/s. Rishi Silk Art, 501, Devprayag Appt., Opp. Terapanth Bhavan, City Light, Surat, Gujarat (hereinafter referred to as "the applicant No. 3") & Shri Sureshkumar Sohanlal Goyal, (Director of M/s Kashish Textiles P. Ltd. & Prop of M/s Rishi Silk Art), 501, Devprayag Appt. Opp. Terapanth Bhavan, City Light, Surat, Gujarat(hereinafter referred to as "the applicant No. 4") against the Order-in-Appeal No. MUM-CUSTOM-SMX-22,23,24&25 /2018-19 dated 27.04.2018 passed by the Commissioner of Customs (Appeals), Mumbai - I.

2. Brief facts of the case are that intelligence was gathered by the Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit that several syndicates, including the applicants No. 1 & 3, were engaged in export of fabrics and readymade garments of inferior quality by grossly inflating value to avail undue and otherwise inadmissible export benefits such as duty Drawback and DEPB. The modus operandi was that many of the firms started in the year 2009 and the declared Proprietors/partners/Directors played no role in the activities of these firms. In their statements they admitted that they had allowed certain people(operators) to use their name and identity to open bank accounts, obtaining IEC from DGFT, handing over signed blank cheques and other forms required for export for monetary consideration. These operators in turn procured the export goods from local market and exported the same at highly inflated price under Drawback which was withdrawn using the pre signed cheques. In most of the cases no

foreign remittances were brought as the export goods were torn and used clothes having no commercial value which was evident from the fact that these firms never submitted any export documents to their designated banks to bring remittances against export. Some of the exporters managed remittances through hawala channels and once the amount was credited into the bank accounts, the same were withdrawn from the bank by way of account payee cheques and encashed with the help of cheque discounter(angadias).

3. After following the due process the adjudicating authority vide Order-in-Original No. 01/2015-16 ICD (M) (X)/ADC/SCG dated 31.03.2016:-

(i) confirmed the demand and ordered recovery of the drawback amount already claimed, sanctioned and received by the exporters in terms of the provisions of Rule 16 and Rule 16A of the Drawback Rules read with Sections 75 & 76(1)(b) of the Customs Act, 1962, along with interest as applicable in terms of Section 75A(2) of the Customs Act, 1962.

(ii) Rejected the Drawback pending sanction under the provisions of Sections 75 & 76 (1)(b) of the Customs Act, 1962;

(iii) Ordered appropriation of the amounts lying frozen in bank accounts with various banks,

(iv) Ordered Confiscation of goods valued at Rs. 1,29,95,638/- exported by M/s. Kashish Textiles Pvt. Ltd. misdeclaring the value under claim of drawback under Sections 113 (d), 113 (i) and 113 (ii) of the Customs Act, 1962 and imposed a fine of Rs. 13,00,000/- under section 125 of the Customs Act, 1962,

(v) Ordered Confiscation of goods valued at Rs. 24,98,405/- exported by M/s. Rishi Silk Art Shipping Bills under Sections 113 (d), 113 (i) and 113 (ii) of the Customs Act, 1962. and imposed fine of Rs. 2,50,000/- under section 125 of the Customs Act, 1962

(vi) Imposed a penalty of Rs. 4,25,000/- under Section 114(iii) and a penalty of Rs. 1,00,000/- 114AA of the Customs Act, 1962 on M/s. Kashish Textiles Pvt. Ltd.

(vii) Imposed a penalty of Rs. 60,000/- under Section 114(iii) and a penalty of Rs. 15,000/- under Section 114AA of the Customs Act, 1962 on M/s. Rishi Silk Arts.

(viii) Imposed a penalty of Rs. 1,00,00,000/- under Section 114(iii) and Rs. 25,00,000/- under Section 114AA of the Customs Act, 1962 on Shri Sureshkumar Sohanlal Goyal (Director of M/s. Kashish Textiles Pvt. Ltd & Proprietor of M/s. Rishi Silk Art).

(ix) Imposed a penalty of Rs. 2,50,000/- under Section 114(iii) and a penalty of Rs. 75,000/- under Section 114AA of the Customs Act, 1962 on Shri Sanjay Tarachand Agarwal (operator cum IEC holder of Ms. Kashish Textiles Pvt. Ltd.).

4. Being aggrieved by the aforesaid Order in Original dated 31.03.2016, the applicants filed appeal before Commissioner of Customs (Appeals), Mumbai who vide Order-in-Appeal No. MUM-CUSTOM-SMX-22,23,24&25 /2018-19 dated 27.04.2018, partially allowed the appeal, holding that :

\*18. *In view of the above, the impugned Order-in-Original No. CAO No.01/2015-16 ICD(M)(X)/ADC/SCG dtd.31.03.2016 passed by*

*the Additional Commissioner of Customs (Imports) Mumbai is upheld with following modification:*

*i) Redemption fine of Rs. 13 lakhs imposed on M/s. Kashish Textiles Pvt. Ltd. vide sub para (viii) of para 33 of the impugned order is dropped.*

*ii) Redemption fine of Rs. 2,50,000/- imposed on M/s. Rishi Silk Arts vide sub para (ix) of para 33 of the impugned order is dropped.”*

5. Being aggrieved with the impugned Order-in-Appeal dated 27.04.2018, the applicant has filed present revision application mainly on the following grounds :-

5.1 The order passed by the Ld. Commissioner (Appeals) is in total violation and non-compliance of law and therefore the said order is required to set aside allowing appeals with consequential relief.

5.2 The findings of Commissioner (Appeals) on the point of cross-examination is totally against law and therefore once the said statements of witnesses whose statements have been recorded and relied upon are discarded from the show cause notice, the allegations made in show cause notice do not sustain and therefore the adjudication order as well as order of the Commissioner (Appeals) will be null and void.

5.3 The entire show cause notice is based on the investigation carried out by the DRI officers by recording statements of various witnesses in 2009 when the said officers had no power as proper officer to record the statements and therefore the investigation is not valid in law.

5.4 The Ld. Commissioner have failed to appreciate that the demand beyond normal period was time barred as held by various court though there is no time limit prescribed in law.

5.5 Ld. Commissioner (Appeals) have erred in imposing penalty under Section 114(iii) and 114AA when the goods were not available for confiscation and in fact there was no physical examination of goods found wrong and all goods were permitted for export in accordance with law.

6. A Personal hearing in this case was held online on 24.01.2023 which was attended by Shri Raj Vyas, Advocate on behalf the applicant. He submitted that the case has been made out of on the basis of evidences of statements. He submitted that no documentary evidence was produced. He reiterated earlier submissions. He requested to reduce the penalty on applicants.

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

8. On going through the case records, it is observed that the case emanates out of the investigation and search carried out on the premises of the applicants where the respondent department has alleged certain infirmities and accordingly after following the due process has passed adjudication order as detailed in para 3 supra. The main issue to be decided here is whether the orders passed on the allegations and penalties / personal penalties imposed on the applicants are sustainable.

9. The applicants have raised the issue of limitation, arguing that the Show Cause Notice (SCN) issued in 2015 is barred as per the Customs Act, 1962. They contend that the Drawback Rules fall under Section 75 of the Customs Act, and therefore the prescribed limitation period applies. However, the impugned order states that the appellant, Shri Sanjay T. Agarwal, Proprietor of M/s. Kashish Textiles P. Ltd., admitted that the export was conducted under a "buy back" scheme. He would pay a certain amount per meter to the fabric supplier, Shri. Ratan Jain, immediately after receiving the goods. Although the actual cost of the sarees was significantly lower, the unit price was declared as US \$2.5 per yard, resulting in a higher value. Additionally, to disguise the shipment as polyester fabrics, the sarees were packed in roll form. The exports were sent to a firm controlled by Shri. Ratan Jain in Colombo, Sri Lanka, and DEPB benefits were availed. The remittances were managed through Shri Afroze and Shri Bilal, and the excess cash from the over-invoiced value was handed over to them. Six consignments in 21 shipping bills were exported between July and August 2009, and the material was received from Shri Vikas Mody and Shri Asif. Shri Mansukh Kataria, in his statements, corroborated the practice of overvaluation and payment of additional fees to him and other clearing charges. The investigating authority uncovered the well-organized syndicate involved in overvaluation and ineligible export incentives. The investigation started in 2009, and SCNs were issued between 2010 and 2015. Considering the continuous investigation and the complexity of the syndicate, the delay in issuing the SCN is deemed reasonable in this case. The Customs, Central Excise Duties & Service Tax Drawback Rules, 1995, framed under Section 75 of the Act, provide self-contained provisions for drawback. Rule 16 addresses the recovery of erroneously or excessively paid drawback, while Rule 16A deals with situations where sale proceeds have not been realized within the allowed period under the Foreign Exchange Management Act, 1999. These rules do not specify any limitation for the recovery of such amounts.



10.1 The applicants argued that their retraction of the statements recorded under Section 108 of the Customs Act is not an afterthought and provided justification for their retraction. However, Government finds that the Adjudicating Authority, in paragraph 21 of the 'Discussion and Findings' section of the impugned order, has extensively discussed the matter and cited relevant case law to explain why the applicants' retraction of the statements, made after nearly six years and based on claims of coercion and threat during recording, is not admissible and cannot be sustained.

10.2 Commissioner (Appeals) has relied on the case of K.I. Pavunny vs. Asstt. Collr. (Hq.), C. Ex. Collectorate, Cochin- 1997 (90) E.L.T. 241(S.C.) where it was established that a voluntary confessional statement can serve as the sole basis for conviction without any prohibition under the Evidence Act. The court should assess the prosecution's evidence to determine if there are other facts and circumstances that corroborate the retracted confession. It is not mandatory for independent evidence to corroborate every detail mentioned in the confession. The court's duty is to examine whether the confession was voluntary, free from threat, duress, or promise. If the court is satisfied with its voluntariness, it should then assess its truthfulness. If the court finds the retracted confession to be true, the incriminating portion can be relied upon for conviction. However, prudence and practice dictate that the court should seek corroboration from other evidence presented by the prosecution.

10.3 In the case of Naresh J. Sukhawani v. Union of India and Surjeet Singh Chhabra v. Union of India - 1996(83) E.L.T. 258(S.C.) 1995 it was held that statements recorded under Section 108 of the Act can be treated as substantive evidence inculcating the accused in contravention of the

provisions of the Customs Act. Even if a confession is retracted, it can still be considered as an admission and bind the accused. The objective of the Act is to prevent large-scale smuggling and facilitate the detection and confiscation of smuggled goods. In such cases, reliance on statements, recovery reports, and oral evidence is common practice. The court evaluates the evidence in light of the Act's objectives while considering the offenses committed under it.

10.4 In summary, the retraction of a confession without evidence of duress or coercion, especially after a significant time lapse, is deemed insufficient to undermine the evidentiary value of statements recorded under Section 108 of the Customs Act, as held in the aforementioned cases. Therefore, the conclusions arrived at in the impugned Orders-in-Original and Orders-in-Appeal in this regard were just and proper.

11.1 The applicants have raised an argument that the Adjudicating Authority has passed order without granting them the opportunity for cross-examination, which they claim is mandatory under Section 138B of the Customs Act, 1962, based on a judgment by the Delhi High Court in the case of Basudev Garg. However, Government notes that the applicants did not respond to the show cause notice issued to them, and despite granting multiple personal hearings, no one appeared on behalf of the applicants except for Shri K.I. Vyas, Advocate, who submitted written submissions. It was during this stage that the applicants requested cross-examination of the statements made by the co-accused.

11.2 The Adjudicating Authority provided detailed grounds for rejecting the request for cross-examination in paragraphs 22.1 to 22.5, which are reasonable and justified. The Adjudicating Authority cited relevant case

laws, including a judgment by the Hon'ble Principal Bench of CESTAT at New Delhi in the case of Jagdish Shankar Trivedi vs. Commissioner of Customs, Kanpur (2006 (194) ELT 290 Tri. Delhi), which held that denial of cross-examination of co-noticees/accused does not violate the principles of natural justice. The court reasoned that allowing cross-examination in such cases could be strategic, leading to each accused claiming the right against testimonial compulsion under Article 20(3) of the Constitution of India and causing a violation of natural justice. Therefore, the Adjudicating Authority's decision to deny cross-examination was justified.

11.3 In the impugned case, the statements made by the co-accused fully corroborate each other, and the denial of cross-examination does not violate the principles of natural justice. Shri Sanjay Tarachand Agarwal, in his voluntary statements, admitted the extent of excess duty drawback availed by all the accused, indicating their awareness of their liability for fraudulent availment of drawback since the start of the investigation in 2009. The applicants were well aware of the facts and circumstances surrounding the fraudulent activity in question. Therefore, they cannot claim to be taken aback or unaware of their liability in relation to the fraudulent actions, as the investigation had been initiated as far back as 2009. It is a well-established legal principle that "admitted facts need not be proved," so the impugned order is not flawed in this regard. Therefore, the conclusions arrived at in the impugned Orders-in-Original and Orders-in-Appeal in this regard were just and proper.

12. Based on the substantial evidence, including corroborative statements from various individuals, including Customs Officers who admitted to colluding with the exporters to manipulate the value of cheap export goods for fraudulent purposes, Government finds no merit in the arguments presented by the applicants. Therefore, Government finds the recovery of the

excess duty drawback amount under Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, in conjunction with sections 75 and 76(1)(b) of the Customs Act, 1962, and interest imposed under Section 75A(2) of the Customs Act, 1962, at the prescribed rate under section 28AB of the Act is justified.

13. The applicants, M/s Kashish Textiles Pvt Ltd. and M/s. Rishi Silk Art, along with their Director & Proprietor, Shri Sureshkumar Sohanlal Goyal, and Shri. Sanjay Tarachand Agarwal (operator cum IEC holder of M/s. Kashish Textiles Pvt. Ltd.), deliberately and consciously engaged in misdeclaring the value of goods in the shipping bills, with the intention of fraudulently obtaining excessive drawback. Consequently, the exported goods are liable for confiscation under Section 113(d), 113(i), and 113(ii) of the Customs Act, 1962. However, since the goods have already been exported and are not physically accessible for confiscation, Commissioner(Appeals) has rightly held that no redemption fine can be imposed.

14. The deliberate overvaluation of the export goods was solely aimed at claiming undue or excessive drawback. Thus, the applicants-exporters, along with the involved individuals, grossly misrepresented and inflated the value of goods before Customs Officers, exhibiting intentional false declarations. Their actions render the goods liable to confiscation, and therefore, penalties under Sections 114(iii) and 114AA are fully justifiable and should be imposed upon them. Therefore, the conclusions arrived at in the impugned Orders-in-Original and Orders-in-Appeal in this regard were just and proper.

15. In view of the above discussion and findings, Government, upholds Order-in-Appeal No. MUM-CUSTOMS-SMX-22,23,24&25 /2018-19 dated

27.04.2018 passed by the Commissioner of Customs (Appeals) and rejects Revision Applications as devoid of merits.

*Shrawan*  
30/6/23  
(SHRAWAN KUMAR)

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

509-512  
ORDER No. /2023-CU5(WZ) /ASRA/Mumbai DATED 30.6.23

To,

- 1) M/s Kashish Textiles Pvt. Ltd.  
Plot No K-17 & 18, City Industrial Estate,  
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501, Devprayag Appt.

Opp. Terapanth Bhavan, City Light,  
Surat, Gujarat

Copy to:

1. Pr. Commissioner Customs(G), Mumbai.
2. Commissioner of Customs (Appeals), Mumbai - I.
3. Kaushik I. Vyas (Advocate), 401, Shivanjali Apartment, Rangila Park,  
Ghod Dod Toad, Surat.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.