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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. 371/420/DBK/2022-RA / 6938

Date of issue: 11.09.2023

ORDER NO. 677 /2023-CUS (WZ)/ASRA/MUMBAI DATED 20.9.2023  
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. Anand Kumar Tiwari

Respondent : Commissioner of Customs, Nhava Sheva-II, Mumbai Zone-II

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962, against the Order-in-Appeal No.  
501(CAC)/2021(JNCH)/Appeal dated 22.06.2021 passed by  
Commissioner of Customs (Appeals), Mumbai-II.

ORDER

This Revision Application is filed by M/s. Anand Kumar Tiwari (hereinafter both referred to as "the Applicant") against Order-in-Appeal (OIA) No. 501(CAC)/2021(JNCH)/Appeal dated 22.06.2021 passed by the Commissioner of Customs (Appeals), Mumbai-II.

2. Brief facts of the case are that based on specific intelligence indicating certain exporters with the help of CB firm were indulging in export of carpets under Duty Drawback Scheme by resorting to mis-declaration of the quantity and quality with an intention to avail undue drawback incentive, the department intercepted consignments of the applicant being exported under Shipping Bill Nos. 5445340 and 5445270 both dated 23.01.2016 through Customs Broker, M/s. PBN Logistics. On preliminary examination, discrepancies in quantity when compared with the packing list were detected, therefore a detailed examination of the consignment was carried out under a panchnama which confirmed excess declaration of quantity. Further, to verify the declared quality, samples of the product were sent to CEPC, New Delhi, which revealed that there had been mis-declaration as regards composition of carpets as well as value.

3. Hence, the consignment was seized and a Show Cause Notice dated 24.10.2018 was issued to the applicant to show cause as to why:-

- i. the declared FOB value of Rs.60,14,478/- should not be re-determined at Rs.2,72,779/-;
- ii. the consignment should not be re-classified, as test reports had revealed that carpets were not hand knotted and had polyester as pre-dominant material;
- iii. total drawback claimed should not be re-determined to Rs.25,096/- against claimed amount of Rs.5,53,332/-;
- iv. the export consignment should not be confiscated;
- v. penalty should not be imposed on the applicant.



4. The Adjudicating Authority vide Order-in-Original (OIO) No. 235/2019-20/ADC/NS-II/CAC/JNCH dated 05.07.2019 passed following order:-

- i. rejected the declared FOB value and re-determined it to Rs.2,72,779/-;
- ii. re-classified the consignment;
- iii. restricted drawback claims to Rs.25,096/-;
- iv. confiscated the impugned goods under section 113(i) and (ii) of Customs, Act, 1962, with an option to redeem the same on payment of redemption fine of Rs.5,00,000/-;
- v. imposed penalty of Rs.2,50,000/- on the applicant under section 114 (iii) of the Customs Act, 1962 and
- vi. imposed penalty of Rs.2,50,000/- on the applicant under section 114AA ibid.

5. Aggrieved, the Applicant filed an appeal with the Commissioner (Appeals) who vide impugned Order-in-Appeal rejected the appeal on the grounds of time barred, being filed beyond the stipulated period.

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

- a) the adjudicating authority has grossly erred in not taking into consideration all the aspects of the case. The impugned Order, therefore, is arbitrary, nonspeaking and unilateral and is liable to be set aside. As per settled law, a reasonable opportunity to file defense ought to have been granted to the Applicant in accordance with the principles of natural justice. The Adjudicating Authority grossly erred in not considering the reply dated 27.12.2018 filed by Applicant through his lawyer, neither there is mention of any Adjournment Letter submitted on two occasions by the Applicant's Lawyer neither a communication was ever sent to the Applicant's Lawyer in regard to the hearing.
- b) the witnesses who had appeared before the Adjudicating Authority, ought to have been examined before admitting their statement in evidence under section 138B of the Customs Act, 1962 irrespective of the fact whether, they could be cross-examined or not.

- c) the penalty imposed is not only harsh, but has also been imposed on the Applicant in discriminatory manner. Consequently, the imposition of penalty on the Applicant cannot sustain in the facts of the instant case, much less under the impugned Order which is issued with apparent non-application of mind on relevant facts.

In view of above submissions, the applicant prayed to set aside the impugned Order-in-Appeal with consequential reliefs.

7. A Personal hearing was held in this case on 13.07.2023. Shri Bharat Jadhav, Advocate appeared online on behalf of the applicant and submitted that the appellate authority has rejected the appeal on the ground of delay. He further submitted that appeal was filed in time once OIO was received. He requested to allow the application.
8. 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.
9. Government observes that the applicant had filed two Shipping Bills – Nos. 5445340 and 5445270 both dated 23.01.2016 having total FOB value of Rs.60,14,478/- for export of the product, 'Indian Hand Knotted Woollen Carpet'. The goods were seized by the Department on the basis of an intelligence that the same were mis-declared in respect of quantity and value of the goods. Subsequently, vide impugned OIO, the seized consignment was confiscated, the export goods were re-classified and the drawback claimed was restricted, as detailed at aforementioned para 4. The appeal of the applicant was rejected on the grounds of being time barred vide impugned OIA.
10. Government observes that the appellate authority has come to the conclusion that the appeal of the applicant was filed beyond the period



stipulated under Section 128 of the Customs Act, 1962 on the basis of following findings:

*“4. Though the appellant has submitted that his neighbour received the copy of the impugned order on 11.07.2019, the appellant has not produced any credible evidence or reasons for receipt of the order from his neighbour, but merely mentioned that he had couriered the order to his Advocate on 18.11.2019. Considering the date of communication of the order as 11.07.2019, I have no choice but to accept that said Order was well served on 11.07.2019 in terms of section 153(3) of the Customs Act, 1962. Hence I conclude that the said appeal was required to be filed within 60 days of its receipt i.e. on or before 9th September 2019, with another 30 days being condonable by the Commissioner(Appeals). However, the same has been filed on 31.12.2019 i.e. after 84 days (from 09.10.2019 to 30.12.2019) under section 128(1) ibid. In this regard, I would also reiterate section 128 ibid.....”*

Government observes that the applicant has not contested these findings of the appellate authority in the impugned revision application.

11. Government observes that the applicant has contended that reasonable opportunity was not provided to them by the adjudicating authority to defend the case as their reply dated 27.12.2018 filed through their lawyer was not considered; that there is no mention in the impugned OIO of adjournment letter submitted on two occasions by their lawyer and that no communication was ever sent to their lawyer in regard to the hearing. In this regard, Government observes that the applicant has not adduced any evidence in support of these claims in the form of acknowledgements from the department for receipt of their letter dated 27.12.2018, for adjournment letters submitted on two occasions and for submission of any Vakalatnama having name and address of their lawyer. Therefore, Government does not find any substance in these contentions of the applicant.

12. The applicant has further contended that the witnesses in the instant case ought to have been examined before admitting their statement as evidence, under section 138B of the Customs Act, 1962. In this regard, Government observes that two statements had been relied upon in the instant case viz. Shri Anand Kumar Tiwari (the applicant in the instant case) and Shri Rajesh Kumar Upadhyay, Manager of CB firm. There is nothing on record to indicate that these statements had been retracted. Further, there was corroboratory evidence in the form of panchnama dated 29.02.2016, test reports from Textile Committee, valuation reports from CEPC etc. which have also been relied upon in the instant case. In the absence of any reason to doubt the veracity of relied upon statements there was no need for examining the persons giving the statements by the adjudicating authority. Hence, Government finds no substance in this contention of the applicant.

13.1 The other contention of the applicant is that the penalty imposed is too harsh. Government observes that section 114 of the Customs Act, 1962 reads as under:

**Section 114. Penalty for attempt to export goods improperly, etc. -**

*Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable, -*

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*iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.*

Government finds that the declared FOB value of the goods attempted to export by the applicant was reduced by original authority from Rs.60,14,478/- to Rs.2,72,779/-. Therefore, the Government finds the decision of the original authority conforms to the provisions of the relevant section as regards imposition of penalty of Rs.2,50,000/-.



13.2 As regards penalty of Rs.2,50,000/- imposed under section 114AA of the Customs Act, 1962, Government observes that this section reads as under:

**Section 114AA. Penalty for use of false and incorrect material. -**

*If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

Thus, to impose penalty under this section, it is essential to prove that a false/incorrect declaration was given under the Act, knowingly or intentionally. In the instant case, Government observes that the adjudicating authority, vide the impugned OIO, has brought on record that the applicant had over valued the FOB value of the export goods manifold times, which the applicant has also not contested. Therefore, Government finds no reason to differ with decision taken by the adjudicating authority in this regard.

13. In view of the findings recorded above, Government rejects the instant Revision Application.

*Shrawan*  
20/9/23

(SHRAWAN KUMAR)

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

ORDER No. 677/2023-CUS(WZ)/ASRA/Mumbai dated 20.9.23

To,

M/s. Anand Kumar Tiwari,  
58/5, J.N. Mukherjee Road,  
Howrah, West Bengal - 711 107.

Copy to:

1. Pr. Commissioner of Customs,  
Nhava Sheva-II,  
Jawaharlal Nehru Custom House,  
Nhava Sheva, Taluka: Uran,  
Dist. Raigad, Maharashtra - 400 707.
2. M/s. Enact Legal,  
Office No. 1, 106, Jai Hind Building,  
Nagindas Master Road,  
Fort, Mumbai - 400 001.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file