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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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No. 371/182/DBK/2021-RA / 7514 Date of issue: 18.10.2023

ORDER NO. 766/2023-CUS (WZ)/ASRA/MUMBAI DATED 17.10.2023
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 : M/s. Chakde Enterprise Pvt. Ltd.

Respondent: Pr. Commissioner of Customs (Export), Ahmedabad.

Subject : Revision Applications filed, under Section 129DD of the Customs Act,
1962, against the Order-in-Appeal No. AHD-CUSTOM-000-APP-421/20/21 dated
16.12.2020 passed by Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This Revision Application has been filed by M/s. Chakde Enterprise Pvt. Ltd. (hereinafter referred as 'applicant') against the Order-in-Appeal No. AHD-CUSTM-000-APP-421/20/21 dated 16.12.2020 passed by Commissioner of Customs (Appeals), Ahmedabad.

2. Briefly stated, facts of the case are that applicant had filed a Shipping Bill No. 575842 on 09.02.2016 for export of Printed Sarong of Cotton declaring value as Rs.252.67 per piece and Printed Sarong of MMF declaring value of Rs.185.29 per piece. The total value of the goods to be exported were shown as Rs.53,56,165/- involving drawback amount of Rs 4,12,170/-. As the value of the goods appeared to be inflated, samples were drawn. The applicant had filed another Shipping Bill No. 5956140 on 19.2.2019 for export of Cotton T shirts, Cotton Night Suits, Cotton Pyjamas, Knitted legging of cotton, Women Night Gown (blended), Cotton Printed Sarong and MMF Printed Sarong. In this case, the value of the MMF Printed Sarong shown as Rs.186.63 per piece, appeared to be overvalued. As the value of the goods in both the shipping bills appeared to be overvalued, a market survey was approved by the Additional Commissioner of Customs, Ahmedabad, as prescribed under Circular No. 7/2003-Customs of 05.02.2013. The market survey obtained price information from a company called Bumaco Fabrics, indicating lower values than declared by the applicant. As a result, the declared values were rejected under Customs rules, and drawback claims were restricted. The applicant filed an appeal, which was remanded for the observance of principles of natural justice. However, the applicant did not avail the opportunities for a personal hearing and did not submit defense submissions. The adjudicating authority eventually rejected the declared values and restricted drawback claims for both shipping bills. The applicant then appealed to the Commissioner of Customs (Appeals), who upheld the OIO in the impugned Order-in-Appeal (OIA).

3. Hence, the Applicant has filed the current Revision Application mainly on the following grounds:

- i. Principles of natural justice in gross violation as scn is not issued, market survey report not supplied and personal hearing not held.
- ii. Board Circular No.7/2003 customs dated 05.02.2003 not followed in as much as market verification must not be resorted to in a routine manner.
- iii. Market survey conducted erroneously and should not be given any credence
- iv. the charge of over valuation of goods remains unsubstantiated. It is submitted that the transaction value in terms of section 14 of the Customs Act, 1962 as applicable for exports also, was required to be considered. The Transaction value would be price paid or payable by the overseas buyer to the Applicant in the course of international trade for delivery at the time of export. Thus, in the present case, the price paid by the overseas purchaser has to be considered as the transaction price. In the Impugned Order, the adjudicating authority has considered extraneous and irrelevant material to deny the drawback
- v. Applicant has placed reliance on various case laws.
- vi. Applicant has requested to set aside the impugned Order-in-Appeal.

4. A Personal hearing was fixed in this case on 21.06.2023. Mr. Tanmay Banthia, Advocate appeared online on behalf of the Applicant. He submitted that market survey report was never provided, therefore applicant could not get grounds of overvaluation. He submitted that value declared was correct and requested for allowing the drawback.

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

6. Government acknowledges that the matters to be addressed in the present case encompass the following:

- i. The adherence to the principles of natural justice.

ii. proper valuation of goods to restrict or reject drawback.

7. Government notes that the applicant has contended that the principles of natural justice have not been followed in the present case. It's important to note that this case has gone through a series of stages, moving from the Adjudicating Authority to the Appellate Authority, back to the Adjudicating Authority, and then again to the Appellate Authority before finally coming to the Revisionary Authority. The Appellate Authority, in its initial Order-in-Appeal (OIA) No. AHD-Custm-000-App-133-17-18 dated 1.11.2017 addressed this issue and remanded the matter back to the Adjudicating Authority for examining the issue with adhering to the principles of natural justice. The Adjudicating Authority, in its subsequent order, noted that the Applicant had been provided with ample time and opportunities for a personal hearing. These opportunities were granted on the following dates: 24.01.2019, 23.01.2019, 19.02.2019, and 11.03.2019, as duly recorded by both lower authorities in their respective orders. Importantly, the Applicant has not challenged this fact. Furthermore, the Appellate Authority also afforded the Applicant an opportunity to explain their case. Given these multiple instances of providing opportunities for a hearing, the government does not find merit in the argument that the principle of natural justice has not been followed in this case.

8.1 With regard to the issues that Market survey was not conducted by following the proper procedure and that survey report was not shared with the Applicant, Government notes that Appellate Authority has discussed this issue in detail at para 7 of the impugned OIA. Relevant para is reproduced hereunder:

*07. The adjudicating authority has referred to Circular No. 7/2003-Customs dated 5.2.2003 in paragraph 12 of the impugned order and stated that the officer examining the goods had doubted the value of the declared goods and *had accordingly drawn samples and on the basis of a prima facie belief that the goods could have been overvalued, the market survey had been carried out as approved by the Additional Commissioner.* The contents of paragraph 4 of Circular No. 7/2003-Customs dated 5.2.2003 are reproduced for ready reference as follows:

4. In cases of specific information that the FOB value declared is inflated or there is prima facie evidence to suggest such over-valuation, the field formations should resort

to market verification to ascertain the correct market price of the goods, In addition to above, market verification can also be initiated on the basis of intelligence or where the intelligence is gathered In respect of consignments entered for export to sensitive destinations and/or where the goods are sub-standard and it appears that the acceptance of the declared value would result in accrual of substantial unintended drawback benefits. But all such cases should be taken up for verification only with the approval of the Additional/Joint Commissioner of Customs in charge of Exports or Preventive,

In the present case, the market survey has been carried out with the approval of the Additional Commissioner of Customs. In paragraph 14 of the impugned order it has been clearly brought out that samples drawn by the officers of Customs were shown to Bumaco, who after seeing the F.No. 5/49-525/CUS/AHD/19-20 samples, had given the price range of the goods. Therefore, there is no reason to question the process of market survey in the present case. Further, the fact that the report of market survey was communicated to the appellant has been admitted by the appellant as can be seen from paragraph 6 of the statement of facts in the appeal memorandum where it is stated as follows:

"On 06/06/2016, the Deputy Commissioner informed the appellant under letter F.No. VIII/48-01/ICD/Misc./2016/1582 dated 06.06.2016 wherein it was intimated that market survey was conducted and valued of Printing Sarong of Cotton in respect of shipping bill No 5745842 dated 09/02/2016 in Rs.113.40 against Rs.252.67 and Printed Sarong MMF is Rs.82.80 against Rs.185.29 and value of Printed Sarong of MMF in respect of shipping bill no 5956140 dated 19/02/2016 is Rs.82.80 against Rs.185.29. A copy of Letter dated 06-06- 2016 is annexed hereto and marked as Exhibit-"D"

In view of the above, it is clear that the market survey was done according to the stipulation in the Circular No. 7/2003-Customs dated 5.2.2003 and the report was communicated to the appellant prior to rejection of the declared value. Therefore, I find no reason to interfere with the impugned order."

From the above, Government notes that the Department conducted a market survey with the prior approval of the relevant Additional Commissioner upon suspecting an inflated declared value. In light of these circumstances, it's clear that the market survey adhered to the guidelines outlined in Circular No. 7/2003-Customs dated 5.2.2003. The findings of the survey were also communicated to the applicant through a letter dated 06.06.2016 before the rejection of the declared value. Importantly, the Applicant has not contested or denied receiving this letter.

8.2 Furthermore, Government notes that the Applicant filed an RTI application to obtain details of the market survey. However, the RTI Appellate Authority has stated in paragraph 11 of their Order No. RTI/Appeal/08/MLM/2016 dated 14.12.2018 that the details have already been communicated to the Applicant. RTI Appellate Authority viewed these repeated appeals by the Applicant as an attempt to divert the focus of the Customs. Relevant para is reproduced as under:

"As far as submission of market survey report is concern it is found that that market survey report has not been provided; as the same is also relied in another case (Shipping Bill no: 5745842 dated 09.02.2018) of the applicant on which he has sought information and the same has been denied under Section B(1) (h) Thus the same was not provided. I further find that result of market survey has already been communicated vide letter dated 06.06.2016 and copy of the same is also communicated to the applicant as per order No.RTV/APPEAL/06/MLM/2016 Dtd.18.11.2016 of FAA Repetitive RTI application and subsequent appeals is nothing but modus of the applicant to divert the focus of the Customs."

9. Furthermore, Applicant contends that in the present case, the transaction value, as defined in Section 14 of the Customs Act, 1962, should be considered. Additionally, they assert that the price paid by the overseas purchaser should be regarded as the transactional value. The Government finds no merit in this argument, as Circular dated 05.02.2023, under which the market survey was conducted, clearly prescribes that in cases where there is specific information suggesting an inflated FOB value or prima facie evidence of over-valuation, field formations should conduct market verification to ascertain the correct market price of the goods. Relevant paragraphs of the circular are reproduced below:

"4. The issue has been examined by the Ministry. There is no doubt that as a general Rule, FOB value of the exports should be the basis for extending the drawback benefits since FOB vale is recognized for export transactions both in the Customs Act, 1962 as well as in the Duty Drawback Schedule where the rates have been expressed as a percentage of FOB values. The duty drawback rates are computed by taking into account the average duty incidence suffered on the inputs used in the manufacture of the export products. In order to prevent the exporters from

earning unintended benefits, most of the entries in the Drawback Schedule have specific rates of drawback. In some other cases, where the rates have been expressed as a percentage of FOB value and the commodities are considered prone to over-valuation, duty drawback caps have been imposed. Notwithstanding above measures, several instances of deliberate over-invoicing have been brought to the notice of the Board by the Customs Commissionerate, Board is also aware of the landmark judgements of CEGAT'S Larger bench in the matter of Om Prakash Bhatia Vs Commissioner of Customs, Delhi [2001(127) ELT 81] wherein Hon'ble CEGAT held that Section 14 of the Customs Act would apply to export valuation. In coming to the above decision, Hon'ble CEGAT, inter alia, relied upon similar judgement of Calcutta High Court in the matter of Pankaj V.Seth [1997 (90) ELT 31].

5. In cases of specific information that the FOB value declared is inflated or there is prime-facie evidence to suggest such over-valuation, the field formations should resort to market verification to ascertain the correct market price of the goods. In addition to above, market verification can also be initiated on the basis of intelligence or where the intelligence is gathered in respect of consignments entered for export to sensitive destinations and/or where the goods are sub-standard and it appears that the acceptance of the declared value would result in accrual of substantial unintended drawback benefits. But all such cases should be taken up for verification only with the approval of the Additional Joint Commissioner of Customs in charge of Exports.

6. In those cases, where it is conclusively proved through verification that the FOB value had been artificially inflated/manipulated by the exporter to avail of unintended higher drawback benefits, the cases shall be investigated and decided on merits in terms of section 14 and 113 read with sections 76(1)(b) and 114 of the Customs Act, 1962"

The Government observes that in the present case, the transaction value was inflated, as revealed by the findings of the market survey conducted by the Department. Therefore, as per the circular, the correct market value should be considered to prevent unintended higher drawback benefits, rather than the transactional value or FOB value. It's worth noting that the Applicant cited various case laws in support of their argument, but these cases are not relevant to the case in hand. In the instant case, the market survey was specifically conducted to assess the inflated declared value, whereas in the cases referenced by the Applicant, there was no such survey conducted.

10. Given that the Market Survey report was conducted in accordance with the proper process, and the report was duly communicated to the Applicant, it becomes evident that the rejection of the declared value was based on the

findings of this survey. Therefore, since there is no dispute regarding the survey in question, there appears to be no valid reason to intervene or interfere with the impugned Order-in-Appeal (OIA).

11. In view of above, Government finds no infirmity with the impugned OIA No. AHD-CUSTOM-000-APP-421/20/21 dated 16.12.2020 passed by Commissioner of Customs (Appeals), Ahmedabad and upholds the same.

12. The Revision Application/s are rejected.

Shrawan
17/10/23

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 766/2023-CUS (WZ)/ASRA/Mumbai dated 17.10.23

To,

1. M/s. Chakde Enterprise Pvt. Ltd., 1, Ishan Complex Sun N step Club, Road Tahltej Ahmedabad-380054.
2. The Pr. Commissioner of Customs(Export), 2nd Floor Custom House, Near All India Radio, Navarangpura, Ahmedabad- 380009.

Copy to:-

1. The Commissioner of Customs (Appeals), Ahmedabad, 7th Floor, Mrudul tower, B/H Times of India, Ashram Road, Ahmedabad-380009.
2. Sr. P.S. to AS(RA), Mumbai.
3. Guard file.