

REGISTERED
SPEED POST



F.No. 375/31/DBK/2001-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 28/8/17

01/2017-~~cus~~ dated 25/08/2017

ORDER NO. ~~Cus~~ dated 2017 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI
RAJPAL SHARMA, ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA,
UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

SUBJECT : Revision Application filed under section 129 DD of the
Customs Act, 1962 against the Order-in-Appeal
No HKS(63) Cargo/2001 dated 19.01.2001 passed by the
Commissioner of Customs (Appeals), New Delhi.

APPLICANT : M/s. M.S. Shoes East Ltd.,

RESPONDENT : Commissioner of Customs, New Delhi.

ORDER

A Revision Application No. 375/31/DBK/2001-RA dated 26.02.2001 was filed by M/s. M.S. Shoes East Ltd, VikasPuri, New Delhi (hereinafter referred to as applicant) against the Order-in-Appeal No. HKS(63)Cargo/2001 dated 19.1.2001, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi. This Revision Application was rejected by the erstwhile Joint Secretary(Revision Application) by Order No. 277/2002 dated 20th August, 2002 against which the applicant approached the Hon'ble High Court of Delhi through Writ Petition Civil No. 8315 of 2002 on the ground that the above order was not attended by the J.S.(R.A.). The High Court, vide its order dated 20.07.2016 in this matter, ordered that since the order by the Joint Secretary was not signed by him it was not valid and a direction was issued to the incumbent Joint Secretary to adjudicate the Revision Application in accordance with law without being influenced by the Draft Order earlier passed.

2. Brief facts of the case are that on 29.6.1989 acting on an intelligence various premises belonging to and related to the business activities of M/s. M.S. Shoes were searched by the officers of the Customs and Central Excise Collectorate, New Delhi and a detailed investigation was carried out with regard to drawback of duty claimed by them.

3. During the investigation it was noticed that the applicant had given description of goods as Ladies Leather shoes, as per Invoice No. attached. in the Shipping Bills in terms of section 50 and section 75 of the Customs Act, 1962 read with Rule 11 and 13 of the Customs and Central Excise Duties Drawback Rules, 1971. A declaration was also made in the relevant columns of the Shipping Bills that duty drawback admissible in their case was 6% of FOB value as specified against sub sl. No. 2902(i) of the Drawback Schedule. But subsequently, for claiming higher amount of duty Drawback from Directorate of Drawback, Ministry of Finance, the applicant substituted the customs attested Export Invoices annexed to the triplicate copy of shipping bill by another invoice bearing the same number and purported to have been certified to be the true copy of the invoices negotiated/purchased as

received by the Bank for collection and attested by the Bank Manager. The description of the goods exported as indicated in the Bank attested invoices annexed to the triplicate copy of Shipping Bills was changed to "Ladies Leather Shoes with Neolite Rubber Sole (made of imported synthetic rubber and fillers)" which was different from what had actually been exported and indicated in the invoices procured by the department during the course of investigation from the exporter's bankers and State Trading Corporation of India Ltd, New Delhi and also from what had been indicated in the invoices annexed to Duplicate/original copies of the Shipping Bills available with the department. The description of export goods indicated in the substituted copies of invoices carried higher rate of duty drawback and accordingly the applicant had claimed higher drawback under rule 7 of the

Drawback Rules, 1971. Based on the investigation, Additional Collector of Customs, Custom House, New Delhi, issued a Show Cause Notice C.No.VIII(SB)9/123/89/3220 dated 15.6.90 alleging that an amount of Rs 25,77,619/- was paid as duty drawback in excess of their entitlement. Penal action under See 117 of the Customs Act, 62 was also proposed. Additional Collector (Now Additional Commissioner) of Customs adjudicated the case and ordered recovery of an amount of Rs 25,77,619/-. This order was upheld by the Commissioner (Appeals).

5. Against the Order of the Commissioner (Appeals), this Revision Application was filed mainly on the following grounds:-

(a) that the Commissioner has failed to appreciate that the supplementary duty drawback in question is refund of duties borne on the inputs and since imported, duty paid inputs were used by the applicant in their exported goods in question as verified by the department in DBK I, II, IIA and III statements;

(b) that the Commissioner has seriously erred while holding that the impugned goods are not manufactured under physical supervision of the Central Excise Officers and they were not sealed in their factory and then brought to the Customs Port for export;

(c) that the Commissioner has failed to appreciate that the entire export proceeds have been realised without any objection from their foreign buyers;

(d) that the present show cause Notice dated 14.6.90, invoking extended period of limitation under section 28 of the Customs Act, 62 is not sustainable as this notice has to be treated as if it has been issued by the Dy. Collector/Additional Collector exercising his power as Deputy Collector and not issued by the Collector of Customs as such;

(e) that the Commissioner has failed to appreciate that the invoices were substituted not to get any undue drawback, beyond entitlement since the description of the exported goods were the same and imported raw materials, actually used in its manufacture were mentioned as it was mandatory to give the details to get supplementary duty drawback;

(f) that their all the statutory records have been in order;

(g) that as per the established practice, at the time of negotiation, invoices were submitted as per L/C terms and as such any other documents could not have been negotiated. The same copies were submitted to STC and another set of invoices were certified by the bankers for DBK claims;

(h) that Sh. R.K. Saini, Director of M/s M. S Shoes, was forced by the department to write that they had obtained excess amount of duty drawback fraudulently;

(i) that the addition of words "With Neolite Rubber sole [made of imported synthetic Rubber and fillers (preticipated silica)]" was done in addition to the word

"Ladies Leather Shoes" in the triplicate copy of the Shipping Bills for claiming drawback which was genuine;

j) that the Department cannot deny the applicant of their rightful duty drawback merely on the ground that there have been some procedural lapses. In this regard, the following case laws were relied upon:-

- (i) Kerala State Detergents and Chemicals V s. Collector of Central Excise - 1985(21)ELT 566(Trib-M)
- (ii) Dorai Knitting Co. Vs E. Rama Subramanian-1981(94)(LW)343
- (iii) Vice Chancellor J&K University Vs D.K. Rampal Air 1977 SC(146) etc.

6. Soon after I joined as Principal Commissioner (R.A.) and Additional Secretary to the Government of India on 07.08.2017, this case was taken up for adjudication in compliance to the above referred High Court's Order dated 20.07.2016 and a personal hearing was held on 18.8.2017. Shri J.S. Sinha, advocate, and Sh. Pawan Sachdeva, M.D. of the applicant, appeared on behalf of the applicant and reiterating their written submissions mainly submitted that they had exported the ladies leather shoes along with neolite rubber soles and there is no contrary evidence that they did not export the goods of the above description. They also submitted additional written submissions on 22.08.2017 wherein following contentions are made:-

i) granting of supplementary drawback on export of ladies leather shoes is genuine
as these shoes were made using the imported material in question.

ii) at no point of time the department has raised any objection in regard to utilization of imported raw material or the genuineness of exports.

iii) the charge of the department is merely on the basis of the addition of words "with neolite rubber soles" in the triplicate copies of invoice for claiming supplementary drawback with a conclusion that no imported raw material was used.

Also, all the ingredients such as soles, adhesives etc. were essential parts of the shoes and Show Cause notice had alleged anomaly only for neolite rubber soles and is silent about other imported ingredients.

iv) all exports were canalized through STC and not only exports goods were found to be in order but exports proceeds were also realized. The consumption of the raw

~~material was verified by the Ministry of Finance and then only the brand rate fixation~~

letters were issued. Their company was 100% into exports and was an SSI

maintaining consumption registers. Even the buyers have certified that the exports

were ladies leather shoes with tunit (rubber sole). Thus disallowing duty drawback in

this case and its recovery their subsequent export is unjustified.

v) the department did not allege in the show cause notice that the imported material

was not utilized or had been sold or disposed of in clandestine manner.

DISCUSSION AND FINDINGS:-

7. The main issue to be decided in the present case is whether the applicant has exported Ladies Leather shown with neolite sole and availed supplementary duty drawback of Rs. 25,77,619/- properly.

7.1 There is no dispute that the applicant has originally declared the exported goods in the relevant Shipping Bills as "Ladies Leather Shoes as per invoice attached". In the attached invoices also the description of the goods is the same as "Ladies Leather Shoes". Further, the applicant also had claimed duty drawback at the rate of 6% of FOB value in the shipping bills which was admissible in respect of Leather Shoes of normal soles. Reference to "neolite sole" was never made in the shipping bills or any other document while exporting the goods and they claimed to have exported Ladies Leather Shoes with neolite sole after a long gap from actual export when they approached the Directorate of Drawback, CBEC, to claim duty drawback over and above 6% of FOB.

7.2 On examination of all relevant facts and evidences on record, the Government finds that their claim for supplementary duty drawback of Rs. 25,77,619/- is not founded on original export documents and is entirely based on substituted invoices wherein the description of the exported goods was changed all of a sudden from "Ladies Leather Shoes" to "Ladies Leather Shoes with neolite Rubber Sole(made of imported synthetic rubber and fillers". If this new description of the exported goods can be given in the substituted invoices, it is obvious that it could have been given

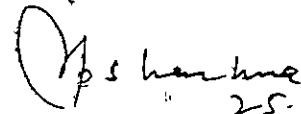
easily in the Shipping Bills as well as invoices attached thereto at the time of export of goods if it was the true description of the goods. But the original description in the invoices and shipping bills clearly demonstrates that the exported goods were normal leather shoes only and substituted description is manipulated subsequently as an afterthought to get higher amount of drawback. When the supplementary duty drawback was claimed on the basis of substituted invoices, the exported goods were not physically available and the verification of the fact whether the exported shoes were having neolite soles or otherwise was not possible and it cannot be verified now. Therefore, there is no option but to go by the description of the exported goods given by the applicant themselves in the original export documents namely shipping bills and invoices. The manipulation of the invoices subsequently to gain higher duty Drawback is also candidly accepted by Sh. Avinash Dhawan in his statements dated 30.06.1989 and 18.07.1989, who was a Director in the applicant's company and handled the applicant's entire work relating to Drawback claims. It is also honestly accepted by Sh. R.K. Saini, Director of the applicant, in his statement dated 24.07.1989. These evidences clearly reveal that the department's case against the applicant is not merely based on the substituted invoices alone but is also strongly corroborated by the statements of the officials of the applicant who were privy to the applicant's modus operandi of manipulating the invoices after affecting the exports with the ulterior motive to avail additional duty drawback. These facts also manifestly indicate that the indulgence of the applicant is not merely procedural

but is a substantive lapse actuated by their bid to get extra benefits from the Government.

7.3 The applicant's claim of the consumption of neolite soles in the manufacturing of the leather shoes and exports thereof is primarily sought to be based on the basis of consumption certificates issued by Commissioner of Industries, Delhi Government, and approval of their supplementary claim of Drawback by the Directorate of Drawback, CBEC. But no direct evidence has been produced either before or during the personal hearing held on 18.08.2017 or even along with their written submission dated 22.08.2017 to establish that they had actually exported "Ladies Leather Shoes with neolite soles" and committed just a technical error by not providing full description of the exported goods as "Ladies Leather Shoes with neolite soles" in the original export invoices and shipping bills. Whereas it is evident that verification of the actual exported goods was carried out by the Customs Officer at the time of the export only and it was never done by the Directorate of the Drawback and the approval for applicant's supplementary Drawback claim was accorded merely on the basis of applicant's claim for higher duty Drawback. Even the certificate of the Commissioner of Industries, Delhi Government, relied upon by the applicant, does not contain any relevant details regarding consumption of neolite soles in connection with the exported goods. It merely states "that on the basis of the information/documents furnished by you and also records produced during the course of checking over all Utilisation for the period's 1986-87, 1987-88 and 1988-89

has been taken in order." The applicant's claim that the buyer of the exported ladies leather shoes has confirmed that they had procured the shoes from the applicants with neolite soles is also not supported by any documentary evidence in the case file and the same cannot be held to be admissible in the absence of proper verification from the foreign buyer. The above narrated facts also strongly establish the suppression of facts on the part of the applicant in regard to availment of supplementary duty Drawback and accordingly extended period of limitation is undoubtedly applicable in the instant case. Their argument that the Additional Collector could not decide this case involving extended period of limitation and only Collector of Customs could decide this case is also completely misplaced as Section 2(8) of the Customs Act, 1962 unambiguously provided during the relevant period that the Collector of Customs included Additional Collector of Customs except for the purpose of Chapter XV. This point regarding competence of Additional Collector to adjudicate this case was also raised before Hon'ble High Court, Delhi and accepting the competence of the Additional Collector, their Writ Petition on this point was disposed of by the Delhi High Court as per its order dated 24.03.1994. After the said High Court's order, the repetition of the same plea is totally unwarranted at this stage.

7.4 In the light of the above observations, the Government has found that the applicant has not produced any concrete evidence regarding export of Ladies Leather Shoes with neolite soles. Hence, Commissioner(Appeals) has not committed any error in passing his Order -in-Appeal No. HKS(63) Cargo/2001 dated 19.01.2001 regarding rejection of their appeal against Order - in - Original No. ADC(X)/12/98 dated 01.08.1998 and accordingly the applicant's request to revise the aforesaid Order-in-Appeal is not found maintainable.

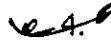

25-8-17
(RAJPAL SHARMA)

NOI No. - 01/2017 - ^{CUS} ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA
dated 25/08/2017

M/s M.S. Shoes East Ltd.,
112 - A, Ekta Enclave, New Delhi - 110 087.

Copy to:-

1. Sh. J.S. Sinha, Advocate, 4E, 4th Floor, World Trade Tower, Barakhamba Lane, New Delhi-110001.
2. The Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi-110037.
3. The Addl. Commissioner of Customs, New Customs House, Near IGI Airport, New Delhi-110037.

 PS to AS(RA)

✓ 6 Guard File.

ATTESTED


(Debjit Banerjee)
Sr. Technical Officer