

**SPEED POST**



F.No. 373/182/DBK/2019-RA  
F.No. 373/186/DBK/2019-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue.....21/03/23

Order No. 107-108 / 23-Cus dated 21-03-2023 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

- SUBJECT : Revision Applications, filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. SEA.C.Cus II No. 343 to 345/2019 dated 29.04.2019 passed by Commissioner of Customs (Appeals-II), Chennai.
- APPLICANT : M/s KSJ Metal Impex Pvt. Ltd., Chennai.  
Sh. Kamlesh Jain, Managing Director, M/s KSJ Metal Impex Pvt. Ltd., Chennai.
- RESPONDENT : The Commissioner of Customs-IV (Export), Chennai.

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**ORDER**

Two Revision Applications, bearing No. 373/182/DBK/2019-RA and No. 373/186/DBK/2019-RA, both dated 10.06.2019, have been filed by M/s KSJ Metal Impex Pvt. Ltd., Chennai and Shri Kamlesh Jain, Managing Director of M/s KSJ Metal Impex Pvt. Ltd., Chennai; (hereinafter referred to as the Applicant-1 & 2, respectively) against the Order-in-Appeal SEA.C.Cus II No. 343 to 345/2019 dated 29.04.2019, passed by the Commissioner of Customs (Appeals-II), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 64844/2018 dated 13.08.2018 passed by the Jt. Commissioner of Customs (Exports), Chennai in so far as the present Applicants are concerned, except to the extent of reducing the penalties imposed upon them.

2. Briefly stated, the Applicant-1 filed three Shipping Bill Nos. 9733711, 9734611 and 9734622, all dated 29.08.2016, for export of items declared as "Handicrafts/Artware of Brass" and claimed drawback of Rs. 24,05,216/-. Based on intelligence that certain exporters were misusing the drawback scheme by misdeclaration of goods/value, Docks Intelligence Unit (DIU) examined the subject consignment and observed that no certificate from the Development Commissioner (Handicrafts) certifying the goods as handicrafts / artware was produced. Accordingly, the representative samples drawn from the subject consignment were forwarded to the Office of the Development Commissioner (Handicrafts). The Assistant Commissioner (Handicrafts), vide letter dated 21.09.2016, stated that the export items did not fulfil the criteria of Handicrafts and hence could not be classified under the category of handicraft items. The value of consignments also appeared to be high. A market survey was conducted and the value of the export goods was opined to be in the range of Rs. 400-Rs.600 per kg. Statements of the Applicant-2 were recorded on 09.09.2016 and 01.12.2016 wherein he, inter-alia, stated that the goods had been bought from a local dealer, namely, M/s Anmol Ferro Impex Pvt. Ltd., owned by Shri Sattu; and that he had filed bank DEEC/Declaration while claiming drawback as he could not figure out who the original manufacturer was since the items were brought from the traders only. M/s Anmol Ferro Impex Pvt. Ltd., however, did not join the investigation. Therefore, another statement of Applicant-2 was recorded on 10.03.2017 wherein he, inter-alia, stated that he had mistakenly informed that Shri Sattu was the owner of M/s Anmol Ferro Impex Pvt. Ltd., while the real owner was Shri Sanjay Kumar Sharma; that he had made payment for the goods that he had procured from the supplier and exported the entire quantity; and that he had received the entire export proceeds through his Axis Bank account, details of which he would be furnishing shortly. Subsequently, the bankers confirmed non-realisation of export proceeds, vide their letter dated 20.03.2017. Upon completion of investigations, and after following the principles of natural justice, the original authority reclassified the goods under Drawback Serial No.

741998A instead of 741901A and the drawback claim of Rs. 24,05,216/- was reduced to Rs. 9,75,350/-. Further, the goods tendered for export were ordered to be confiscated under Section 113 (h), (i) and 113 (h) (ia) of the Customs Act, 1962, with an option to redeem the same on payment of redemption fine of Rs. 10,00,000/-. Penalties of Rs. 10,00,000/- each were also imposed on Applicants 1 & 2, under Section 114 of the Customs Act, 1962. The appeals filed by the Applicants have been rejected by the Commissioner (Appeals), except to the extent of reduction in penalty imposed to Rs. 5,00,000/- on each of the Applicants herein.

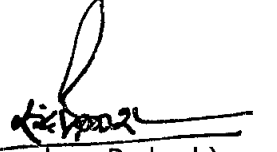
3. The revision applications have been filed, mainly, on the grounds that the Order-in-Original suffered from the vice of violation of principles of natural justice as the request for cross examination of the persons who participated in the market enquiry was denied; that the samples were referred to the Development Commissioner (Handicrafts) on 21.09.2016 and the report was also received on the same date which is unheard of; that the lower authorities had rejected the value declared on the Shipping Bills on the basis of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, without following the mandate of the said Rule 8; that the value had been redetermined under rule 6 without disclosing as to how value cannot be determined under rule 3,4 or 5 of the Valuation Rules; that they had received the export proceeds in toto and, therefore, value could not have been rejected; and that the redemption fine and the penalties imposed are without any authority.

4. Personal hearing in the matter was held, in virtual mode, on 17.03.2023. Shri M. Mukilam, Advocate appeared for the Applicants and reiterated the contents of the respective RAs. No one appeared for the Respondent department nor any request for adjournment has been received. Hence, it is presumed that the department has nothing to add in the matter.

5. The Government has carefully examined the matter. The export goods were declared as "Handicrafts/Artware of Brass". However, upon enquiry with the office of Development Commissioner (Handicrafts), the Assistant Commissioner (Handicrafts) stated that the goods were not 'Handicrafts'. Nothing has been brought on record to controvert this opinion of the office of Development Commissioner (Handicrafts). The contention that the Assistant Commissioner (Handicrafts) rendered his opinion on the same day and, hence, post haste, is not acceptable as the reference was made on 20.09.2016 and was answered on 21.09.2016. In this light, the order of the original authority reclassifying the goods under Drawback Serial No. 741998A instead of 741901A cannot be faulted. As regards the valuation of the goods, the Applicants admittedly procured the goods from a trader who did not join the investigations and, therefore, the transaction between the trader and the Applicant-1 could not be verified. The Applicants

also did not disclose the details of the manufacturer who had manufactured the subject goods. In such a case, the department cannot also be faulted for determining the value under Rule 6 ibid. There is also an element of uncertainty about realisation of export proceeds in as much as the concerned Bank informed the department that no remittance had been received, whereas the Applicants have claimed that remittance had been received in full. In any case, as correctly pointed out by the Commissioner (Appeals), the Hon'ble Calcutta High Court has, in the case of Collector of Customs vs. Pankaj v. Sheth {1997 (90) ELT 31 (Cal.)}, held that remittance of full foreign exchange into India is not a sure indication of declared export value being correct. Other contentions of the Applicants herein have also been properly and correctly dealt with by the Commissioner (Appeals).

6. In view of the above, the Revision Applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. M/s KSJ Metal Impex Pvt. Ltd.,  
"The Lattice", No. 20,  
Waddles Road, 4<sup>th</sup> Floor,  
Kilpauk, Chennai – 600 010.
2. Shri Kamlesh Jain, MD,  
M/s KSJ Metal Impex Pvt. Ltd.,  
"The Lattice", No. 20,  
Waddles Road, 4<sup>th</sup> Floor,  
Kilpauk, Chennai – 600 010.

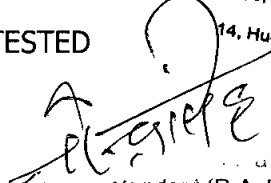
Order No. 107-108/23-Cus dated 21-03-2023

**Copy to:-**

1. The Commissioner of Customs, Chennai-IV (Export), Custom House, 60, Rajaji Salai, Chennai – 600 001.
2. The Commissioner of Customs (Appeals-II), Custom House, 60, Rajaji Salai, Chennai-600 001.
3. M/s AUM Associates, Suite No. 25, 1<sup>st</sup> Floor, R.R. Complex, No. 1, Murthy Lane, Rattan Bazaar, Chennai – 600 003.

4. PPS to AS (RA)
5. Guard File
6. ~~Spare Copy~~
7. Notice Board

ATTESTED

  
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