

F. No. 375/07/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.....04/10/21

Order No. 203/21-Cus dated 04-10-2021 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 332(SM)/CUS/JPR/2018 dated 26.09.2018, passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Jaipur.

Applicant : M/s Nandi Exports, Jaipur.

Respondent : Commissioner of Customs, Jaipur.

\*\*\*\*\*

**ORDER**

Revision Application No.375/07/DBK/2019-RA dated 01.01.2019 has been filed by M/s Nandi Exports, Jaipur, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 332(SM)/CUS/JPR/2018 dated 26.09.2018 passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Jaipur. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal of the Applicant against the Order-in-Original No. 08/2015 dated 26.03.2015 passed by the Joint Commissioner of Customs, Jaipur on the ground that the Applicant had themselves admitted that they had availed higher drawback on the strength of inflated value in export invoices/Shipping Bills.

2. The brief facts of the case are that an intelligence was received by Customs (Preventive), Jaipur, that the Applicant was indulging in claiming inadmissible Drawback on the exports of Readymade Garments, Textile Made-ups and Articles for furnishing & bedding etc. by way of issuing parallel sales invoices for a single export consignment i.e. one for Customs purpose showing therein highly inflated value with an intent to claim unintended Drawback and other for obtaining 'Country of Origin Certificate' from Rajasthan Chamber of Commerce & Industry. Based on the investigations conducted, a show cause notice dated 24.07.2014 was issued in respect of exports made through ICD, Jaipur and Air Cargo Complex, Jaipur. The original authority disallowed the amount of inadmissible drawback of Rs. 14,14,637/- under Section 75 of Customs Act, 1962 read with Rule 4 of the Customs and Central Excise Duties Drawback Rules, 1995 and ordered for its recovery from the Applicant

under Rule 16 of the Customs and Central Excise Duties Drawback Rules, 1995 along with interest. Besides, penalty of Rs. 5,00,000/- was also imposed on the Applicant under Section 114(iii) of the Customs Act, 1962. An amount of Rs. 9,76,560/- (against inadmissible drawback) and Rs. 2,51,070/- (against interest), which was deposited during investigation, was appropriated towards demand of drawback and interest, as above. Aggrieved, the Applicant filed appeal before the Commissioner (Appeals) who rejected the appeal. Hence the instant revision application.

3. The revision application has been filed, mainly, on the ground that the goods were exported on basis of invoices submitted to Customs and full remittance from overseas buyer through proper banking channel has been received.

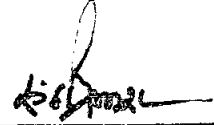
4. Personal hearing, in virtual mode, was held on 01.10.2021. Sh. R.G. Chaudhary, Authorized Representative/Consultant appeared on behalf of the Applicant and reiterated the contents of the revision application. Upon being asked, Sh. Chaudhary explained that the Chamber of Commerce while issuing the Certificate of Origin seeks invoice from the exporter, which they (Chamber of Commerce) in turn certify. Further, in this case, the Proprietor has already admitted that the invoices reflecting lower price were given to the Chamber of Commerce under compulsion of buyer. Upon being further asked, Sh. Chaudhary submitted that it is not readily clear whether Customs invoices were negotiated through Bank. Sh. Chaudhary specifically highlighted that the demand in Para 7 of the show cause notice is on the basis of parallel invoices whereas that in Para 8 is on the assumption

that the value would have been inflated since the export goods were similar. The demand in Para 8 is, therefore, not based on any direct evidence. None appeared on behalf of the respondent nor any request for adjournment has been received. Hence, the case is taken up for final decision, on the basis of records.

5. The Government has carefully examined the matter. The Commissioner (Appeals) has by a well reasoned order, and, specifically relying upon the judgment of Hon'ble Supreme Court in Om Prakash Bhatia vs. Commissioner Customs {2003 (155) ELT 423 (SC)}, rejected the appeal. Further, it is an admitted fact that the Applicant had prepared two invoices one for Customs purpose and other for obtaining Country of Origin Certificate from the Chamber of Commerce. As per Section 50 of the Customs Act, the exporter while presenting a Shipping Bill shall make and subscribe to a declaration as to the truth of its contents. The acceptance of the fact by the Applicant that they had prepared two invoices at the first instance itself makes the correctness of the value declared in the Shipping Bills for export purpose doubtful. Further, by preparing parallel invoices one with lesser value and another reflecting higher value, for the same consignment, the Applicant had evidently engaged in fraudulent conduct. The contention that this was done at the instance of the Buyer can not absolve the Applicant of their concomitant responsibility. It is also apparent that such fraud and collusion by the Applicant by way of suppression of value, allegedly at the instance of buyer, could have been only to provide some benefit or advantage to the buyer, which benefit or advantage would have been shared by the buyer with the seller (i.e. the Applicant herein). The

Hon'ble Supreme Court has, in the case of **Commissioner of Customs, Kandla Vs. Essar Oil Ltd. [2004 (172) ELT 0433 (SC)]**, held that "fraud is an act of deliberate deception with the intention of securing something by taking unfair advantage of another." Further, "Fraud as is well known vitiates every solemn act. Fraud and Justice never dwell together.....Fraud is an anathema to equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine." Thus, the Government is not persuaded to grant any relief to the Applicant in this case, which is tainted/vitiated by fraud.

6. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

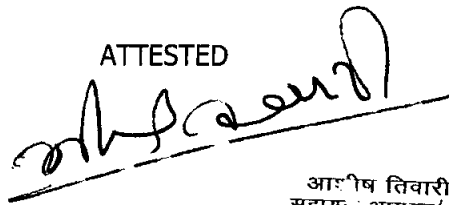
M/s Nandi Exports,  
846, Gupta Garden,  
Govind Nagar West,  
Amber road,  
Jaipur, Rajasthan.

Order No. 203/21-Cus dated 04-10-2021

Copy to:

1. The Commissioner of Customs, New Central Revenue Building, Statue Circle, C Scheme, Jaipur-302 005.
2. The Commissioner of CGST & Customs (Appeals), New Central Revenue Building, Statue Circle, C Scheme, Jaipur-302 005.
3. Sh. R.G. Chaudhary, Consultant, 16, CR House, Guru Jambheshwar Nagar, Main Queens Road, Jaipur – 302 021.
4. PA to AS(RA)
5. ~~Guard File~~
6. Spare Copy.

ATTESTED



5

आशीष तिवारी / ASHISH TIWARI  
सहायक आयुक्त/Assistant Commissioner  
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क  
CGST, Central Excise & Customs  
राजस्व विभाग / Department of Revenue  
वित्त मंत्रालय / Ministry of Finance  
भारत सरकार / Government of India  
नई दिल्ली / New Delhi