

F.No. 375/38/DBK/2019-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue. 28/10/21

Order No. 244 /21-Cus dated 28-10-2021 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.CC(A)Cus/D-II/EXP/ICD/TKD/3535/18-19 dated 14.02.2019, passed by the Commissioner of Customs (Appeals), Delhi.

Applicant : M/s Ambika Creation, Surat.

Respondent : Commissioner of Customs (Export), ICD, TKD, Delhi

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**ORDER**

A Revision Application No.375/38/DBK/2019-RA dated 22.05.2019 has been filed by M/s Ambika creation, Surat (hereinafter referred to as the Applicant) against the Order No. CC(A)Cus/D- II/EXP/ICD/TKD/3535/18-19 dated 14.02.2019, passed by the Commissioner of Customs (Appeals), New Delhi. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal of the Applicant against the Order-in-Original No. 11/2018/Avinash Pushkarna/ADC/Export/ICD/Tkd dated 02.02.2018, passed by the Additional Commissioner of Customs, ICD, Tuglakabad, New Delhi.

2. Brief facts of the case are that the Applicant filed six Shipping Bills under claim of drawback for the goods declared as 'Knitted fabric fancy long scarves'. On the basis of an intelligence that the value declared in respect of the exported goods is overvalued, the SIIB unit examined the subject six consignments. On investigation, it was alleged by the department that the value of the exported goods was highly inflated and the Applicant had attempted to export the goods in question on inflated value with the intent to avail higher quantum of drawback, which was otherwise not admissible. A market enquiry was conducted by the respondent department wherein it was found that the market price of the impugned goods is between Rs. 245/- to Rs. 260/- per piece and, accordingly, department redetermined the value of impugned goods as Rs. 250/- per piece. Vide the above said Order-in-Original dated 02.02.2018, the value of exported goods was re-determined as Rs.2,38,70,000/- for drawback purpose, as against the declared value

of Rs. 3,65,55,430/-. Penalty of Rs. 11,50,000/- was also imposed on the Applicant under Section 114 (iii) of the Customs Act. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected.

3. The instant revision application has been filed, mainly, on the grounds that the transaction value can not be rejected except in accordance with the provisions of Section 14 and Rule 8 of Customs Valuation (Determination of value of Export Goods) Rules, 2007; that the value has been redetermined on the basis of market inquiry when as per Rule 6 local market price may not be the only basis for determining the value of export goods; that export proceeds had been realized, therefore, allegation of over valuation does not sustain; and that denial of drawback by alleging overvaluation is not sustainable, consequently, penalty is also not imposable.

4. Personal hearing, in virtual mode, was held on 22.10.2021. Sh. R.K. Verma, Advocate appeared for the Applicant and reiterated the contents of revision application. Upon being asked whether statement admitting the overvaluation made during the investigations was retracted, Sh. Verma admitted that the retraction was not done. However, he submitted that the FOB value cannot be rejected merely on the basis of a statement and entire facts of the case have to be considered. None appeared for the respondent department nor any request for adjournment has been received.

5.1 The Government has examined the matter carefully. At the outset, it is clear that the case of the Applicant to challenge the export value is based on the fact that

the acceptance of value and market enquiry during investigation does not debar them from contesting the same.

5.2 The Government observes that, on examination of the goods by the SIIB, it appeared that the value of the export goods was inflated. Therefore, to ascertain the correct value, a market enquiry was conducted by the department. The market inquiry brought out that the value of the exported goods declared by the Applicant was on a higher side. The Government further observes that the Applicant had not produced any evidence on record either before the adjudicating authority or before the Commissioner (Appeals) to negate the findings of the market enquiry. Further, Shri Anil Gupta, Proprietor, in his statement dated 26.12.2017, recorded under Section 108 of the Customs Act, 1962, had, inter-alia, admitted that he would not be able to provide invoice/cost data in respect of the subject goods and rather they would rely on the market verification report for their valuation; that, however, he did not agree with the report of their export goods obtained from M/s Orient Craft. Keeping in view the objections raised by Sh. Anil Gupta, another market inquiry was conducted with other entities i.e. other than M/s Orient Craft. Sh. Gautam Rajkumar Barmecha, the authorized representative of the Applicant firm, in his statement dated 25.01.2018, accepted the value as determined by the respondent department as per second market enquiry report. It is also admitted during the course of personal hearing that the said statements were never retracted. Further, the Applicant had sought waiver from show cause notice and personal hearing at the stage of adjudication of the case by the original authority, which clearly exhibits that the Applicant had no grounds to contradict the department's case. Another

significant fact to be noticed is that the Applicant had not agreed with the first market inquiry and, therefore, a second inquiry was conducted by the department. As such, it is evident that the admission in respect of the value determined as per the second inquiry was a well considered decision of the Applicant. It is also evident that the Applicant has participated in the investigations and had an effective say during the investigations.

5.3 The cost sheet submitted by the Applicant, at this stage, appears to be nothing but an afterthought as, during the investigations, the Applicant had admitted that they had no cost data to justify the correctness of the declared value.


5.4 Further, the Government observes that the realization of export proceeds is not conclusive to prove that the value declared in respect of the export goods is genuine. Hon'ble High Court of Calcutta, in the case of Collector of Customs vs Pankaj V. Sheth {1997(90)E.L.T. 31 (Cal.)}, has held that remittance of full foreign exchange into India is not a sure indication of declared export value being correct. In the case of Om Prakash Bhatia vs. Commissioner of Customs, Delhi {2001(127)ELT81(Tri-LB)}, wherein the department had alleged overvaluation in respect of exports made under claim of Drawback, a 5 member bench of the Tribunal followed the decision in Pankaj V. Seth (Supra) and upheld the act of the department to resort to market inquiry to ascertain the correct value.

5.5 The Applicant has relied heavily on the judgment of Hon'ble Supreme Court in the case of Commissioner of Customs, Mumbai Vs Tex-Age {2016(340)EKT3(SC)}. The Government observes that, in the said case, the Apex Court has refused to

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interfere with the order of Tribunal [2008(221)ELT395(Tri-Mumbai)] as the finding recorded by the Tribunal " is a pure question of fact and no question of law arises for consideration." As brought out above, the facts of the present case are different. Similarly, the other case laws relied upon are also not applicable in the facts of this case.

6. In view of the above, no case is made out to interfere with the impugned Order-in-Appeal. The revision application is rejected.

  
(Sandeep Prakash)

Additional Secretary to the Government of India

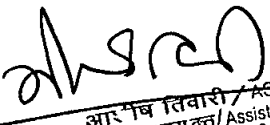
M/s Ambika Creation,  
Godown No. A-19/6, Floor-1, Road No. 7,  
Gala No. 2, Udhana Udhayog Nagar,  
Surat, Gujarat-394210

Order No. 244 /21-Cus dated 28-10-2021

Copy to:

1. The Commissioner of Customs (Exports), ICD, Tughlakabad, New Delhi -110020.
2. Commissioner of Customs (Appeals), Delhi, New Custom House, New Delhi 110037.
3. Sh. Rajnish Kumar Verma, Advocate, C-2A/267-B, Janakpuri, Opposite Kendriya Vidyalaya, New Delhi 110058.
4. PS to AS(RA)
5. Guard File.
6. Spare Copy

Attested

  
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  
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