

SPEED POST



F. No. 373/92/DBK/2016-R.A.
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..14/12/22

Order No. 382/22-Cus dated 3.12.2022 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 Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 402/2015-16 dated 23.03.2016, passed by Commissioner of Customs (Appeals), Cochin.

APPLICANT : M/s. Sell Well International, Mahe.

RESPONDENT : The Commissioner of Customs, Cochin

ORDER

A Revision Application No.373/92/DBK/2016-RA dated 12.05.2016 has been filed by M/s. Sell Well International, Mahe (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 402/2015-16 dated 23.03.2016, passed by the Commissioner of Customs (Appeals), Cochin. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, upheld the Order-in-Original No. 33/2012 dated 13.06.2012 passed by the Additional Commissioner of Customs (SIIB), Custom House, Cochin.

2. Briefly stated, the Applicants herein had filed 57 Shipping Bills for the export of readymade garments during the year 2006 to 2010 and declared M/s Mix Max International (hereinafter referred to as the supporting manufacturer) as the supporting manufacturer in terms of the Board's Circular No. 54/2001-Cus dated 19.10.2001. Subsequently, the Applicant filed drawback claims before the jurisdictional Customs authorities and in respect of 49 Shipping Bills, drawback was sanctioned. But in respect of 08 Shipping Bills, the Applicant filed supplementary claim for Central Excise portion which was not granted earlier. Further, drawback claims in respect of 08 Shipping Bills pertaining to Central Excise portion were pending with queries. Original authority, vide the above mentioned OIO dated 13.06.2012, ordered that the Central Excise portion of drawback already granted amounting to Rs. 20,95,777/- be recovered from the Applicant along with applicable interest under Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, as the declaration of the Applicant that the M/s Mix Max International is a manufacturing firm was not found to be correct. The goods covered under 49 Shipping Bills were also held liable to confiscation under Section 113 (ii) of the

Customs Act, 1962 and a penalty of Rs. 3,00,000/- was imposed on the Applicants herein under Section 114 of the Act *ibid*. The appeal filed by the Applicants herein has been rejected by the Commissioner (Appeals), *vide* the impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that they are held to be not eligible for Central Excise portion of drawback under Circular No. 54/2001-Cus dated 19.01.2001 in absence of a supporting manufacturer; that they are otherwise eligible for the Central Excise portion of drawback in terms of Board's Circular No. 16/2009-Cus dated 25.05.2009, which is clarificatory in nature and hence has a retrospective effect; that at the time of issuance of show cause notice dated 12.12.2011 the requirement of declaring a supporting manufacturer was non-est in view of Circular No. 16/2009-Cus; and that the goods are not liable to confiscation under Section 113 and penalty is also not imposable under Section 114.

4. Personal hearing in the matter was held on 12.12.2022, in virtual mode. Sh. Anil Kumar, Advocate appeared for the Applicant and reiterated the contents of the revision application. No one appeared for the Respondent department and no request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

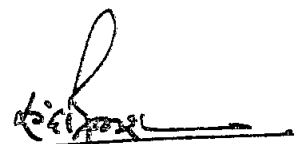
5.1 Government has examined the matter carefully. It is observed that the exports in the instant case were made during the year 2006 to 2010. It is also on record that the Mix Max International had started their operations from 16.06.2009 as per the Certificate of District Industries Center. Further, the supporting manufacturer was engaged only in

the trading and not manufacturing as per the registration certificate issued by the Commercial Taxes Department. As per Board's Circular no. 54/2001, in order to avail full rate of duty drawback (i.e. inclusive of Central Excise portion), the merchant exporters have to furnish a declaration from their supporting manufactures declaring that they are manufacturing and supplying garments to that particular merchant exporter only and that they have not availed any CENVAT facility in respect of any garments manufactured by them. As such, the basic requirement of the Circular No. 54/2001 is that the supporting manufacturer has to be engaged in manufacturing activities. As is evident from the above, that the supporting manufacturer had started their operations only in 2009 and as such does not cover most of the period during which exports were made. The contention of the Applicant that the entity declared to be the supporting manufacturer was indeed involved in the manufacturing activities is also negated by the fact that if they were indeed doing so, they should have obtained registration with Central Excise department as a manufacturer, since the subject garments were otherwise not exempt from the Central Excise duty. Even otherwise, as already brought out hereinabove, the entity declared as a supporting manufacturer was registered with the State Tax authorities only for trading.

5.2 The Applicants have placed reliance on Board's Circular No. 16/2009-Cus dated 25.09.2009 and submitted that by virtue of the said Circular the merchant exporters who purchase goods from local market shall be entitled to full rate of duty drawback (including excise portion). It is further submitted that the Circular dated 25.09.2009 has a retrospective application. This position is sought to be supported by a judgment of the Hon'ble Delhi High Court in the case of Maalvika Impex (India) vs. Commissioner of Customs {2014 (310) ELT 868 (Del.)}. The Government finds that in Maalvika Impex

(supra), the Hon'ble High Court has followed its earlier decision in the case of Commissioner of Customs (Export) vs. Kultar Export {2013 (288) ELT 187 (Del)}. In Kultar Export (supra), the Hon'ble High Court had upheld a decision of the Tribunal wherein the Tribunal had, inter-alia, held that the Circular No. 54/2001-Cus and certificates as per this Circular are not applicable to the merchant exporters who buy goods from open market. In this light, the Tribunal extended the benefit of Circular No. 18/2009-Cus to M/s Kultar Exports. In the present case, on the other hand, the Applicants herein themselves admitted applicability of Circular No. 54/2001-Cus and filed declaration/certificates as per this Circular. The case against the Applicants is originating out of misdeclaration made while showing compliance with the said Circular. The Applicant cannot be allowed to, on one hand, accept applicability of Circular No. 54/2001-Cus and make declarations etc; as required, at the time of exports and, on the other hand, deny the applicability of very same Circular when called out for mis-declaration. Thus, the subject contentions based on Circular No. 16/2009-Cus and decision in Maalvika Impex (India) cannot be accepted.

6. In view of the above, the impugned Order-in-Appeal does not merit revision. The Revision Application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s. Sell Well International,
MC4/708-A, Near Family Super
Market, Main Road,
Mahe-673310.

Order No. 382/22-Cus dated/3-12-2022

Copy to:-

1. The Commissioner of Customs, Customs House, Cochin-682009.
2. The Commissioner of Customs (Appeals), Custom House, Cochin-682009.
3. Sh. Joy Thattil & Co. Advocates, Chittoor Road, Cochin-682012.
4. P.S TO A.S (RA)
5. Guard File
- ✓ 6. Spare Copy
7. Notice Board

ATTESTED

LR

13.12.22

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