



F.Nos.375/76/DBK/2020-RA  
375/75/DBK/2020-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. 18/5/22

Order No. 14142/22-Cus dated 18-05-2022 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. CC(A)Cus/D-II/Export/ICD/TKD/712-713/2020-21 dated 07.09.2020, passed by the Commissioner of Customs (Appeals), NCH New Delhi.

Applicants : 1) M/s B.P. International, Ghaziabad.  
2) Shri Prempal Singh, Proprietor of M/s B.P. International.

Respondent : The Commissioner of Customs (Export), ICD, Tughlakabad.

## **ORDER**

Two Revision Applications, bearing Nos. 375/76/DBK/2020-RA, 375/75/DBK/2020 both dated 14.12.2020, have been filed by M/s. B.P. International, Ghaziabad (hereinafter referred to as the Applicant -1) & Shri Prempal Singh, Proprietor of M/s B.P. International ( hereinafter referred to as the Applicant-2), respectively, against the Order-in-Appeal No. CC(A)Cus/D-II/Export/ICD/TKD/712-713/2020-21 dated 07.09.2020, passed by the Commissioner of Customs (Appeals), NCH, New Delhi. Commissioner (Appeals), has vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 60/2018/ Avinash Pushkarna/ADC/Export/ICD/TKD dated 31.08.2018, passed by the Additional Commissioner of Customs, ICD TKD (Export), Tughlakabad, New Delhi.

2. Brief facts of the case are that on the basis of an intelligence that a syndicate comprising of certain persons was indulging in fraudulent availment of duty drawback by exporting inferior quality readymade garments through various bogus firms for which neither exports documents were submitted in the concerned banks nor remittances were received through legal channel, the Directorate of Revenue Intelligence stated an investigation. Upon completion of investigations, a show cause notice dated 13.03.2014 was issued to several noticees, including the Applicants herein, to show cause as to why the goods exported should not be confiscated under Section 113(d) and 113(i) of the Customs Act, 1962 read with Section 50 of the Customs Act, 1962 as

the goods exported were over invoiced and undue export incentive under drawback scheme was availed. Further, the drawback already availed by them should not be recovered under Rules 16 and 16 A of the Customs and Central Excise Duties Drawback Rules, 1995 along with applicable rate of interest. In addition, Applicant -1 and Applicant-2 were asked to show cause as to why penalty under Section 114 (i) & (iii) of the Customs Act, 1962 should not be imposed upon them for alleged acts of commission and omission. Vide the above said Order-in-Original dated 31.08.2018, the case against the noticees was confirmed. It was, inter-alia, ordered that the goods exported by the Applicant-1 be confiscated under Section 113 (d) and 113 (i) of the Customs Act, 1962. However, since the goods were not available for confiscation, a fine of Rs. 5,00,000/- was imposed under Section 125 of the Act, *ibid.* Besides, drawback already availed by the Applicant-1 was ordered to be recovered along with applicable rate of interest. Penalty of Rs. 20,00,000/- each was also imposed on the Applicant-1 and Applicant-2 under Section 114 (i), 114 (iii) and Section 114 AA of the Customs Act, 1962. The penalty imposed on Applicant-1 was ordered to be recovered from one Sh. Harish Choudhary. Aggrieved, the Applicants herein filed appeals before the Commissioner (Appeals), who vide the above mentioned Order-in-Appeal, rejected the Appeals.

3. The revision applications have been filed on the grounds that the impugned order is not sustainable in law as it has been passed without taking into account the circumstances revealed in the investigations; that during the investigations it was found that Sh. Harish Choudhary

alongwith Sh. Gopal Sharma were the actual exporters who had violated the different provisions of law and, therefore, the drawback was recoverable from them; that the Applicants were not at all involved in the export of readymade garments and had not claimed any drawback nor were they ultimate beneficiaries ~~persons~~ and, hence, had not acted in any manner to make the goods liable for confiscation; that, therefore, penalty was not imposable on them under Section 114 of the Customs Act; and that no evidence for abetment and collusion has been brought out. Accordingly, it has been prayed that the impugned Order-in-Appeal be set aside and the drawback should be recovered from the masterminds.

4. Personal hearing was granted on 08.04.2022 and 13.05.2022. In the hearing held, in virtual mode, on 13.05.2022, Shri. Mohan Lal, Consultant appeared for the Applicants and reiterated the contents of the RA. He submitted that all transactions in the name of M/s. B.P. International were not in his knowledge – he was neither the exporter nor acted or omitted to do anything to make the goods liable to confiscation under Section 113(d) & (i) of the Customs Act, 1962. Hence, penalty was not imposable on Shri. Prempal Singh. Further, the goods were not available for confiscation. Hence, no redemption fine was imposable. No one appeared for the respondent department nor any request for adjournment has been received.

5.1 The Government has examined the matter carefully. The fact of fraudulent exports and consequently wrong availment of drawback is not

disputed by the Applicants. However, it is their case that the fraudulent exports and consequent wrong availment of drawback was masterminded by other persons. It is averred that the Applicants had no knowledge about the fraudulent exports and had not acted or omitted to act in any manner which made the goods liable to confiscation. On the other hand, the case of the department is that the Applicant-2, at the instance of Sh. Harish Choudhary, handed over his identity documents etc., for opening of a proprietorship firm, namely, M/s. B.P. International (Applicant-1). It is also brought out that the Applicant-2 was promised pecuniary benefits in lieu of allowing his identity to be used for floating of this firm and operation of bank accounts etc., in its name. Further, it is on record that the Applicant-2 was aware that an amount of Rs. 50,79,249/- had been deposited in his firm's account which was further transferred through RTGS. The fact of providing the identity documents, signing blank checks and otherwise facilitating the transactions is not denied. The question, therefore, that arises for consideration is whether the Applicants have by acting in this manner rendered the goods liable to confiscation under Section 113.

5.2 The Government observes that the Applicant-2 not only facilitated the fraudulent exports by providing his identity documents for floating a fake firm but also signed blank checks etc. He was also aware of a substantial amount of Rs. 50,79,749/- being deposited in his firm's account which was further transferred through RTGS. It is also on record that an amount of Rs. 1,80,000/- was paid by the masterminds for opening of each of such fake firms and for enabling the fraudulent

transactions. There is also no allegation that Applicant-2 was coerced into acting in this manner. In this light, the Government is in agreement with the authorities below that no prudent person would sign documents, blank checks etc., without exercising due caution. The Government takes specific note of the fact that the Applicant-2 failed to verify the scope of transactions being conducted in the name of his firm even when substantial amounts were deposited in and transferred out of the bank accounts. Thus, the conclusion is inescapable that the Applicant-2 was a willing participant in the fraud. As such, the Applicants cannot be absolved of their liability in the matter.

6.1 It has been contended that the goods are not available for confiscation and therefore, fine under Section 125 of the Act cannot be imposed. The relevant extracts of Section 125 are as under :

*"Section 125 : Option to pay fine in lieu of confiscation. –*

*(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or where such owner is not known, the person from whose possession or custody, such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :*

*-----*  
*Provided further that, without prejudice to the provisions of the*

*proviso to sub-section (2) of Section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

*(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges, payable in respect of such goods.*

*(3) -----."*

6.2 On a plain reading of Section 125, it is apparent that the question of levy of fine thereunder would arise pursuant to the findings that the goods are liable to be confiscated. The Applicants do not dispute that the subject goods are liable to be confiscated. There is nothing in Section 125 to indicate that the availability of the goods is necessary for imposing the redemption fine. The Hon'ble Madras High Court has, in the case of VISTEON AUTOMOTIVE SYSTEMS INDIA LIMITED vs CESTAT, CHENNAI {2018 (9) G.S.T.L 142 (Mad.)}, held as under :

*"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularized, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting*

*confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Wherever confiscation of any goods is authorized by this Act ...", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."*

6.3 In view of the above, the subject contention of the Applicants cannot be accepted.


7. It is also the contention of the Applicants that being a proprietorship firm both the firm and the proprietor cannot be penalised. In normal course, there can be no dispute with this proposition. However, in the present case, the penalty imposed on the firm has been ordered to be recovered from the mastermind. Therefore, the position is different in the present case. The Government, however, observes that in the facts and circumstances of the case, there is no justification for



imposing equal amount of penalty on Applicant-2, i.e., penalty amount equal to the penalty ordered to be recovered from the mastermind. Accordingly, the penalty imposed on the Applicant-2 is reduced to Rs. 5 lakhs.

8. In view of the above, the Revision Applications are rejected, except to the extent of modification in penalty imposed on Applicant-2, as above.

(Sd/-)  
(Signature)  
(Date)  
(Place)

  
(Sandeep Prakash)

Additional Secretary to the Government of India

To,

1. M/s. B.P. International.  
III-G-26, Nehru Nagar Extn.,  
Near Subhiksha Store,  
Ghaziabad, U.P.- 201001.
2. Mr. Prempal Singh,  
Proprietor of M/s. B.P. International, III-G-26,  
Nehru Nagar Extn., Near Subhiksha Store,  
Ghaziabad, U.P.- 201001.

Order No. 141-142/22-Cus dated 18-05-2022

Copy to:

1. The Commissioner of Customs(Export), ICD, TKD,  
Tughalakabad, New Delhi- 110020.
2. The Commissioner of Customs(Appeals), New Customs House,  
Near IGI Airport, New Delhi-110037.

3. Shri Mohan Lal, Advocate, B-67, Flatted Factories Complex,  
Okhla Phase-III, New Delhi-110020.

4. PA to AS(RA).

✓ 5. Guard File.

6. Spare Copy.

ATTESTED



(लक्ष्मी राघवन)  
(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi