

SPEED POST



F.No. 373/138/DBK/2021-RA
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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..15/5/22

Order No. 189-19/ / 23-Cus dated 15-5-2023 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 Orders-in-Appeal Nos. 154-157/2020 dated 02.11.2020, passed by Commissioner of Customs (Appeals), Bengaluru.

APPLICANTS : 1. Shri Ravidranath Tagore, Chennai
2. Ms. R. Amritha Priya, Coimbatore
3. M/s Azomatrix Impex, Coimbatore

RESPONDENT : The Principal Commissioner of Customs, Airport & ACC, Bengaluru

ORDER

Three Revision Applications, bearing Nos. 373/138/DBK/2021-RA, 373/139/DBK/2021-RA and 373/140/DBK/2021-RA all dated 23.04.2021, have been filed by Shri Ravindranath Tagore, Partner of M/s Azomatrix Impex, Chennai, Smt. R. Amritha Priya, Partner of M/s Azomatrix Impex, Chennai and M/s Azomatrix Impex, Chennai, (hereinafter referred to as the Applicant- 1, 2 & 3, respectively) against the Orders-in-Appeal Nos. 154-157/2020 dated 02.11.2020, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide the aforesaid Order-in-Appeal, modified the Order-in-Original No. 427/2019(BACC) dated 29.06.2019, passed by the Additional Commissioner of Customs, Air Cargo Complex, Bengaluru to the extent of reducing the penalties imposed on the Applicants herein under Section 114 of the Customs Act, 1962 and by setting aside the penalties imposed under Section 114 AA of the Act, *ibid*.

2. Briefly stated, the officers of Directorate of Revenue Intelligence (DRI) had gathered information that M/s Logo Trading and M/s Azomatrix Impex (Applicant 3) were exporting rejected/torn/damaged items of leather like material/inferior leather material having negligible commercial value by way of declaring it as genuine/100% pure leather item with exaggerated value with mala-fide intention to fraudulently claim drawback and other export benefits. Pursuant thereto, the officers intercepted two consignments of 10 shipping bills pertaining to M/s Logo Trading and 10 shipping bills of M/s Azomatrix Impex at Air Cargo Complex, Bengaluru. The items declared in the said shipping bills were "100% Shoe Uppers for Ladies" with a combined FOB value of Rs. 2,34,60,960/- and the total drawback claimed was Rs. 19,23,800/-. Upon opening the consignments, it was found that the goods were not of genuine leather but assorted materials of rejects/waste/torn/worn-out shoe uppers made of worn out/inferior/damaged leather/Rexene/other materials. The goods were thereafter seized, vide Mahazar dated 20.09.2016. In follow-up, the premises of M/s Logo Trading, Coimbatore, M/s Azomatrix Impex as well as that of Shri. Md. Zubril S, Proprietor of M/s Logo Trading were searched on 21.09.2016. In the search of the declared premises of Applicant 3, no incriminating documents related to Applicant 3 were found. However, certain COFEPOSA/SAFEMFOPA documents of Shri Pandian Muruganathan alias Shiv

Pandian (uncle of Applicant 1) and his sister were found. The said premises was found to be purely residential and no manufacturing or trading was seen. The statements of the Customs brokers were also recorded under Section 108 of the Customs Act, 1962. In his statement dated 29.09.2016, Shri Vimalan Parthiban, an 'H' Card holder, recorded on 29.09.2016, wherein he, inter-alia, stated that the Applicant 1 had insisted and instructed him to do the shipment by breaking into different shipping bills so that the drawback claim could be kept within Rs. 1,00,000/-. The samples drawn from the seized consignments were sent to Central Leather Research Institute (CLRI), Chennai for testing. As per CLRI's report, the goods were mixed composition of leather and non-leather and only a nominal portion of leather was convertible to a footwear product. It was further stated that more than 60% of the shoe uppers could not be converted into footwear. Upon completion of the investigations, a show cause notice dated 16.03.2017 was issued, which was adjudicated vide the aforesaid Order-in-Original dated 29.06.2019. The original authority ordered confiscation of the goods entered for export by the Applicant 3, having declared FOB value of Rs. 1,17,30,480/-, under Sections 113(d), 113(i) and 113(ia) of the Customs Act, 1962. Penalties of Rs. 25,00,000/- and Rs. 8,00,000/- were also imposed on Applicant 3, under Section 114 and 114 AA, respectively. The original authority also imposed penalties of Rs. 1,00,000/- and Rs. 50,000/- each on Applicant 1 and 2, under Section 114 and Section 114AA, respectively. The goods entered for exports in the name of M/s Logo Trading were also ordered to be confiscated and penalties were imposed. In the appeals filed by the Applicants herein, the Commissioner (Appeals) upheld the order of confiscation but reduced the penalties imposed on Applicant 1, 2 and 3 under Section 114 to Rs. 50,000/-, Rs. 50,000/- and Rs. 5,00,000/- respectively, whereas penalties imposed under Section 114AA were set aside.

3. The revision application has been filed by Applicant 3, mainly, on the grounds that the imposition of penalty under Section 114 has no legal sanctity and it is liable to be set aside and that the quantum of penalty imposed on Applicant 3 is highly excessive. In respect of Applicant 1 and 2, the main contention raised in the respective revision applications is that the Applicants are the partners in the partnership firm, i.e., M/s Azomatrix Impex (Applicant 3) and are, therefore, not separately liable for penalty.

4. Personal hearing in the matter was held on 28.04.2023, in virtual mode. Shri M. Nagendra, Advocate and Shri Animesh Garg, DC appeared for the Applicant and Respondent department, respectively. After proceeding with the hearing for some time, Shri Nagendra sought adjournment to seek instructions. Request was accepted. The department was instructed to keep the investigation file handy on the next date of hearing. The next hearing was held, in virtual mode, on 12.05.2023. Shri M. Nagendra, Advocate appeared for the Applicant and requested that the additional submissions made on 12.05.2023 may be taken on record. He reiterated the contents thereof. Shri Animesh Garg, DC appeared for the Respondent department and highlighted that:

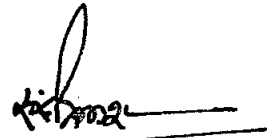
- (i) Search was conducted at the registered premises of the Applicant firm. Therefore, it is incorrect of the Applicants to claim that they were not aware of the investigations.
- (ii) Despite being so aware, they did not join the investigations and are now claiming that the proceedings were held behind their back.
- (iii) The contention that the documents were fabricated in the name of Applicant firm is an afterthought as this was never raised before the Commissioner (Appeals).
- (iv) The goods were seized under Mahazer dated 20.09.2016 and are still available with the custodian.

He accordingly submitted that penalty under Section 114 has been correctly imposed for attempt to export goods which are liable to confiscation under Section 113.

5. The Government has carefully examined the matter. The crux of the allegations against the Applicants herein is that they were exporting sub-standard goods by over valuing them and by attempting to circumvent the checks and balances by splitting the consignments. It is, on the other hand, the contention of the Applicants, as brought out in the additional submissions, that the applicants were not involved in the alleged exports of goods and that they were unaware of the exact nature of these goods which were being attempted to be exported by M/s Logo Trading in their name, without bringing it to their knowledge. Hence, they cannot be held responsible for the same. The Government finds that though a search was conducted at the premises of the Applicant 3 on 21.09.2016, the

Applicants did not join the investigations thereafter. It would also appear from the order passed by the original authority that no replies were filed in response to the show cause notice and the Applicants did not even attend the personal hearings. The letters calling for their reply and the personal hearing were returned undelivered. As such, the original authority did not have before him the defence of the Applicants and proceeded to confirm the allegations made in the show cause notice, vide short and cryptic finding recorded in para 21 of the Order-in-Original. The Commissioner (Appeals) has also been tentative in his findings, perhaps due to the fact that he did not have the benefit of detailed findings recorded by the original authority. The Government observes that grave and serious allegations of fraudulent attempt to export substandard goods as a part of well-conceived modus-operandi have been levelled against the Applicants herein. Adjudication of such allegations requires detailed examination of facts presented in the show cause notice vis-à-vis the defence put forth by the Applicant. Therefore, it would be in the interest of justice to remand the matter to the original authority for examination afresh. The Applicants herein are also directed to join the de-novo proceedings before the original authority who would, after providing sufficient opportunities for making written and oral submissions, decide the case within a period of three months.

6. The Revision Applications are, accordingly, allowed by way of remand to the original authority with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. Shri Ravindranath Tagore,
No. B.1, Rajam Apartments,
Muthukrishnan Street, Aminjikarai,
Chennai – 600 029.
2. Ms. R. Amritha Priya
No B.2, Shubha West Hill Vedapatti,
Sundampalayam,
Coimbatore – 641 007.

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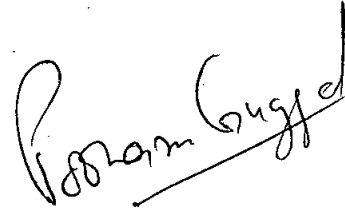
3. M/s Azomatrix Impex,
No. 19/23, Nanjammal Street,
K.K. Pudur, Saibaba Colony,
Coimbatore – 641 038.

Order No. 189-191/23-Cus dated 15-5-2023

Copy to:-

1. The Principal Commissioner of Customs, Airport & Air Cargo Complex, Air India Sats, Air Freight Terminal, Kempegowda, Bengaluru – 560 030.
2. The Commissioner of Customs (Appeals), BMTC Building, BMTC Bus Stand, Domlur, Bengaluru – 540 071.
3. Shri. M. Nagendra Murthy, Advocate, No. 219, SLV Parkview Apartment, 2nd Floor, Sir M. Vishweswariah 5th Stage, Near Kodagu Gowda Samaja Choultry, Ullalu Village, Bengaluru – 560 056.
4. PPS to AS (RA)
5. Guard File
- ✓ 6. Spare Copy
7. Notice Board

ATTESTED



पूनाम गुग्गल / Poonam Guggal
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