

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**NEW DELHI**

PRINCIPAL BENCH – COURT NO. – IV

**Customs Appeal No. 50306 of 2022 [SM]**

[Arising out of Order-in-Appeal No. CC(A)/Customs/D-II//ICD/TKD/Export/1153-1154/2021-2022 dated 27.09.2021 passed by the Commissioner of Customs (Appeals), New Delhi]

**Shri S.K. Jindal (Director)**

**...Appellant**

M/s. Bhavan Jindal Exim Pvt. Ltd.  
R. No. 5, Shakti Sadan Kapol Wadi,  
Opp. GH High School, MG Cross Road,  
Borivali East, Mumbai,  
Maharashtra - 400066

*VERSUS*

**Commissioner of Customs,  
New Delhi**

**...Respondent**

New Customs House,  
Near I.G.I. Airport,  
New Delhi - 110037

**WITH**

**Customs Appeal No. 51272 of 2022 [SM]**

[Arising out of Order-in-Appeal No. CC(A)/Customs/D-II//ICD/TKD/Export/1153-1154/2021-2022 dated 27.09.2021 passed by the Commissioner of Customs (Appeals), New Delhi]

**M/s. Bhavana Jindal Exim Pvt. Ltd.**

**...Appellant**

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**APPEARANCE:**

Ms. Priyanka Goel, Advocate for the Appellant

Ms. Tamanna Alam, Authorized Representative for the Respondent

**CORAM: HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)**

DATE OF HEARING: 11.07.2022  
PRONOUNCED ON : 02.08.2022

**FINAL ORDER No. 50676-50677/2022**

**DR. RACHNA GUPTA**

Present order disposes of two appeals as mentioned above, arising out of the common show cause notice and the common orders of Adjudicating Authorities below.

2. The facts relevant for the impugned adjudication are that M/s. Bhavana Jindal Exim Pvt. Ltd., an exporter had put in export two shipments covered under shipping bill Nos. 3718938 and 3718934 both dated 27.01.2017 as were filed through their CHA M/s. Sadagati Clearing Services Pvt. Ltd. Along with shipping bills the documents as that of invoice, packing list, export value declaration i.e. the declaration required for export of readymade garments for availing higher all industries rate of drawback were filed along with said shipping bills. The Goods to be exported under these documents were declared as 'Leather Apparels, Leather Gents Long Jacket and Leather Gents Jacket' and were mentioned to be under drawback scheme. The goods were to be exported to M/s. Unimax Handbags, Los Angeles.

2.1 Officers of Directorate of Revenue Intelligence, Delhi Zonal Unit, on the basis of intelligence that some firms are indulging in fraudulent availment of drawback by way of overvaluation and mis-declaration, checked the live shipments produced for export by

some of the exporters at ICD, Tughlakabad. During the said exercise that the aforesaid two shipments of appellant were detained and examined. The goods of those shipments were found packed in carton box and then wrapped with HDPE bag. The quantities of goods were found to tally with that mentioned in respective invoices and packing lists. However, from the visual examination, the leather jackets were clearly visible to be old and used and as such found to not to match with the declared description of the goods. Accordingly, goods of both the shipments were detained under the provisions of Customs Act, 1962 vide Panchnama dated 17.02.2017. During the investigation, there appeared admission of the Director of the appellant vide is statement dated 29.03.2017 and also of the F-card holder of appellant's CHA, Sh. Anit Kumar Jha vide his statement dated 07.04.2017 about goods covered in the shipment to be old and used. It was also an admission of the Director of appellant that the value of old and used jackets was low whereas the higher value for those jackets was declared before customs.

2.2 Hence the Show Cause Notice No. 39/2017 dated 01.08.2017 alleging that the goods which were subsequently seized vide seizure Memo dated 02.05.2017 covered under the aforesaid shipping bills since have been admitted to be exported by deliberately mis-declaring the description and inflating the value of the goods for purpose of wrongly availing drawback in contravention of the second proviso to Rule 3 (1) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 and overvaluation in contravention of Section 50 (2) of the Customs Act, 1962,

accordingly, were proposed liable to confiscation. The declared price was prayed to be rejected and the claimed drawback amount was also proposed to be rejected. In addition, penalties under Section 114 (iii) and under Section 114 AA not only on the appellant but also on the Director of the appellant were proposed to be imposed. The said proposal was initially confirmed vide Order-in-Original No. 05/2019 dated 10.01.2019. The appeal thereof has been rejected vide Order-in-Appeal No. 1153-1154/2021-22 dated 27.09.2021. Being aggrieved the appellant is before this Tribunal.

3. I have heard Ms. Priyanka Goel, learned Counsel for the appellant and Ms. Tamanna Alm, learned DR for the department.

4. It is submitted by learned Counsel for the appellant that the demand has wrongly been confirmed against the appellant. Appellant himself vide letter dated 31.01.2017 had requested the Dy. Commissioner of Customs (Export) for withdrawal of both of the consignments i.e. immediately after the goods which were delivered by the supplier were found to not to be same as sample shown to the appellant before the delivery of the goods. Hence, the allegation that the appellant tried to export less value goods by overvaluing them to avail the benefit of high duty drawback are absolutely wrong. Commissioner (Appeals) has confirmed the demand holding that the defence taken by the appellant is an afterthought. The statement of the appellant was recorded on 29.03.2017 but the letter was sent to the department on 31.01.2017 immediately when the CHA of the appellant had brought to the notice of the appellant that the goods in the

consignment instead of being the fresh leather jackets are old and used jackets. The letter dated 31.01.2017 cannot at all be the afterthought. The demand is prayed to be set aside on this ground only.

4.1 It is submitted that since the difference in quality of goods was brought to the notice of the department immediately after the difference brought to the notice of the appellant that no reason appears with the department to confiscate the said goods. In the given circumstances, especially the letter dated 31.01.2017 is sufficient to show that there was no malafide intent on the part of the appellant to export the goods by deliberately mis-declaring the description and by deliberately overstating the value thereof to the customs to avail the undue drawback. The imposition of penalties under Section 114 (iii) as well as under Section 114 AA on the appellant as well as on its Director are not at all sustainable. It is also submitted that penalty under Section 114AA cannot be imposed upon the companies. The facts of the present case are mentioned to be totally beyond the scope of the objective of Taxation Laws (Amendment) Bill, 2005 as was introduced in Lok Sabha on 12.05.2005 for introducing new Section 114 AA. With these submissions learned Counsel for the appellant has prayed for the order of Commissioner (Appeals) to be set aside and appeal to be allowed.

5. While rebutting these submissions, it is submitted by learned DR that the findings of Adjudicating Authority are based upon the apparent mis-declaration on the part of the appellant as noticed by

the officers of DRI based on the intelligence about fraudulent exports with an objective to avail excessive/inelligible duty drawback. The findings are based upon the admission of the Director of the appellant itself corroborating the allegations put forth by the investigating team in the impugned show cause notice. Sufficient reasons have been given in the order of even Original Adjudicating Authority as to why further investigations about market price of the similar goods was not required. The admission of the appellant stands corroborated with the admission of the employee of his CHA. It is submitted that once the goods in the consignment are admitted to be old and used the claim for duty drawback is apparently a wrong claim as the same is not available on the export of old goods. Leared DR further submitted that the price of jacket is admitted to have been Rs.500/- per piece which admittedly has been declared at Rs.8,762/-. Similar variation is with respect to the price of long leather jackets. In light of those admissions, the allegation in the Show Cause Notice are rightly held to have been proved against the appellant. In the given circumstances, the act of mis-declaration and intentional overvaluation is a definite act which invites penalty under Section 114 AA. It is also submitted that companies are equally liable for the penalties under these sections. With these submissions and impressing upon no infirmity in the order under challenge, the appeal is prayed to be dismissed.

6. After hearing the rival contentions and perusing the entire records, it is observed and held as follows:

6.1 The Commissioner appeals has rejected the declared value of exported goods, has held the goods liable to confiscation and has imposed redemption fine and penalties on the appellants on the basis of the following findings:

- i. The value was liable to be rejected as the export goods were found of inferior quality as per examination conducted by the officials.*
- ii. Seizure of the goods was on a reasonable belief.*
- iii. Value has been correctly re-determined under Rule 6 of the CVR 2007 as rule 4 & 5 could not be applied as goods of like kind and quality were not available in the market.*
- iv. The Appellants was liable to be penalized in terms of the Section 114 (ii) & 114 AA of the Customs Act, 1962.*
- v. Letter dated 31.01.2017 is clearly an afterthought as a letter was nowhere indicating about the inferior quality of the goods.*

7. The appellant mainly contended the said findings on the ground that there is no possibility for the said letter to be an afterthought and secondly on the ground that there was no intent with the appellant to mis-declare and to intentionally overvalue the consignments for claiming wrong duty drawback. But I observe that admittedly, appellant had filed the declaration required for exports of readymade garments for availing higher all industries rate of drawback, hence the goods to be exported for claiming said drawback has to be the fresh goods. I rely upon second proviso to Rule 3 (1) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, according to which no drawback shall be allowed on exports if the goods to be exported have been taken into use after being manufactured. This provision clarifies that for

claiming the drawback benefits, the goods have to be freshly manufactured.

8. Present is observed to be an admitted case of the appellant that the goods in the consignment were declared to be freshly manufactured goods but on examination, were found to be old and used goods. The similar admission is also apparent from the statement of F-card holder of his CHA, Mr. Anit Kumar Jha. In his statement dated 07.04.2017 (as on record), it has been deposed as follows:

*"During off loading the goods from the vehicle some field boys of our company could somehow see the goods are old and used. When the field boys informed the same to us, we intimated M/s Bhavna Jindal Exim Pvt. Ltd. that the goods appears to be old and used and not as the samples showed to us. Since the representative of M/s. Bhavna Jindal Exim Pvt. Ltd. was out of station, he came on 31.01.2017 and examined the goods himself and agreed that the goods are old and used and are not the goods that he had ordered for supply to his customer. Accordingly, M/s Bhavna Jindal Exim Pvt. Ltd. requested Deputy Commissioner of Customs (Export), ICD, TKD vide letter dated 31.01.2017 for withdrawal of shipment."*

9. It is the settled law that admissions need no proof and are admissible as such if not retracted. Apparently neither appellant nor said Mr. Anit Kumar Jha have retracted their statements. These statements are therefore out of the scope even of Section 138B of



Customs Act, 1962. The appellant has strongly impressed upon that alleged mis-declaration and overvaluation was absolutely unintentional and non-deliberate act of the appellant as it was not in the knowledge of the appellant at the time of filing the shipping bills along with the requisite documents that the goods are old & used ones. Reliance has been placed on letter dated 31.01.2017 submitting that the letter was much prior than the date of detention of appellants goods i.e. 17.02.2017. The said letter has not been produced by the appellant. I observe that Commissioner (Appeals), in the order under challenge, has annexed the scanned copy of the said letter. Perusal thereof shows that the only reason for withdrawal of the cargo (shipment in question) mentioned in that letter is that the appellant's buyer has cancelled the shipment due to delay in delivery. It is apparent on record that the impugned shipment was detained on 17.02.2017, the Commissioner (Appeals) has held the letter dated 31.01.2017 without any acknowledgment for the inferior quality of goods as nothing but an afterthought. Per contra the emphasis of appellant while challenging these findings is that since the shipment was detained on 17.02.2017, there was no occasion with the appellant to mention the observations of Panchnama dated 17.02.2017 in the letter dated 31.01.2017.

10. To adjudicate the same, I observe that the appellant in his statement has mentioned that the cancellation of order by the importer was the reason for withdrawal of shipment. Same ground is mentioned in letter dated 31.01.2017 vide which the withdrawal of consignment of impugned goods was prayed. Since goods were detained on 17.02.2017, apparently, the letter dated 31.01.2017

does not appear to be an afterthought. But statement of the appellant, if read as a whole, is observed to have sufficient admission and corroboration to the statement of Anit Kumar Jha, 'F' Card Holder of CHA of appellant, about the fact that in furtherance of the process of filing of shipment bills on 27.01.2017, the goods were also received directly at ICD, TKD (Export) from the appellant through CHA on 28.01.2017 itself, that is the very next day of filing both the shipping bills. The statement further reflects that at the time of offloading the goods from the vehicle i.e. on 28.01.2017 itself the field boy of CHA company noticed some goods to be old and used. This information was immediately sent to the appellant that the goods are not as per the samples as were shown to the CHA. However, the representative of appellant company since being out of station till 31.01.2017 that he examined the goods on 31.01.2017 accepting the goods in the consignment to be old and used as different from the goods that were ordered for being supplied to his customer.

11. Mr. Anit Kumar Jha has specifically stated it is thereafter that appellant's company requested Deputy Commissioner of Customs (Export), ICD – TKD vide letter dated 31.01.2017 for withdrawal of the shipment. This deposition clarifies that at the time when letter relied upon by the appellant was sent, the appellant already had the knowledge about mis-declaration to have been committed with respect to the consignments under impugned shipping bills. In such circumstances, praying withdrawal of the shipment/cargo that too on a ground of 'order being cancelled by the buyer due to the late delivery' is a deliberate concealment on the part of the

appellant. In such circumstances, the said concealment was nothing but an afterthought to cover up the mistake which the appellant had already committed i.e. of mis-declaration of the goods and overvaluing them with the sole intention of availing a higher duty drawback. The duty drawback is otherwise not available with respect to the export of old and used goods. These observations are sufficient to hold that the above observed concealment was with the intention to mis-declare and overvalue the goods to claim ineligible duty drawback. Commissioner (Appeals) is held to have committed no error while holding that letter dated 31.01.2017 was an afterthought. Hence, I do not find any infirmity as far as the rejection of declared value of export goods and the order for their confiscation and imposition of redemption fine is concerned that too on the bases of letter dated 31.01.2017 being an afterthought. To that extent order under challenge is hereby upheld.

12. Coming to the issue of imposition of penalty under Section 114 (iii) and 114 AA of Customs Act, 1962, the same is objected by learned Counsel on the ground that penalty cannot be imposed upon the company and secondly on the ground that the appellant himself was not aware of the goods of impugned consignment to be old and used jackets till it was informed to him by his CHA. He otherwise had already applied for withdrawal of both the shipments under both shipping bills. With respect to the first ground of objection it is held that penalty under Section 114, Customs Act, 1962 is imposable on such person as is mentioned in the respective section. The plea of appellant that Section 114 (iii) and Section 114

AA are not applicable on the companies but the same is not acceptable as legislature has never intended to exclude a juristic person like, company, from word 'persons'. Both these section penalizes person. As per Section 3 (42) of General Clause Act 'person' shall include the company or association or body of individuals whether or not incorporated. Similar is the intention of income tax statute under Section 2 (3) thereof. In view of entire above discussion it is held that the first ground of appellant challenging the imposition of penalty upon the appellant company and its Director is therefore not sustainable.

13. With respect to the another ground of letter dated being 31.01.2017 to be an evidence for the appellants *bona fide*. The same has already been held to be an afterthought, an act of deliberate concealment/ suppression.

14. The intentional concealment about mis-declaration stands corroborated from the another observe fact that the impugned letter, despite repeated demands, was never produced by the appellant before the original Adjudicating Authority despite that time for producing the same was requested and despite that several opportunities were given to the appellant to produce the said letter. Commissioner (Appeals) has also observed that the letter does not bear any acknowledgment of it being received by the Department. Though remotely, but the use of HDPE bags High Density Polyethylene bags corroborate the observed *mala fide* on part of appellant because these bags though more durable but simultaneous are dense and UV rays resistant. These facts

corroborate the alleged act to be intentional act of mis-declaration of goods and overvaluation thereof. These facts also corroborate the intention of the appellant for exporting the inferior quality goods against higher values and intentions to avail higher duty drawbacks against export of such goods for which the said drawback is not available. Accordingly, it is held that the plea of innocence as taken by the appellant that too solely based upon the letter dated 31.01.2017 has rightly been rejected by Commissioner (Appeals).

15. In light of the entire above discussion, the order imposing penalties upon appellant as well as on its Director under Section 114 (iii) and 114 AA of Customs Act, 1962 is also hereby upheld. Consequently, order under challenge is hereby upheld, both the appeals stands dismissed.

[Order pronounced in the open Court on 02.08.2022]

**(DR. RACHNA GUPTA)**  
**MEMBER (JUDICIAL)**

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