

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

**PRINCIPAL BENCH - COURT NO. II**

**Customs Appeal No. 52296 of 2021-SM**

(Arising out of order-in-appeal No. CC(A)/CUS/D-II/ICD/TKD/Exp/642/2020-21 dated 02.08.2021 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi).

**M/s Euro International**

Shop No. L-225  
Sector-03, DSIDC Bhawan  
New Delhi-110039.

**Appellant**

VERSUS

**Commissioner, Customs (Export)**

ICD, Tughlakabad  
New Delhi.

**Respondent**

**APPEARANCE:**

Sh. Bipin Garg & Ms. J. Kainaat, Advocates for the appellant  
Sh. Ishwar Charan, Authorised Representative for the respondent

**CORAM:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER No. 51109/2022**

**DATE OF HEARING: 31.08.2022**

**DATE OF DECISION: 29.11.2022**

**ANIL CHOUDHARY:**

The appellant, M/s Euro International is a manufacturer and exporter of readymade garments falling under Chapter 61 and 62 of Customs Tariff Act.

2. The appellant is in appeal against confirmation of penalty under Section 114(3) and 114AA of the Act, though Commissioner (Appeals) was pleased to reduce the quantum.

3. Brief facts of the case are Revenue initiated enquiry against various exporters including this appellant who is IEC holder and located at New Delhi. It appeared to Revenue that this appellant have illegally diverted their export consignments cleared through ICD, Tughlakabad to destination other than the destination declared in the shipping bill, in order to avail undue benefit of 'Focus Market Scheme' (FMS), Special Focus Market Scheme (SFMS), Market Linked Focus Production Scheme (MLFPS) and Merchandise Export from India Scheme (MEIS). Investigation revealed that appellant and others used to file the shipping bill at ICD, Tughlakabad by showing a country as 'Country of Destination', which was notified under Chapter 3 of Foreign Trade Policy for availing the benefit of FMS/SFMS/MLFPS/MEIS, and after clearance of such shipping bills by the Customs, they used to fraudulently amend the transferee copies (TR-1/TR-2 copies) of the shipping bills to change the colour of destination to a country, which was not notified under Chapter 3 of FTP (for availing benefit of the incentive scheme). It further appeared that such fraudulent amendments were carried out by the key person of concerned freight forwarding agency, who booked the containers with the shipping line for export. Therefore, the goods were actually exported to the fraudulently changed intended destination, instead of the destination disclosed to the Customs (as notified in Chapter-3 of FTP). After, the export, the appellant approached the DGFT for issuance of incentive scrip on the basis of country of origin declared to the customs in the shipping bill.

4. In the course of investigation office of M/s Concorde Shipping & Logistics India, Proprietor Imran Mirza, who provided the freight forwarding service to the appellant was also searched on 26.08.2015 at New Delhi. Certain documents relevant to investigation were resumed.

5. The shipping lines namely M/s Freight Connection India Pvt. Limited (FCI) and M/s IAL Logistics India Limited submitted the master bill of lading. With respect to transportation of two containers for export by appellant through FCI, it was observed that those containers were dispatched at Jebel Ali Port, Dubai, UAE whereas different destination was declared to the customs in the respective shipping bill. Further M/s FCI submitted the original TR-1 / TR-2 copies of customs cleared shipping bills dated 20.02.2015 and 19.02.2017. It was observed that in all the shipping bills filed by appellant, there were manual amendments in handwriting of some unknown person on first page of shipping bill with regard to port of dispatch & country of destination. Originally Manzanillo or Mogadishu as the case may be, was printed on the shipping bills as port of despatch and Mexico or Somalia as the case may be was declared as country of destination, which were found to be stricken out manually and further Jebel Ali was found written by hand against port of dispatch, and Dubai was written manually against country of destination. These manual amendments appear to be endorsed by purported signature and rubber stamp and signature of Superintendent of Customs, Export Shed, ICD, Tughlakabad, New Delhi.

6. Similarly, IAL Logistics India vide letter dated 16.09.2015 submitted copy of master bill of lading dated 26.02.2015 for transportation of container of export goods for appellant under shipping bill Nos. 7758509 and 7758523, both dated 11.02.2015 and shipping bill No. 7764275 dated 12.02.2015. These containers were also found dispatched to Jebel Ali Dubai from the copy of TR-1, TR-2 submitted by M/s IAL Logistics, it was observed that these were filed by the appellant and there were similar manual amendments. Originally port of despatch was mentioned as Awassa and country of destination was mentioned as Ethiopia in the shipping bill, which was stricken out manually and changed to Jebel Ali Port, Dubai under the purported endorsement by the Customs with rubber stamp.

7. Revenue made a comprehensive reference to the Additional DGFT, New Delhi by letter dated 05.09.2016. From reply dated 14.09.2016 received from Dy. DGFT it was revealed that the DGFT has issued four (04) Focus Market Licenses scrip to the appellant against their exports covered under 17 fraudulently amended shipping bills, but only three FML scrip were subsequently registered with the Customs EDI System at ICD, Tughlakabad. The fourth FML scrip No. 0519032887 dt. 04.08.2017 was not registered with the Customs. The aggregate amount of the other three scrip was Rs. 22,37,970/-. As against the other three shipping bills where goods were shipped through M/s IAL Logistics, no license / scrip had been issued by DGFT.

8. Statement of Proprietor of the appellant Sh. M. P. Singh was recorded who admitted that on the request of the buyer of the

goods, he had directed the freight forwarding agent to change the destination.

9. Show cause notice dated 09.10.2017 was issued proposing to confiscate the goods exported vide twenty shipping bills as per Annexure-A to the show cause notice having FOB value Rs.9,41,94,578/- under Section 113(d), (g) and (i) of the Act. Further, proposed to demand the ineligible amount of Focus Market licenses obtained, totalling Rs.22,37,970/- alongwith interest. Further, proposed to demand the amount of drawback given to the appellant Rs.88,54,474/- under Section 75A of the Act read with Rule 16 of the Drawback Rules. Further, penalty was proposed under Section 114 and 114AA of the Act. The Proprietor of freight forwarder - Sh. Imran Mirza was also made co-noticee for imposition of penalty under Section 114 and 114AA of the Act.

10. The appellant contested the show cause notice inter-alia stating that the country of destination and port of despatch also changed as per the buyer's request. However, admitting the error on their part, they have deposited the amount of scrip, which was availed and utilised alongwith interest and 25% penalty before issuance of show cause notice. It was further urged that the proposed confiscation of the goods is bad in law as penalty has already been paid on the value of scrips availed irregularly, no further penalty is exigible. It was further urged that admittedly the goods have been exported and thus the demand of duty drawback is bad and against the provisions of the Act and the Duty Drawback Rules. The admissibility of drawback is not dependent on country of destination and the amount of duty drawback

availed was correct. There is no restriction or bar on availing drawback in respect of the goods exported to UAE (Dubai). The appellant have rightly claimed the benefit of duty drawback in terms of Section 75 of the Customs Act (as applicable in manufactured goods) read with the Drawback Rules. It was further urged that the physical export of goods is not disputed by Revenue. Admittedly, the export proceeds have also been received in convertible foreign exchange with respect to the twenty shipping bills in question. The shipping bills alongwith other related documents were filed as per law. The LET export order was given after all the requisite processing and examination of the goods by the officers. The appellant got the port of export and country of destination changed at the last minute through the freight forwarder agent, as per instruction received from the buyer. Further, there is no bar for export of readymade garments to UAE for availment of duty drawback. The drawback can be rejected only in terms of the provisions of the Act read with the Rules particularly Section 76. Section 76 provides that no drawback shall be allowed in respect of any goods the market price of which is less than the amount of drawback amount thereon or where the drawback due in respect of any goods is less than Rs. 50/-.

11. The Adjudicating Authority was pleased to confirm the proposed confiscation in respect of the goods of twenty shipping bills, FOB value of Rs. 9,41,94,578/- under Section 113(d), (g) and (i) of the Act. However, as the goods were not available for confiscation, nor cleared under bond, no redemption fine was imposed. However, the amount of Rs.22,37,970/- equivalent to the ineligible Focus Market

Scrips was confirmed alongwith interest. Further the amount of drawback available of Rs.88,54,474/- was also disallowed and demanded under Rule 16 of the Drawback Rules alongwith interest, read with Section 75A. Further, penalty of Rs. 50 lakhs each was imposed on the appellant firm through its Proprietor under Section 114(iii) and 114AA of the Act. Penalty of Rs.20 lakhs was also imposed on Sh. Imran Mirza, Proprietor of M/s Concorde Shipping & Logistics India (the freight forwarder) under Section 114AA of the Act.

12. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) who recorded the finding with regard to duty drawback, that admittedly goods have been exported to UAE without permission of the proper Officer by making amendment in the shipping bill after Let Export Order was given. Further, the permission for export was for country like Mexico, Somalia or Ethiopia, as the case may be. The very basis of claiming duty drawback in these cases, were the shipping bills duly cleared by the Customs, which had different place declared as regards country of destination. It was further observed that the admissibility of drawback is not dependent on the country of destination. Further, observed that the benefit of duty drawback cannot be taken away for infringement of condition application to availment of FMS. The two schemes are independent and admissibility or inadmissibility of benefit under one scheme (FMS) has no bearing on the admissibility of the other scheme (duty drawback). Thus, the demand of duty drawback from the appellant is bad in law. Further, observed that as per Rule 2(a) of the Drawback Rules, the drawback in relation to any goods manufactured in India

and exported means the rebate or duty or tax, as the case may be, chargeable on any imported material or excisable materials used or taxable services used as input services in the manufacture of such goods. Further, Rule 2(c) of the Drawback Rules stipulates that export with its grammatical variations and cognate expressions, means taking out of India to a place outside India or taking out from a place in DTA to a SEZ and includes loading of provisions/ store or equipment for use on board a vessel or aircraft proceeding to a foreign port. Further, Rule 3 stipulates that drawback may be allowed on the export of goods at such amount or at such rate as may be determined by the Central Government. Further, Rule 16A of the Rules stipulates for recovery of amount of drawback where the export proceeds are not realised within the prescribed limit or any extended period. The Ld. Commissioner concluded that under the Drawback Rules, the only condition for availing drawback is that the goods should have been exported out of India to a place outside India and further the export proceeds should have been realised within the prescribed period. He further held that admittedly goods have been exported by diverting the destination to UAE, which is a place outside India. Further, there is no allegation that export proceeds have not been received. Thus, the drawback cannot be disallowed. Under the facts and circumstances, it was held that the appellant shall not be entitled to benefit of FMS. However, the Commissioner (Appeals) was pleased to uphold the penalty on Sh. Imran Mirza. So far the penalty on this appellant is concerned, taking notice amount of FMS was repaid with interest and penalty, penalty was reduced under both the Sections to Rs. 22 lakhs each.



13. Learned Counsel for the appellant inter-alia urges that the issue before the Tribunal is whether the goods which have actually been exported can be confiscated under Section 113 and further penalty have been rightly imposed under Section 114(iii) and 114AA, although the amount was reduced.

14. Learned Counsel further submits that admittedly the goods have been exported. Section 113 of the Act provides for confiscation of goods attempted to be improperly exported, etc. Further, export goods have been defined under Section 2(19) - means any goods which were to be taken out of India to a place outside India. Admittedly, the goods were not available for confiscation at the time of passing of the adjudication order. Admittedly, the goods have been exported and the order of confiscation is bad and may be set aside. It is further urged that admittedly the appellant has deposited the amount of FMS scrip used alongwith interest and 25% penalty during investigation, prior to issuance of show cause notice. Thus, imposition of penalty is bad more so in view of export admittedly have been done and the claim of drawback has been upheld by the Commissioner (Appeals).

15. Learned Counsel also relies on the ruling of Division Bench of this Tribunal in **M/s Nosch Labs Pvt. Ltd., vs. CC, Hyderabad**, Final Order No. A/30041/2022 dated 11.03.2022 in Customs Appeal No. 21548 of 2014.

16. Heard the learned Authorised Representative for the Revenue.

17. Having considered the rival contentions, I am satisfied that admittedly the goods were not available for confiscation, hence the order of confiscation is bad and accordingly order of confiscation is set aside. I further find that in the facts and circumstances of the case, the order of confiscation being set aside, the penalty under Section 114(iii) is also set aside, as this penalty is not imposable in absence of confiscation. So far penalty under Section 114AA is concerned, I find that the appellant have resorted to unauthorised modification /alteration in the shipping bill after the same was passed by the proper officer of the Customs, which amounts violation of provisions of Section 114AA. However, in view of the facts and circumstances, upholding the penalty under this Section I reduce the penalty to Rs.2,00,000/- (Two lakhs only).

18. Thus, the appeal is allowed and the impugned order is modified in the aforementioned terms.

(Order pronounced on 29.11.2022).

(Anil Choudhary)  
Member (Judicial)