CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. II

Custom Appeal No. 52549 of 2018

(Arising out of Order-in-Original No. DLI/CUS-PREV/OPD/PR.COMMR/03/2018 dated 4.5.2018 passed by the Principal Commissioner of Customs (Preventive), New Delhi)

Deepak Goel **Appellant**
E-4, Ashok Vihar, Phase-I,
Delhi-110052.

Versus

Principal Commissioner of Customs **Respondent**
(Preventive), New Delhi
New Customs House, Near IGI Airport,
New Delhi – 110 037.

<u>Appearance</u>

Ms. Reena Rawat, Advocate - for the appellant

Ms. Tamanna Alam, AR - for the respondent

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

Date of Hearing: 17.1.2020
Date of Decision: 10.09.2020

Final Order No. 50761/2020

Anil Choudhary:

The appellant who is a broker in the Textile cloth market have filed the present appeal against imposition of penalty of Rs. 25 lakhs under Section 114 AA vide impugned order in original.

2. The brief facts are that on intelligence, the department initiated enquiry into the affairs of M/s J.S. Designer Ltd. a manufacturer exporter of garments

located at Patparganj Industrial Area, New Delhi. Shri Vikas Mohan Singhal is the Managing Director and Ms. Anuradha Singhal is one of the Directors. The intelligence received was that the said M/s J.S. Designer Ltd. was indulging in over invoicing of export consignments of dyed and printed polyester fabrics with intention to fraudulently avail undue export benefits (DEPB). Further information indicated that an export consignment consisting 320 packets was lying at godown No. 2C of Export Shed, ICD - Patparganj, New Delhi under Shipping Bills No. 37265412 dated 19 May, 2011. Upon enquiry it was found that further two more shipping Bill Nos. 3758850 and 3865786 (filed by M/s J.S. Designer Ltd.) were also lying pending for clearance at the same ICD. The goods under the three shipping bills were physically examined on 1st and 2nd June, 2011 in the presence of witnesses and representative of CHA. The consignment were found to contain fabrics under Panchnama. Since all the three consignments appeared to be highly over valued, the goods were provisionally released for export under bond and furnishing a bank guarantee of Rs. 2 crores, and representative samples drawn.

3. On the strength of search warrant, the officers visited the main office cum factory at D-222, Sector-63 Noida. Shri Vikas Mohan Singhal, Managing Director was present and submitted certain documents and his statement was also recorded on the spot on 1st June, 2011. One Apple I Mac computer was also resumed for further investigation.

4. In his statement Shri Vikas Mohan Singhal, Managing Director, inter alia stated that he was a textile engineer and they procured different fabric like polyester fabric/cotton fabric/knitted fabric/viscose fabric etc through different mills/agencies traders by placing purchase order through email or telephonically. The payment to all the suppliers were made through cheques/RTGS/NEFT. As regards the mode of negotiation, enquiry from different suppliers as regards quality etc. purchase orders was placed to the supplier quoting lower price. They did the value addition in the shape of embroidery, sequence, hand work with lot of embellishments as per the needs of buyer. The fabric was exported to Afghanistan, Iran, Tanzania. They used their own transportation up to the ICD/IGI Airport. He also submitted sample invoices of some of their supplier

of fabrics like V&S International Pvt. Ltd., M/s Vimal Fashion International, M/s Maya Fashion, etc.

5. Follow up search was made with some of the supplier of the fabrics. In the search carried out at the premises of M/s V & S International Pvt. Ltd. at Gurgaon, statement of Shri Chander Gauba, Managing Director was recorded on 16 June, 2011 on the spot. He inter alia stated they were in the business of manufacture of knitted fabric, export of readymade garments and trade of fabric. 70% of trading in fabric was done in cotton fabrics and the balance in others like polyester, etc. That value addition was being done like dyeing, computer embroidery, chiffly etc. They were mainly buying cotton and also viscose and polyester fabrics. They admitted that they were dealing with the said M/s J.S. Designer Ltd.

6. Search was also carried at M/s Vimal Fashion International, New Delhi. Statement of Shri Vimal Rathi, authorized signatory was recorded who stated that they were trading in fabrics.

7. Search was carried out at the premises of M/s Maya Fashion, New Delhi. The statement of Shri Honey Barua, Assistant of the firm, was recorded on the spot, who

stated that he normally looked after the debit notes and other liaison work. Shri Govind Das Chandak, proprietor of M/s Maya Fashion stated that the firm was a trading house dealing in purchase and sale of fabric mainly cotton fabrics. They never sold any man made fabric to M/s J.S. Designer Ltd. Shri Govind Das Chandak admitted that they have supplied fabric to M/s J.S. Designer Ltd. since 2006. Further stating that they do not deal in any polyester fabrics.

8. Search was also carried at M/s Singla Apparels (P) Ltd., New Delhi and statement of Shri Gopal Aggarwal was recorded who inter alia stated that M/s J.S. Designer Ltd. was a buyer. They have sold cotton fabrics, polyester fabric and cotton and polyester mix fabrics and knitted fabric with polyester and cotton yarn to M/s J.S. Designer Ltd. Payment was received from M/s J.S. Designer Ltd. by cheque/RTGS. They did not maintain any documents except sales invoices. In his further statement dated 14 July, 2011, Shri Gopal Aggarwal modified his earlier statement and stated that they had supplied only cotton handloom to M/s J.S. Designer Ltd. from November, 2010 to December, 2010. In his further statement dated 29.9.2011, he stated that after verifying

the invoices for sale to M/s J.S. Designer Ltd., that only cotton fabric had been supplied and reiterated that he had not supplied the polyester fabric to M/s J.S. Designer Ltd. Further the cotton fabric was costlier than polyester. The price of cotton fabric was in the range of Rs. 50/- to 80 per meter, whereas the polyester price was in the range of Rs. 25 to 40 per meter.

9. Search was also conducted at M/s Niharika Fabrics (India) Pvt. Ltd., Delhi-6. Statement of Sales Manager of M/s Niharika Fabrics (India) Pvt. Ltd. was recorded on the spot on 7 July, 2011, who inter alia stated that the main business of the company was trading in fabrics and did not have any processing plant. They also have their branch office at Surat and they have sold polyester to M/s J.S. Designer Ltd. during the year 2010-2011 and 2011-2012. They have supplied fabric both from the stock at Delhi and directly from Surat. In his statement Shri Anurag Kanodia, proprietor of M/s Niharika Fabrics (India) Pvt. Ltd. inter alia stated that he usually procured grey fabric and got it dyed or printed and thereafter supplied the same. For the supply made from their Surat office, documentation was routed through their Delhi office, the average price for supply was Rs. 16/- per meter. In his

further statement recorded on 16 September, 2011, Shri Anurag Kanodia stated that the ready stock of fabrics @ Rs. 16/- per meter was defective polyester fabric, whereas the range for good quality polyester fabric during the relevant period was Rs. 35/- to Rs. 45/- per meter. They have supplied at the average of Rs. 40/- per meter during December, 2010 to January, 2011. They also supplied similar fabric to other parties at similar prices.

10. In the course of scrutiny and verification, it appeared that several other suppliers also have supplied fabrics to M/s J.S. Designers Ltd. as per details provided by Shri Vikas Mohan Singhal, Managing Director of M/s J.S. Designers Ltd.

11. Search was also carried at the premises of one M/s Bhiwandi Cloth House, Chandni Chowk, Delhi-6 under Panchnama various records, documents, like cheque books of certain firms were resumed and cash amounting to Rs.7,50,000/- was seized. The cheque books seized belong to 11 different firms/companies. Shri Gopal Sharma was present on the spot. He inter alia stated that the premises were taken on rent in the month of December, 2010 from Shri R.P. Sharma, resident of Hisar who helped him in his business. He had no knowledge

about the firm M/s Bhiwandi Cloth House. As far as his knowledge, Shri R.P. Sharma was dealing in fabric and related items. Documents resumed under Panchnama belong to Shri R.P. Sharma who had given the bag containing pass books and other documents. He further stated that the cash amount seized Rs.7,50,000/-, belongs to him which was collected by him from persons to whom he had sold Kiryana items, dry fruits and he would produce the documents in support of the same.

12. The officers also visited the premises of M/s G.K. International located at Fatehpuri, Delhi-6 on 28 July, 2011. However the shop was found locked. On enquiry, it was known from Shri Pawan Sharma, the landlord, that the said firm have been closed 18 months back and they were engaged in the business of dry fruits from the said shop.

13. In his further statement recorded on 11 July, 2011, Shi Chander Gauba, Managing Director of M/s V & S International Pvt. Ltd. inter alia stated that no purchase order was ever placed from M/s J.S. Designer on them. They had adopted the procedure of procuring purchase invoices of fabrics and then issuing sale invoices on some margins of profit, to increase the turnover of their

company; that no fabric was supplied to M/s J.S. Designer Ltd. by them; that one Shri Deepak of M/s G.K. International was one of their provider of purchase invoice and they had tied up with M/s J.S. Designer Ltd. to accept their sale invoices; that the payments were routed through Shri Deepak. He further agreed to modification of his earlier statement in view of the subsequent statement. In his further statement dated 23 August, 2011, Shri Chander Gauba, undertook to provide the details of payments received from M/s J.S. Designer Ltd. and its corresponding disposal. As per the details provided by him vide letter dated 29 August, 2011 it appeared that huge payments were made to M/s G.K. International.

14. Statement of Shri Deepak Goel (appellant herein) was recorded on 30 August, 2011 wherein he inter alia stated that he had started the work of brokerage in fabrics and automobile parts in his own name. He used to operate from rental premises at Chandni Chowk, which he left in the year, 2011. As M/s J.S. Designer Ltd. had good name in the market, therefore he had gone to their factory in Noida and met Shri Vikas Mohan Singhal; that he had approached Shri R.P. Sharma to provide the sale

invoices/bills for the purpose of turn over only. Shri R.P. Sharma agreed to provide sale invoice/bills for M/s V & S International Pvt. Ltd. from his various companies like, M/s Florance Textiles & Fabrics Pvt. Ltd., M/s Shri Radha Cloth Gallery Pvt. Ltd. etc.; that he had never supplied any fabric to M/s J.S. Designer Ltd. or M/s V & S International Pvt. Ltd. He does not have any record of quantity of fabrics supplied/arranged to M/s J.S. Designer Ltd. Further Shri Deepak Goel admitted that he was working for Shri R.P. Sharma and was drawing a monthly salary from him.

15. On further enquiry, with regard to cheque books of 11 parties recovered from M/s Bhiwandi Cloth House and enquiry made with respective banks, intimated the names of proprietor, Director of the firm/company and also forwarded the Account Opening forms to the department, which is mentioned in para 9.8 of the impugned order as follows :

Sl. No.	**Name of firm**	**Name Proprietor/Director**
1.	M/s G.K. International	Gopal Sharma
2.	M/s Bhiwandi Cloth House	Ramesh Kumar, Sunder Prakash Sharma
3.	M/s Nitin Traders	Hanuman, Radhey Shyam Sharma, Gopal Sharma
4.	M/s Florance Textiles and Fabrics Pvt. Ltd.	Parween Aggarwal
5.	M/s Raghavendra Apparels Pvt.	Mahender Kumar,

	Ltd.	Praveen Aggarwal
6.	M/s Shri Radha Cloth Gallery Pvt. Ltd.	Mahender Kumar, Praveen Aggarwal
7.	M/s Amber International	Hanuman
8.	M/s Urmi Cloth Gallery Pvt. Ltd.	Madan Lal Sharma, Sunder Prakash Sharma
9.	M/s Manu Cloth Gallery Pvt. Ltd.	Rajnesh Kumar Sharma, Sunder Prakash Sharma
10.	M/s Neotex Exim Pvt. Ltd.	Uday Bhagat, Sunder Prakash Sharma
11.	M/s Shivaji Trading Company	Hemant Kumar, Sunder Prakash Sharma
12.	M/s New Fashion Point	Anil Saini
13.	M/s Jagdish Fab	Hemant Kumar, Ramesh Kumar Sharma
14.	M/s Pyramid Tech Heights Pvt. Ltd.	Parween Aggarwal, Sunder Prakash Sharma, Mahender Kumar & Uday Bhagat
15.	M/s Surat Clothing Empire	Rajinder Kumar
16.	M/s Aroma Textiles Pvt. Ltd.	Parveen Aggarwal, Sunder Prakash Sharma
17.	M/s Nikhil Trading Co.	Atul Kumar
18.	M/s Indraprastha Trade Impex Pvt. Ltd.	Mahender Kumar
19.	M/s Kishore Exports	Ramesh Kumar, Hemant Kumar

16. In his further statement Shri Deepak Goel- appellant recorded on 12 September, 2011, stated that he was given orders for supply of cotton fabrics i.e. cotton voil, cambric and grey polyester etc. to Shri Singhal of M/s J.S. Designer Ltd. Thereafter he passed on the orders for the supply of fabrics to firms/company like M/s Bhiwandi Cloth House, M/s Nitin Traders, M/s G.K. International etc. etc. who have supplied and issued invoices to M/s J.S. Designer Ltd. Shri R.P. Sharma used to procure orders of fabrics for these companies/firms; that polyester fabric was supplied to M/s J.S. Designer Ltd.

ranging between Rs. 45/- and 50/- per meter; that there was an arrangement that M/s J.S. Designer Ltd. had to pay only @ of Rs. 40/- per meter, and difference had to be adjusted by supplying cotton fabric over and above the grey polyester supplied to them. He further stated that he has not supplied or arranged to supply polyester to M/s V & S International Pvt. Ltd.; that he was asked by Shri Chander Guaba, Managing Director of M/s V & S International Pvt. Ltd. to arrange turn over for their company and therefore he arranged purchase invoices of fabric for their company; that his commission was 0.05 to 0.10% of the total value of fabrics depending on the quality, etc. Shri Deepak Goel admitted that in a way, he had been managing M/s Bhiwandi Cloth House, M/s Nitin Traders, M/s G.K. International, M/s Manoj Kumar & Sons, M/s Nikhil Trading Company, M/s New Fashion Point, m/s Erode Clothing Empire, M/s Pyramid Tech Heights Pvt. Ltd., M/s V & S International Pvt. Ltd., M/s Florence Textiles and Fabrics Pvt. Ltd. M/s Shri Radha Cloth Gallery Pvt. Ltd. and M/s Raghavendra Apparel Pvt. Ltd.

17. Subsequently in presence of Deepak Goel, the sealed premises of M/s Florance Textiles and Fabrics Pvt. Ltd.

was opened and searched by the officers, and certain documents and CPU were resumed under Panchnama.

18. Further on summons Shri Gopal Sharma appeared before the officers on 19.9.2011, wherein he inter alia stated that he was proprietor of M/s G.K. International since 2009-2010 and initially he used to trade in dry fruits, however, later on he had started trading in fabrics. He sold fabrics to many companies like, M/s Ganesh Overseas, Kirthi Enterprises Ltd., M/s STL Global Ltd., J.S. Designer Ltd., M/s V & S International Pvt. Ltd. etc. He used to sell fabrics which were procured locally. He came in contact with M/s J.S. Designer Ltd. through one broker – Shri Deepak Goel. The bill was raised for polyester fabric on M/s J.S. Designer Ltd., but he had supplied cotton fabrics.

19. Statement of one Shri Praveen Aggarwal who was proprietor/Director of firms namely M/s Florance Textiles and Fabrics Pvt. Ltd., M/s Pyramid Tech Heights Pvt. Ltd., M/s Aroma Textiles Pvt. Ltd., M/s Giriraj Texturisers Ltd., M/s Raghvendra Apparels Pvt. Ltd. and partner in M/s Shri Radha Cloth Gallery Pvt. Ltd. He inter alia stated that Shri Deepak Goel- appellant started firms/companies namely M/s Florance Textiles and Fabrics Pvt. Ltd., M/s

Pyramid Tech Heights Pvt Ltd., M/s Shri Radha Cloth Gallery Pvt. Ltd., M/s Aroma Textiles Pvt. Ltd., M/s Giriraj Texturisers Pvt. Ltd. and M/s Raghavendra Apparel Pvt. Ltd. He knew that these companies were started actually by Shri Deepak Goel for doing business in fabrics and Shri Deepak Goel assured him that he would be getting 10,000/- P.M. in return. He did whatever Shri Deepak Goel told him, that the full control of these companies was with Shri Deepak Goel. The order of fabrics were being brought by Shri Deepak Goel, the bills etc. was prepared by Shri Deepak Goel and he had been asked to sign the documents. The cotton fabric were supplied to M/s J.S. Designer Ltd. by these companies. He did not know regarding source of purchase of fabrics, that he has never seen purchase invoices, and the bank account of these companies were operated as per direction of Shri Deepak Goel. The cheque books of these companies remained either with Shri Deepak Goel or the same were kept at 234, Main Road, Chandini chowk, Delhi-6. He did not know anything about the companies/ firms M/s Ridhi International, M/s Kartik Exports, M/s R.D. Traders, M/s Ganpati Traders etc.; that he got money transferred through RTGS as directed by Shri Deepak Goel.

20. Similar statement was given by Shri Mahendra Kumar who was Director/partner in some of the aforementioned companies/firms along with Shri Praveen Aggarwal. He also stated that he was in return paid Rs. 3000/- per month, and he had to sign documents and cheques. He also reiterated the actual control of these companies/firms was with Shri Deepak Goel and he used to do whatever, as per the direction of Shri Deepak Goel.

21. From the statement of Shri Parveen Aggarwal and Shri Mahendra Kunmar, it appeared that the appellant Shri Deepak Goel was actually managing/operating/manipulating in the aforementioned companies, even though on paper, other persons were Director/partner/proprietor.

22. In his subsequent statement Shri Deepak Goel (which was recorded on 30 September, 2011) inter alia stated and that he was the actual owner of M/s G.K. International, etc. and Shri Praveen Kumar and Shri Mahender Kumar were his employees on monthly salary. He further stated that he was paying monthly salary of Rs. 14,000/- to Shri Gopal Sharma, Rs. 3000/-to Shri Mahender Kumar and Rs. 10,000/- to Shri Parveen Aggarwal. The companies were

owned/managed/controlled by him for doing trading of fabrics were - M/s G.K. International, M/s Bhiwandi Cloth House, M/s Nitin Trader, M/s Manoj Kumar and Sons, M/s Nikhil Trading Company, M/s new Fashion Point, M/s Kishore Exports, M/s Aggarwal Trading Company, M/s Pearl International, M/s Florance Textiles and Fabrics Pvt. Ltd., M/s Raghavendra Apparels Pvt. Ltd., M/s Aroma Textiles Pvt. Ltd., M/s Shri Radha Cloth Gallery Pvt. Ltd., M/s Pyramid Tech Heights Pvt. Ltd., M/s Neotex Exim Pvt. Ltd., M/s Pearl Creations, M/s Kartik Exports, M/s Giriraj Overseas, M/s Ridhi International, M/s Bharat Enterprises, M/s Keshav Trading Company, M/s R.D. Traders, M/s Shades and Shines Garments, M/s Giriraj Texturisers, M/s Ganpati Traders, M/s Archana Traders, M/s Shivaji Trading Company, M/s Amit Overseas and M/s Surat Clothing Empire. He further stated that he did not reveal this fact earlier as he was nervous and scared. These aforementioned firms/companies were created to divide the turnover and to save income tax. He came to know all these people associated with him in the course of trading. On being shown the invoices which were submitted by Shri Vikas Mohan Singhal and M/s J.S. Designer Ltd. along with cost sheet in respect of Shipping

Bill No. 4119009, he admitted that he had issued the invoice(s) to M/s J.S. Designer Ltd.

23. In the course of further enquiry at supplier - M/s Manoj Kumar and Sons at Fatehpuri, Delhi-6, on 8 September, 2011, the premises were found locked from inside and the person(s) present escaped from the terrace door. Subsequently in his statement dated 12 September, 2011 Shri Deepak Goel – appellant admitted that he was managing M/s Manoj Kumar and Sons and thereafter under Panchnama dated 7 October, 2011, premises of M/s Manoj Kumar and Sons was searched and documents were resumed under Panchnama. Shri Deepak Goel in his further statement dated 12 September, 2011 also stated that he had also been supplying fabrics to M/s Kamran Exports Pvt. Ltd., who had been further exporting polyester fabrics to M/s Pardes MulaKhail Ltd., Afghanistan, the same buyer of M/s J.S. Designer Ltd., exporting polyester fabrics. It appeared that M/s Kamran Exports Pvt. Ltd. was exporting at US $ 1.5 to $ 1.75 per meter whereas M/s J.S. Designer Ltd. was exporting @ US $ 2.95 to $ 3.95 per meter which appeared much higher than the

contemporaneous export of polyester fabric to the same buyer.

24. Statement of Shri Kultar Singh, Director of M/s Kamran Exports Pvt. Ltd. was recorded on 13 October, 2011 and 17 October, 2011 wherein he inter alia stated that they were regular exporter to Afghanistan, were also trading in polyester fabric in domestic market. He also stated that Shri Deepak Goel – appellant was their broker, and the firms to which they have supplied polyester fabrics were M/s V & S International Pvt. Ltd., M/s Florance Textiles and Fabrics Pvt. Ltd. etc. That they have received payments against the sales through bank/RTGS.

25. From the aforementioned facts, it appeared to Revenue, both M/s Kamran Exports Pvt. Ltd. and M/s J.S. Designer Ltd. were exporting polyester fabrics to same buyer in Afghanistan. However, the invoice values of M/s J.S. Designer were much higher.

26. In his further statement recorded on 13 October, 2011 Shri Deepak Goel –appellant stated that the cash amounting to Rs. 7,50,000/- seized from the premises of M/s Bhiwandi Cloth House was for payment to Shri Vikas Mohan Singhal, for returning the payment received

through Cheque/RTGS to various firms for the excess invoice price, than the actual price.

27. In order to have further clarity on the arrangement between the parties, Shri Deepak Goel, Shri Vikas Mohan Singhal and Shri Chander Gauba, another statement was recorded of Shri Chander Gauba on 21 December, 2011 wherein he inter alia stated that his broker - Shri Deepak Goel agreed to route his sales through his firm, in order to enhance his turn over. He had not bothered to check the rates and quality of the fabrics, whether cotton or polyester, since the purpose was limited to enhance the turn over; that he used to issue the invoice to M/s J.S. Designer Ltd. against his suppliers invoices, as per instructions of Shri Deepak Goel, that profit at Rs. 2 to 8 per meter was being added on purchase price depending on the quality of the fabrics; that Shri Deepak Goel used to give instructions to him about the rates to be charged from M/s J.S. Designer Ltd.; that the adjustment invoices were alike other invoices; he used to make payments to Shri Deepak Goel as per all the invoices raised by him from the companies owned by him (Shri Deepak Goel) or any other company from which he had arranged to supply fabrics. He was not aware if there were any such

adjustment invoices, as they treated all the invoices in a similar manner.

28. The officers also sent representative samples collected from export consignments for technical evaluation and price assessment, to Textile Committee, Mumbai, which is a statutory body created by Government of India, wherein after examining they submitted its report on 24 August, 2011, giving the composition of the fabrics, type and the price per meter. From the report, it appeared to Revenue, M/s J.S. Designer Ltd. have highly inflated FOB value of the export consignments.

29. Accordingly, show cause notice dated 11.7.2012 was issued on the main noticee/exporter M/s J.S. Designer Ltd. and also its Directors and other persons including the present appellant, proposing to reject the FOB value in respect of several shipping bills including three bills mentioned herein above, redetermination of the value under Rule 8 read with Section 14 of the Customs Act, proposing lower re-determined value and accordingly revising the lower DEPB amount with respect to the particular shipping bill(s) as mentioned in para 46 of the show cause notice. Thus, the total declared FOB value of

Rs. 35,64,32,668/- was proposed to be re-determined at Rs. 5,38,89,807/- exported under the DEPB scheme, more fully detailed in Annexure-1 to the show cause notice. With proposal for confiscation and further penalty was proposed under Section 114(iii) and Section 114AA of the Customs Act, with further proposal to appropriate bank guarantee against the determined dues, with proposal to invoke the extended period of limitation. Penalty was also proposed on Shri Vikas Mohan Singhal and Ms. Anuradha Singhal, MD and Director of M/s J.S. Designer Ltd under Section 114/114AA of the Customs Act. On the present appellant - Shri Deepak Goel, penalty was proposed under Section 114AA of the Customs Act on the allegation of being partner in the conspiracy with Shri Vikash Mohan Singhal to defraud the Government exchequer. Further penalty was proposed under Section 117 with proposal to appropriate the cash amount of Rs. 7,50,000/- upon imposition of penalty.

30. Similar penalty was also proposed to Shri Chander Gauba Director of M/s V & S International Pvt. Ltd., Shri C.S. Pandey, Fabric Manager of M/s J.S Designer Ltd., Shri Pradeep Sharma CHA of M/s J.S. Designer Ltd.

31. The learned Principal Commissioner adjudicated the show cause notice vide order-in-original dated 30 January, 2013 which was in appeal by the party set aside by Tribunal vide Final Order dated 13.10.2014, No. C/A/54085-54090/2014-CU(DB), remanding the matter for fresh adjudication on the ground that cross-examination of the witnesses and the experts, the statement and opinions were relied upon, should be allowed to meet the ends of natural justice. Thus, this is the second round of litigation. The Principal Commissioner fixed the hearing include cross-examination. Shri Gopal Aggarwal, proprietor of M/s Singla Apparels (P) Ltd. was cross examined. He stated, his earlier statement on 7.7.2011 and 14.7.2011 were true; that the fabric supplied to M/s J.S. Designer Ltd. was made of cotton and he has received the sale proceeds. The price of fabric depends upon on finishing, design and art work. Shri Chander Gauba, Director of M/s V & S International Pvt. Ltd. was cross examined on 22.8.2017 wherein he stated that they have supplied polyester fabric and have received the sale proceeds. Shri Vimal Rathi, authorized signatory of M/s Vimal Fashions, in cross examination inter alia stated that the firm is engaged in trading in all types of fabrics since last

twenty years. They have been supplying polyester fabrics for more than five years to M/s J.S. Designers Ltd. on verbal orders raising invoices and payments were received by cheque or letter of credit, and polyester fabric is generally costlier than cotton fabric. Shri Govind Das Chanok, Proprietor of M/s Maya Fashions was cross examined on 11.10.2017 wherein he inter alia stated that they have supplied cotton and other type of fabric to M/s J.S. Designer Ltd. and received the full payment through cheques. Further stated that Shri Honey Baruah was doing clerical work for them, have left in the year 2012-2013. Shri Pawan Kanodia, Director of M/s Niharika Fabrics India Pvt. Ltd. was cross-examined on 11.10.2017 inter alia stated that they have been supplying polyester fabrics to M/s J.S. Designer Ltd. for seven years and they received the payment through cheques/banking channel. Shri Deepak Goel (appellant) was also cross examined on 27.10.2017 inter alia stated that he was being paid 10 to 15 paisa per meter of the fabric supplied to M/s J.S. Designer Ltd., by the supplier. He had supplied polyester fabric to M/s J.S. Designer Ltd. Further stated that it is not true that bills were raised at higher price and the differential amount was returned to Shri Vikas Singhal of M/s J.S. Designer Ltd. Shri Kultar Singh, Director of M/s

Kamran Exports Pvt. Ltd. was cross examined on 29.11.2017 who inter alia stated that they have exported polyester fabric during the year 2010-2011, the price of printed polyester fabric was between Rs.90/- to Rs. 200/- per meter. That he also reiterated his statement dated 15.12.2011 recorded before the officers of Customs (Preventive). Further stated that they have exported the materials to merchant importer. He did not state that the invoice of M/s J.S. Designer Ltd. was over invoiced. Further stated that if any work is done on the raw fabric, its value will definitely increase. Shri Rajiv Goyal, partner of M/s Goyal Enterprises was cross-examined on 14.12.2017 who inter alia stated that they have supplied raw material approximately 3,60,000 meters of rayon fabric valued at Rs. 3.25 crores to M/s J.S. Designer Ltd. during the period 2010-2012. Further stated that they have earlier provided copies of purchase order, purchase invoice and copy of challan receipts pertaining to M/s J.S. Designer Ltd. Further stated that polyester fabric can be more expensive than cotton fabric. Shri Vijender Sharma, Cost Accountant was cross examined on 17.1.2018 who inter alia stated that he was practicing cost accountancy for more than 18 years. Raw material consumption means the bill of material consumed in the production of the product, is the value arrived at by multiplying the quantity by the rates, the cost was arrived at per square meter, that point no. 3 of the report for costing may be referred to where they had considered all the components as per accepted cost account standards. The cost of yarn (as basic raw material) and incorporated the cost of grey fabrics in the calculation sheet, the department had given them the copy of report of the textiles committee which contained various details such as type of yarn, weight, quantity used per square meter, that these details were used by them and they had done market survey themselves and meeting people and collected the best available information for the report. They are independent professionals and did not have direct or indirect relation with M/s J.S. Designer Ltd. Shri B.S. Patil, Deputy Director, Textile Committee, Chennai was cross examined on 15.2.2018, inter alia stated that if laboratory can conduct various types of technical test such as composition of fabric, other parameter like warp, weft, GSM etc.; that there are no norms for the size of the sample and it all depends on parameters to be determined. As regards size of sample sent to the laboratory for testing, he stated that if any particular sample was insufficient in size, this fact would have been mentioned in their report; that at the request of the Customs Department they had given the average/approximate prices of the fabrics on the basis of survey in textile cluster, Surat. Some samples shown by the Advocate for M/s J.S. Designer Ltd. during cross examination and asked to recognize, Shri Patil stated that the samples were pasted on paper sheet bearing the name of M/s J.S. Designer Ltd., whereas samples they have received were not bearing the name of any firm and that they attached swatches cut from the sample pieces along with test report.

32. Show cause notice was re-adjudicated vide impugned order upholding the proposed rejection of FOB value and re-determination at the lower value and the actual DEPB benefit admissible. Further penalty was imposed on M/s J.S. Designer Ltd. under Section 114(iii) along with order for confiscation of goods released provisionally, with option to redeem on payment of fine of Rs. 20 lakhs. Penalty was also imposed on Managing Director of M/s J.S. Designer Ltd. - Shri Vikas Mohan Singhal under Section 114(iii). Shri Chander Gauba, Managing Director of M/s V & S International Pvt. Ltd. was imposed penalty under Section 114AA. Penalty on

the present appellant was also imposed under Section 114AA at Rs. 25 lakhs with further direction to appropriate the amount of Rs. 7,50,000/- seized from the premises of M/s Bhiwandi Cloth House, which was owned by the appellant Shri Deepak Goel, in the course of investigation.

33. Being aggrieved the present appellant Shri Deepak Goel is in appeal inter alia on the ground that the impugned order passed is in violation of the principles of natural justice, without granting sufficient opportunity of hearing. The impugned order is practically ex-parte order. That there are sufficient documents on record which clearly manifest that the goods were supplied to M/s J.S. Designer Ltd. in the course of wholesale trade, and it is not the case of department that only invoices were raised and no goods were supplied. It is admitted in the show cause notice that the goods have been supplied allegedly at higher rate, and the price difference was returned to Shri Vikas Mohan Singhal in cash. As per trade practice the goods are supplied directly by the supplier to the buyer/end user and the bills are raised by the intermediate seller, which is also an acceptable practice under law, including the Cenvat Credit Rules.

Thus there is no case of bogus invoices raising against non-supply of fabrics. Admittedly, goods have been delivered to M/s J.S. Designer Ltd. and appellant have not derived any pecuniary benefits out of the export of goods, allegedly at inflated value. The role of the appellant as the broker of fabrics was limited only to ensure supply of fabrics to M/s J.S. Designer Ltd. Thereafter the buyer is at liberty to do whatever he likes to do with the goods. Thus, the appellant is nowhere related to further use of the fabrics and alleged overvaluation for the purpose of export. The appellant have all along stated that the goods were actually delivered to the buyer and payments were received through banking channel. The department have failed to appreciate that the exporter – M/s J.S. Designer Ltd. have done further work on the fabric (value addition), and as such it cannot be alleged that this appellant has facilitated the enhancement in value of the export goods as the appellant is not directly concerned in the export business of M/s J.S. Designer Ltd., and the details/intricacies of the same are not in the knowledge of this appellant, nor fabricated any documents for being presented before the Customs, hence the provisions of Section 114AA of the Customs Act are not attracted. This appellant is not aware of the export values of M/s J.S.

Designer Ltd. nor have participated in preparation of overvaluation export invoices. This in absence of condition precedent as required under Section 114AA, the penalty imposed is fit to be set aside. Further it is nowhere alleged that the ill gotten benefit of export proceeds/DEPB have been shared with the present appellant. It is further urged that penalty imposed is also grossly disproportional to the gravity of offence, if any.

34. Learned Authorised Representative for Revenue opposes appeal and reiterated the findings in the impugned order.

35. Having considered the rival contentions, I find that this appellant in the course of investigation, wherein documents including cheque books etc. were found with respect to 11 firms/companies and cash of Rs.7,50,000/- was found and seized. This appellant admitted that all these companies/firms wherein other persons namely Shri Gopal Sharma Shri Ramesh Kumar, Shri Parveen Aggarwal, Shri Mahender Kumar etc. were partner/Director/proprietor have admitted that they are only the name lenders and the actual owner/Manager of these firms/companies is the present appellant - Shri Deepak Goel. Those persons whose name is appearing

as proprietor/Director also stated that they were working on a monthly salary of Rs. 3000/- to 12,000/-, doing and working for Shri Deepak Goel as per his instructions. They also stated that Shri Deepak Goel was doing transaction in these firms and companies, as appearing in para 15 herein above. Further this appellant had also stated that they were engaged in raising inflated bills for the supply of fabric to M/s J.S. Designer Ltd. and were returning the differential amount in cash to Shri Vikas Mohan Singhal. Further, although Shri Deepak Goel have subsequently denied raising inflated bills for supply of fabric, but the facts are proved on the corroborative evidence being seizure of documents including cheque books etc of various firms and companies, wherein benamidar of this appellant were proprietor/partners/Directors and such benamidar persons have also admitted that they were only the name lenders engaged on salary basis, and such firm/companies were managed by Shri Deepak Goel. Admittedly, as per facts on record such firms and companies were raising inflated bills for the supply of fabric to M/s J.S. Designer Ltd. Thus I find that this appellant have facilitated the main accused M/s J.S.

Designer Ltd. and its Directors in inflating FOB value of goods for export, by justifying the cost, indirectly.

36. As this appellant have not directly facilitated M/s J.S. Designer Ltd. and its Directors, but have indirectly facilitated them in inflating the FOB value for the purpose of wrongly claiming higher DEPB benefits, taking a liberal view, I reduce the penalty from Rs. 25 lakhs to Rs. 7,50,000/-. Thus, the appeal is allowed in part. The appellant shall be entitled to consequential benefits in accordance with law.

(Pronounced in Court on 10.09.2020)

(Anil Choudhary)
Member (Judicial)

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