CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL No. 85411 of 2024

[Arising out of Order-in-Original CAO No. CC/RK/27/2023-24 Adj.(X) ACC dated 15.11.2023 passed by the Commissioner of Customs-IV (Export), Air Cargo Complex (ACC), Sahar, Andheri (East), Mumbai.]

Riyaz Sayed Abdul Aziz **.... Appellant**
Proprietor of M/s Rishay International
140/142, Chakala Street
Office No.112, First Floor
Mumbai – 400 009.

VERSUS

Commissioner of Customs (Export) **.... Respondent**
Air Cargo Complex (ACC), Sahar
Andheri (East),
Mumbai – 400 099.

APPEARANCE:

Shri N.D. George, Advocate for the Appellant
Shri Ram Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86050/2025

Date of Hearing: 09.01.2025
Date of Decision: 04.07.2025

Per: M.M. PARTHIBAN

This appeal has been filed by Shri Riyaz Sayed Abdul Aziz, Proprietor of M/s Rishay International, Mumbai (herein after, referred to as "the appellant", for short) assailing the Order-in-Original CAO No. CC/RK/27/ 2023-24 Adj.(X) ACC dated 15.11.2023 (herein after, referred to as "the impugned order") passed by the Commissioner of Customs-IV (Export), Air Cargo Complex (ACC), Sahar, Andheri (East), Mumbai.

2.1 Brief facts of the case, leading to this appeal, are summarized herein below:

2.2. The appellant herein is the sole proprietor of M/s Rishay International which was involved in export of Ready-Made Garments (RMG) and fabrics to African countries, mostly to Nigeria, and they had availed customs duty drawback benefits in respect of such exports allegedly in an irregular manner by gross over-valuation of export goods. Earlier, Directorate of Revenue Intelligence, Mumbai Zonal Unit (DRI) had received specific intelligence indicating that certain exporters were engaged in bogus exports by preparing manual shipping bills (S/Bs), on which actually no export was effected. Further, the intelligence also revealed that a number of export firms were floated for preparation of bogus bills in the name of several companies for showing fake/fraudulent exports and availing irregular drawback.

2.3 On the above basis, DRI had conducted search operations of various premises of exporters, bogus suppliers and the office premises of the Chartered Accountants firm M/s Karan Ranka & Associates involving one Shri Suhel Parvez Mohammed Sharif Ansari (for short, referred hereafter as 'Suhel Ansari') under Panchnama proceedings. Further, statements were recorded from various persons concerned with such exports during the course of investigation conducted by DRI. In a statement dated 24.08.2015 recorded from Shri Shaik Mohammed Arshad, an employee of Shri Suhel Ansari, he had stated that there were about 22 business entities which were used for generating fake invoices without delivery of any goods. Further, he stated that about 59 export firms were floated for indicating purchase of goods from the afore stated 22 business entities/ suppliers; the modus operandi involved in such alleged fraudulent export is that persons connected with export firms would collect the invoices from their office without involving any goods and subsequently prepare documents indicating higher value of export goods as against the actual export of low value goods. In this manner, he illustrated that as against the maximum purchase cost of export goods at 35% of total drawback amount, they would avail 100% of the drawback duty benefits and pass on to the exporter balance 65% of the drawback benefits.

2.4 In another statement dated 24.08.2015 recorded from Shri Riyaz Sayed Abdul Aziz, Sole Proprietor of M/s Rishay International, he had stated that he started working in the year 1995 as salesman of oil and joss-stick (agarbathi) in a firm named M/s Amar Enterprises for about 10 Years; later in the year 2005 he started working with Shri Hitesh, who is a dealer in gold ornaments having shop in 'Ashok house', Zaveri Bazar, where he came to know the modus of preparing fake invoices in the name of non-existent companies for bogus purchase or sale of goods mentioned in such bills. He further stated that no purchase of any garments, imitation jewellery was made by him, and only fake bills were prepared in the name of 22 different business entities and the same were supplied to a number of exporters which included the exporter M/s Rishay International; one Shri Altaf Bhai used to be the contact person to whom he had supplied such fake bills.

2.5 Besides the above, search of the office premises located at Room No.30, Fourth floor, Chunnawala Building, 38, Kolsa Street, Pydhonie, Mumbai-400003 on 14.08.2015, resulted in recovery of documents containing various files in which export documents relating to different exporters have been maintained by Shri Suhel Ansari; 3 laptop computers hard disk drive of 500GB etc., under Panchnama proceedings.

2.6 Further statement was also recorded from Shri Amit Hirendra Jha, proprietor of M/s Universal Shipping & Forwarding Agency, the Customs Broker of appellant-exporter on 10.02.2022, which indicated that on the basis of invoices, packing list produced by the exporter, shipping bills and other supporting documents were prepared for processing the same; export consignments used to be received directly at the cargo complex, after assessment of the shipping bills by customs authorities, and there was no occasion involving any discrepancy being detected about the actual goods exported vis-à-vis the high-valued goods for which the invoices were alleged to have been prepared by the above modus operandi. Further investigation was also conducted by the Special Intelligence and Investigation Branch-Exports (SIIB-Exports) of Customs Commissionerate at Air Cargo Complex, Mumbai, on the basis of detailed investigation conducted by DRI.

2.7 On completion of detailed investigation, the Customs department had alleged that M/s Rishay International had exported low value goods by over valuation and availed ineligible drawback, in a fraudulent manner, in number of export consignments, which are summarised below:

Sl. No.	Period of exports involved (LEO dates)	No. Of Shipping Bills	Total FOB value of exports (in Rs. Lakhs)	Total drawback (in Rs. Lakhs)
1	01.01.2012 to 31.12.2012	438	3052.22	223.77
2	01.01.2013 to 31.12.2013	120	766.11	61.81
3	01.01.2014 to 31.12.2014	19	113.46	9.42
4	01.01.2015 to 31.12.2015	0	0	0
5	01.01.2016 to 31.12.2016	0	0	0
	Total	577	3931.79	295.00

Accordingly, customs authorities had issued Show Cause Notice (SCN) dated 30.11.2022 proposing for recovery of drawback availed irregularly under Rule 16 of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995, where no Bank Realisation Certificates (BRCs) have been received towards sale proceeds of export goods; confiscation of export goods valued at Rs.3931.79 lakhs under sub-sections (d), (i), (ia) of Section 113 of the Customs Act, 1962; and for imposition of penalty on the appellant and other co-noticees under Section 114(i)/114(iii), 114AA ibid.

2.8 In adjudication of the SCN dated 30.11.2022, the learned Commissioner of Customs had confirmed all the proposals made in the show cause notice including rejection of Rs.295 lakhs of drawback; appropriation of Rs. 5 lakhs; imposition of redemption for Rs.393 lakhs and also imposed penalty of Rs.393 lakhs each on the appellant firm M/s Rishay International, appellant Shri Riyaz Sayed Abdul Aziz, who is the Sole Proprietor of export firm M/s Rishay International, 3 other co-noticees. Feeling aggrieved with the impugned order dated 15.11.2023, the appellant has filed this appeal before the Tribunal.

3.1 Learned Advocate submitted that the appellant-exporter has filed a number of Shipping Bills (S/Bs) for export of ready-made garments to African countries, mostly to Nigeria. These S/Bs relate to the period 01.01.2012 to 13.12.2014, and were filed along with respective invoices & packing lists, which where duly assessed by the jurisdictional customs authorities, by accepting the value of export goods declared by the appellant and such goods were also allowed to be exported out of the country by granting Let Export Orders (LEOs), in all such export shipments. Therefore, he submitted that the allegation of over valuation of export goods is not sustainable and consequential penalty imposed on the appellant is also not sustainable.

3.2 Learned Advocate also stated that the investigation initiated by DRI was on the basis of communication received from Consulate General of India, Dubai, UAE vide their letter dated 08.03.2018 intimating DRI that the goods has been cleared at much lower value than what has been declared to the Indian customs. The investigation was later handed over to the SIIB-Exports, who had on completion of the investigation, have issued the Show Cause Notice (SCN) to the appellant in the present case. He further stated that both in the SCN and in the impugned order, the report of Consulate General of India, Dubai, have been relied upon for confirmation of demands on the appellant-exporter; however, such evidence does not have any relation in respect of exports of goods undertaken by the appellant, which was destined to African countries. Hence, he submitted that the confirmation of demands in their case is not legally sustainable.

3.3 Further, learned advocate also stated that the appellant had submitted proof of realisation of export proceeds, in respect of the exports carried out by them during the disputed period 2012-2014, before the investigation authorities. Therefore, he submitted that the allegation levelled against the appellant for over valuation of export goods and non-realisation of export proceeds and the consequent denial of drawback benefits, imposition of penalty on the appellant does not have any legal basis, as these are contrary to the facts.

4. On the other hand, learned Authorized Representative (AR) appearing on behalf of the Revenue, reiterated the findings stated that findings of the learned Commissioner of Customs in the impugned order. He further stated that since the intelligence was received about the appellant obtaining bogus purchase invoices, buying inferior quality ready-made garments from the local market and exporting the same at inflated prices, in order to avail inadmissible drawback, and in the absence of realisation of full sale proceeds of export goods, the impugned order is sustainable.

5. Heard both sides and perused the case records. The additional submissions made in the form written paper books by both sides was also perused carefully.

6. The short issue for determination before the Tribunal is as follows:

(i) whether alleged overvaluation of export goods proposing for its confiscation under sub-sections (d), (i), (ia) of Section 113 of the Customs Act, 1962; and rejection of duty drawback benefits under Section 75(1) *ibid* read with clause (ii) of Rule 3(1), Rule 16 of Customs Central Excise Duties and Service Tax Drawback Rules, 1995 in respect of the impugned exports, is legally sustainable or not?

(ii) does the imposition of redemption fine and penalty on the appellant, under Sections 125(1) and 114, 114AA *ibid* stands legal scrutiny or not?

7. In order to appreciate the issues under dispute, the specific legal provisions relevant to the above dispute are extracted and given below for ease of reference.

Customs Act, 1962

Drawback on imported materials used in the manufacture of goods which are exported.

"Section 75. *(1) Where it appears to the Central Government that in respect of goods of any class or description manufactured, processed or on which any operation has been carried out in India, being goods which have been entered for export and in respect of which an order permitting the clearance and loading thereof for exportation has been made under section 51 by the proper officer, or being goods entered for export by post under clause (a) of section 84 and in respect of which an order permitting clearance for exportation has been made by the proper officer, a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the manufacture or processing of such goods or carrying out any operation on such goods, the Central Government may, by notification in the Official Gazette, direct that drawback shall be allowed in respect of such goods in accordance with, and subject to, the rules made under sub-section (2) :*

Provided *that no drawback shall be allowed under this sub-section in respect of any of the aforesaid goods which the Central Government may, by rules made under sub-section (2), specify, if the export value of such goods or class of goods is less than the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf :*

Provided further *that where any drawback has been allowed on any goods under this sub-section and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the Foreign Exchange Management Act, 1999 (42 of 1999) such drawback shall except under such circumstances or such conditions as the Central Government may, by rules, specify, be deemed never to have been allowed and the Central Government may, by rules made under sub-section (2), specify the procedure for the recovery or adjustment of the amount of such drawback…….*

Confiscation of goods attempted to be improperly exported, etc.
Section 113. *The following export goods shall be liable to confiscation :—*
(a) any goods attempted to be exported by sea or air from any place other than a customs port or a customs airport appointed for the loading of such goods;

xxx xxx xxx xxx

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

xxx xxx xxx xxx

(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;

(ia) any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under section 75;

xxx xxx xxx xxx

Penalty for attempt to export goods improperly, etc.
Section 114. *Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable,—*

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;

xxx xxx xxx xxx

(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

Penalty for use of false and incorrect material.
Section 114AA. *If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

Customs, Central Excise Duties and Service Tax Drawback Rules, 1995

"Rule 3. Drawback. -

(1) Subject to the provisions of -

(a) the Customs Act, 1962 (52 of 1962) and the rules made thereunder,

(b) the Central Excises and Salt Act, 1944 (1 of 1944) and the rules made thereunder,

(bb) the Finance Act, 1994 (32 of 1994), and the rules made thereunder; and

(c) these rules,

a drawback may be allowed on the export of goods at such amount, or at such rates, as may be determined by the Central Government:

Provided *that where any goods are produced or manufactured from imported materials or excisable materials or by using any taxable services as input services, on some of which only the duty or tax chargeable thereon has been paid and not on the rest, or only a part of the duty or tax chargeable has been paid; or the duty or tax paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962 (52 of 1962) and the rules made thereunder, or of the Central Excise Act, 1944 (1 of 1944) and the rules made thereunder, or of the Finance Act,* *1994 (32 of 1994) and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty or tax paid or the rebate, refund or credit obtained:……*

Rule 16. Repayment of erroneous or excess payment of drawback and interest. -
Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of section 142 of the Customs Act, 1962 (52 of 1962)."

8. In respect of the above issues of dispute, learned Commissioner of Customs has held that the appellant-exporter was obtaining fake bills in the name of the number of bogus companies from Shri Suhel Parvez Ansari, for use as higher valued/overvalued invoices for export of low value goods, with an intent to claim ineligible drawback. In coming to the above conclusion, he relied upon the DRI's enquiry confirming that Consulate General of India, Dubai, UAE vide its letter dated 08.03.2018, in which they had reported that from the scrutiny of the documents provided by Federal Customs Authority, Dubai, it emerged that goods had been cleared and unit values has been much lower than what has been declared to Indian Customs; and as per DRI, the appellant-exporter has also conducted the similar modus operandi. On the above basis, learned Commissioner of Customs had given the following findings for confirmation of the demands on the appellants. The relevant paragraph in the said impugned order are extracted and given below:

"4.67 Summarising the entire discussion, following is found:

i. That M/s Rishay International has procured fake and bogus invoices from Shri Suhel Ansari;

ii. Goods of inferior quality were procured from unknown places without any invoice.

iii. Incorrect transactions were made with the fake suppliers, whose invoices were raised by Shri Suhel Ansari. This was done to conceal the actual transactions and give cover to the bogus transactions.

iv. This automatically explains the facts there was not physical movement of the goods against the fake invoice raised by Shri Suhel Ansari.

v. As export goods were procured from unknown places, which were of inferior quality and having low value, therefore the impugned export M/s Rishay International was grossly overvalued and only done for the purpose of fraudulent claim of drawback.

vi. Aforesaid fact of overvaluation supported by various statements as mentioned above and by the enquiry caused by DRI with the Consulate General of Dubai.

vii. *The entire modus operandi was operated by Shri Suhel Ansari with the collusion of Shri Arshad, Shri Karan Ranka, exporter and Customs Broker. Shri Suhel Ansari was mastermind of the fraud.*"

9.1 On plain reading of the legal provision under Section 75 of the Customs Act, 1962, it transpires that sub-section (1) of said Section provides for allowing drawback of duties of Customs on any goods, which have been entered for export and for which an order permitting clearance of loading and exportation thereof has been made by the proper officer of Customs under Section 51 *ibid*. However, the second proviso to the said section provide the procedure for recovery or adjustment of the amount of such drawback, where if it is found that the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the Foreign Exchange Management Act, 1999.

9.2 In the case before us, the facts are not in dispute that in all 577 shipping bills filed by the appellant-exporter covering the export of goods during 01.01.2012 to 31.12.2014, the Let Export Orders have been issued by the proper officer of Customs under the jurisdictional Commissionerate. Further, the appellant-exporter have also produced eight certificates dated 29.11.2016 from Bombay Mercantile Co-Operative Bank Ltd., Navratan Building, 69, P.D' Mello Road, Carnac Bunder, Mumbai certifying that export proceeds in respect of export shipments made by M/s Rishay International, Mumbai during the periods 01.01.2012 to 30.06.2012; 01.07.2012 to 31.12.2012; 01.01.2013 to 30.06.2013; 01.07.2013 to 31.12.2013; 01.01.2014 to 30.06.2014; 01.07.2014 to 31.12.2014; 01.01.2015 to 30.06.2015 and 01.07.2015 to 31.12.2015, have been received for all the documents that have been received by them, and in none of the shipping bills, the export sale proceeds are pending realisation. Similarly, eight separate letters dated 05.12.2016 addressed to the AC, Customs, ACC, Sahar, Mumbai have been produced from Union Bank of India, Princess Street Branch, Devkaran Mansion, Shamaldas Gandhi Marg, Mumbai, certifying that in respect of export shipments made by M/s Rishay International, Mumbai have been received for all the documents that have been received by them during similar periods covering the years 2012 to 2015, and in none of the shipping bills, the export sale proceeds are pending realisation. On the basis of above factual evidences, we are of the considered view, that the primary ground for rejection of drawback as provided under Section 75 *ibid* does not exist in the present case before us.

9.3 The claim of Revenue that the export goods have been overvalued by producing fake invoices, and low value goods have been actually exported by the appellant-exporter in 577 shipments exported during 2012-2014, are supported by the statements recorded from various persons, who are not directly connected with exports but have facilitated generation of fake/bogus invoices. It is also a fact on record that in respect of 577 shipments exported through ACC, the proper officers of Customs have duly assessed the S/Bs and have allowed the exports goods to be exported out of the country. However, there was no case of any doubt about the value of export goods or mis-declaration about the quality, mis-match of the export goods and the export invoices, packing list identified at the time of export over three years by the Customs authorities. In this background, the evidence in the form of letter dated 08.03.2018 of Consulate General of India, Dubai, UAE reporting the scrutiny of the documents provided by Federal Customs Authority, Dubai, stating that goods had been cleared at Dubai and unit values has been much lower than what has been declared to Indian Customs, are of no relevance as in none of the S/Bs in the present case, the exports were destined to Dubai, UAE and on the contrary all the goods in various shipments were exported to African countries, mostly to Nigeria.

9.4 The above factual details prove that the findings recorded by the learned Commissioner of Customs in the impugned order is contrary to the facts on record and his findings are also not supported by any independent evidences. For the same reason, we do not find any evidences to prove that the declarations made in the S/Bs, with respect to value or other particulars of export goods were in anyway incorrect or contrary to the declarations made by the appellant. Therefore, we are of the considered view that no specific findings have been made out for violation of sub-sections (d), (i), and (ia) of Section 113 *ibid* enabling confiscation of export goods. For the said reason, consequent imposition of redemption fine under Section 125(1) *ibid* and consequent imposition of penalty on the appellant under Section 114 is also not legally sustainable.

9.5 On perusal of the legal provision under of Section 114AA *ibid*, it transpires that the penalty under this section was brought into the Customs Act by Taxation Laws (Amendment) Act, 2006 w.e.f. 13.07.2006. During the examination of the Section 114AA *ibid* by the Standing Committee on Finance on the representatives of trade expressing that the proposed provisions were very harsh, which might lead to harassment of industries, by way of summoning an exporter/importer to give a 'false statement' etc., it was explained by the Ministry of Finance that new Section 114AA ibid has been proposed consequent to the detection of several cases of fraudulent exports, where the exports were shown only on paper and no goods crossed the Indian border. Thus, it has been made clear that the imposition of enhanced penalty under Section 114AA ibid is applicable only for serious frauds being committed in cases where no goods are being exported, but only papers are being created for availing the number of benefits under various export promotion schemes. In the present case before us, where in all the shipments goods have been exported, is entirely different from the case of paper exports without actual export of goods, and therefore the provisions of Section 114AA ibid does not apply to the present case of the appellant-exporter, where the export goods have actually been exported, as neither there was any dummy export being made only on paper, nor there was any criminal intent involving evasion of duty. Hence, we are of the considered view that imposition of penalty under Section 114AA *ibid* does not arise in the present case of the appellant.

10. In view of the foregoing discussions and analysis, we do not find any merits in the impugned order passed by the learned Commissioner of Customs to the extent it has rejected the drawback benefits and confirmed its recovery, in respect of the goods exported by the appellant-exporter in filing various S/Bs which were duly assessed and such goods having been allowed clearance for export by the jurisdictional Customs authorities. Further, we also do not any merits in the impugned order in imposition of redemption fine on the export goods, and for imposition of penalties on the appellant.

11. In the result, the impugned order dated 15.11.2023 passed by the learned Commissioner of Customs-IV (Export), Air Cargo Complex (ACC), Sahar, Andheri (East), Mumbai is set aside and the appeal filed by the appellant is allowed in their favour, with consequential relief, if any, as per law.

(Order pronounced in the open court on 04.07.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha