

**Merchant Export Ltd. Vs. C.C.**

**Merchant Export Ltd. Vs. C.C.**

**SooperKanoon Citation :** [sooperkanoon.com/30999](http://sooperkanoon.com/30999)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** May-23-2003

**Reported in :** (2003)(162)ELT466TriDel

**Judge :** K Usha, N T C.N.B.

**Appellant :** Merchant Export Ltd.

**Respondent :** C.C.

**Judgement :**

1. This appeal is directed against Order-in-Original No.32/2001/SIB/30/2000-Cus dated 17.12.2001 passed by the Commissioner of Customs, Cochin while adjudicating the case relating to alleged overinvoicing of ball pens exported by the appellants through Cochin Port under DEPB Shilling Bill No. 00157 dated 4.8.99. Commissioner upheld the charge of misdeclaring export price and market value of the goods with intent to avail higher quantum of duty entitlement than was due based on the correct value. The consignment comprising 6.50 lakhs ball pens had already been exported to Dubai. In the Adjudication order the Commissioner found that as against the declared export price of about Rs.84 lakhs (US\$ 1.93 lakhs at the rate of US \$ 0.30 per ball pen) the clearance value through Dubai Customs was only US \$ 13000 i.e. 0.02 per piece. Similarly, on the question of present market value of the goods, the Commissioner found that the pens had been purchased from their Calcutta manufacturers at a price of Re 1 per piece or less, as against the declaration of present market value (PMV) of Rs.10/- per piece in retail and Rs.6 per piece in wholesale.

DEPB benefit is at the rate of 21% on FOB value, subject to the condition that it shall not exceed 50% of the PMV. Since the market value was found to have been over-stated many fold so as to claim higher benefit of about Rs 17.6 lakhs (at the rate of Rs. 2.63 per pen) the Commissioner reduced the DEPB benefit to about Rs 5 lakhs. He also imposed a penalty of Rs.25,000/-on the appellant under Section 114 of the Customs Act for contravention of Section 113(b) of the Customs Act.

Present appeal challenges the aforesaid findings and actions of the Commissioner and persists with the claim for payment of the full DEPB credit as claimed (with interest), based on the declared FOB value and market value and quashing of penalty.

2. The Commissioner's finding regarding the actual market value of the goods has been reached based on the evidence obtained during investigation by Directorate of Revenue Intelligence (DRI). That evidence showed that the ball pens had been purchased by one M/s.

Chirag Exports and Imports, 864, Industrial Area 'A' Ludhiana owned by Shri S.P. Goel. 1.30 lakhs ball pens had been supplied by M/s Hitachi Plastic Co., 103/5, B.L. Saha Road, Calcutta and the remaining 5.20 lakhs by M/s Linc Pen and Plastics Ltd. Calcutta. These transactions remain established by evidence relating to negotiations on price, supply of the goods and payment for them. Further, transport documents recovered from the exporters, Clearing Agent at Cochin Port showed that these goods had been transported and delivered at Cochin from Calcutta by M/s. Assam Freight Carriers in Truck No. WB-23/2430. During the investigations the manufacturer suppliers of the goods, the transporter, clearing agent all confirmed these facts. The evidence obtained by the Customs authorities from Dubai Port, where the goods were delivered, showed that these goods were cleared at a declared value of 13,000 US dollars (0.02 US dollar per pen) by M/s Pilot Trading LLC, Dubai. The details of the goods mentioned in the export documents filed at Cochin matched the goods declared in the clearance documents filed at Dubai. Thus, confirming that the goods exported by the appellants and cleared at Dubai were one and the same. The impugned order has been passed relying on such evidence.

3. During the adjudication the appellants contended that the exported goods were not the pens purchased from the Calcutta parties by M/s Chirag Exports and Imports. Instead, those pens had been purchased on cash payments at Ludhiana against cash bills. Sample bills from Sardar Store, Ludhiana, Vijay Book Centre, Bombay, S. Narayan Penwala etc.

were produced in support of the contention that market value of the exported pens was about Rs 10 a piece. It was also alleged that the case was a frame up in view of previous imports by the appellants in the name of Cannon Steel Ltd. Commissioner rejected these contentions on the ground that these transactions did not appear to be genuine. He also felt that if the goods had been purchased as claimed by the exporter at Ludhiana, it is not shown as to how they went to Calcutta for being brought to Cochin for export. The Commissioner also found no merit in the appellant's claim that during cross-examination of Shri Sanjeev Kajaria, partner of M/s Hitachi Plastic Co., Calcutta he had disputed the version of the investigation, inasmuch as Shri Sanjeev Kajaria had stated that export goods had no connection with the goods sold to M/s. Chirag Exports and Imports. Commissioner also rejected the appellant's submission that truth will be known only on the cross-examination of several persons like Shri Rajen, First Secretary in the Indian Embassy, Dubai, Shri Sanjay Bararia of M/s Linc Pen & Plastics Ltd. at Calcutta etc.

4. In the present appeal also the defence of the appellants is on the same line as before the adjudicating authority. It is also submitted that imposition of penalty for misdeclaring export value of goods is not permissible under Section 114 of the Customs Act. It is contended that misdeclaration in relation to value of export goods which are eligible to drawback only are liable to penalty under sub-section 3 of the Section and not export under DEPB. Learned Counsel also pointed out that Section 113(d) of the Customs Act was not attracted to the present case, since Sub-Section related to export of goods contrary to any prohibition. Learned Counsel submitted that since there was no prohibition in regard to export of ball pens, provisions of Section 113(d) are not attracted at all and the Commissioner's order imposing penalty for violation of sub-section 113(d) is not sustainable at all.

In this connection he also referred to the following observations contained in the judgement of the Hon'ble High Court of Punjab and Haryana at Chandigarh in Writ Petition No. 1187/2000 filed by the appellant: "so far as Rule 14(2) of the Foreign Trade (Regulation) Rules, 1993 is concerned, it only prohibits any person from employing corrupt or fraudulent practice for the purposes of obtaining any licence of importing or exporting any goods. In the present case, there is nothing on the record to show that the petitioner had employed any corrupt or fraudulent practice for the purposes of obtaining any licence of importing or exporting any goods. On the other hand, the allegations are that while exporting 13-inch long pen, the petitioner had quoted higher present market value and had manipulated certain documents in this regard and had thereby given false documents. However, these allegations against the petitioner would not bring the case of the petitioner within the mischief of Rule 14(2) of the Foreign Trade (Regulation) Rules, 1993.

Furthermore, necessary action may be taken against the petitioner for having furnished false declarations etc. as alleged. However, that would not bring the case of the petitioner within the provisions of COFEPOSA Act, so as to order detention of the petitioner under these provisions, inasmuch as neither the petitioner has indulged in any activity which is prejudicial to the conservation or augmentation of foreign exchange nor he has indulged in the smuggling of goods."

5. Learned SDR has submitted that Commissioner's findings are fully supported by documentary evidence on record and that misdeclaration of export value and market value of the goods with intent to claim DEPB credit hugely in excess of what is merited remain fully established. It has been stressed that the actual value of the exported ball pens remains established by their purchase price from the Calcutta manufacturers. Evidences showing transport of those pens from Calcutta Manufacturers to Cochin Port and the shipment of the goods at Cochin had proved beyond doubt that the exported goods were truly of Re. 1 or less per piece value. Clearance of the goods at Dubai at 13000 US Dollars (as against the declared value of US dollars 1,95,000 FOB) also supports the allegation that FOB value of the goods had been hugely over-stated.

Learned SDR further contended that in the face of such clear chain of evidence about the real state of transactions the appellants alternate claim that the goods

were purchased from Ludhiana market and exported cannot have any credibility. Learned DR has also pointed out that un-numbered vouchers produced by the appellants by way of evidence of purchase of the pens at Ludhiana cannot be accepted, goods worth such high value are not transacted in this fashion. Learned DR, therefore, submitted that the appellant's claim is required to be rejected as entirely false and unsubstantiated. Learned DR further stated that the appellant's grievance relating to not making witness available for cross-examination has also no relevance since the case of the Revenue remain established by documentary evidence themselves. As regards the imposition of penalty, it is the contention of the learned DR that this issue remains settled by the decision of the Larger Bench of the Tribunal reported in 2001 (127) ELT 81-Om Praksh Bhatia Vs. C.C, Delhi.

Learned DR also pointed out that Larger Bench has clearly held that misdeclaration of export value constitutes violation of the provisions of Customs Act and made the goods liable to confiscation and the person liable to penalty. Learned DR also pointed out that the aforesaid judgement of the High Court of Punjab and Haryana related only to the question of preventive detention and has no application to the action under Customs Act for misdeclaration of the goods. Learned DR also relied on the decision in the case of Sheikh Mohd. and Others Vs C.C, Calcutta and Others reported in 1983 ELT page 1439 (SC).

6. We have perused the records and considered the submissions made by both sides. We find that the Revenue's allegation relating to misdeclaration of FOB value and market value of the ball pens in question remain fully established through documentary evidence. The pens in question were purchased in the name of M/s. Chirag Exports and Imports, Calcutta, another firm of Shri S.P. Goel, partner in the present exporting firm. The purchases were at the rate of Re. 1 and 93 paise per pen. Investigations had recovered document relating to the transport of these pens from Calcutta to Cochin and it has been confirmed that these were the pens exported under shipping Bill No.00157 dated 4.8.99. The evidence obtained from Dubai Customs authorities also support the allegation that the goods cleared at Dubai were the same as the goods exported under shipping Bill No. 00157 dated 4.8.99. Apart from the fact that quantities, description etc. tallied, the clearance value declared at Dubai also is in line with the purchase price of the

goods at Calcutta. In the face of such strong documentary evidence about the identity and value of the goods exported, the version of the appellants that these goods were purchased in the open market at Ludhiana and were taken to Cochin Port for export cannot have any acceptance. They can only be rejected as fabrications to support an entirely false claim for DEPB benefit. The appellant's grievances on the ground of right of cross-examination of witness etc. are of no relevance in a case like the present one, where the documentary evidence by itself tells the true story.

7. In these facts and circumstances, we fully endorse the view taken by the adjudicating authority on the value of the goods. The Commissioner has given a generous deal to the appellants by treating 150% of the purchase price of the pen as present market value and allow DEPB credit at 50% of this value. If the DEPB credit was given at 21% of the FOB value, based on the purchase price of the pens, or US dollars 13000, which was the clearance price at Dubai, credit entitlement would have been very much less. We, therefore, do not find any reason for the appellants to be dissatisfied about the quantum of DEPB credit allowed in the impugned order. On the question of imposition of penalty, we find that a Larger Bench of this Tribunal has held that misdeclaration of export value is an offence under the provisions of the Customs Act.

In the present case, export value declared by the appellants has been proved to be a massive overstatement. Neither the purchase price of the goods nor the import price declared at Dubai support the export price declared by the appellants. That the appellant has repatriated the declared value makes no difference. It is settled law that realization of the declared export value by the exporter does not prove that export value had been correctly declared. Facts and circumstances of this case point only in one direction. Export value was hugely exaggerated. It is also evident that such misdeclaration and falsehood were undertaken only to claim DEPB credit. A huge fraud was afoot. In regard to pens purchased at around Re. 1 per piece, the appellant was trying to claim duty exemption credit at Rs.2.73 per piece. No treasury can afford to dole out 273% of export value as DEPB benefit. A penalty of Rs 25000/- in a case like this cannot be called unmerited or excessive.

8. In view of what has been stated above, we find no merit in the present appeal. The impugned order calls for no interference in the appeal filed. by the exporter. There is no appeal filed by the Revenue.

The impugned order is, accordingly, confirmed and the appeal is rejected.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**