

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 1**

CUSTOMS APPEAL NO. 50268 OF 2021

[Arising out of Order-in-Appeal No. CC(A) CUS/D-II/ICD/TKD/EXP/677/2019 dated 22.10.2019 passed by the Commissioner of Customs (Appeals), New Delhi]

M/S SIMRAN EXPORTS

.....APPELLANT

30/15, Ground Floor,
Shakti Nagar, Delhi

Vs.

**COMMISSIONER OF CUSTOMS(EXPORT)-
NEW DELHI**

.....RESPONDENT

Inland Container Depot, Tughlakabad,
New Delhi-110020

Appearance:

Ms. Garima Agarwal, Advocate for the Appellant

Shri Shiv Shankar, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51350 /2025

DATE OF HEARING : 08/07/2025

DATE OF DECISION: 23/09/2025

P.V. SUBBA RAO

M/s. Simran Exports¹ filed this appeal to assail the Order in Appeal dated 22.10.2019² passed by the Commissioner of Customs (Appeals), New Delhi in which he upheld the Order in Original dated 28.2.2017³ passed by the Additional Commissioner, ICD Tughlakabad Exports, New Delhi and rejected the appellant's appeal.

1 **appellant**
2 **impugned order**
3 **OIO**

2. The appellant is an exporter. It had exported garments of declared FOB value of Rs. 1,06,84,417/- on 24.10.2009 and claimed drawback as applicable and was also granted drawback accordingly. Thereafter, the Directorate General of Revenue Intelligence⁴ initiated investigation and concluded that the goods were over invoiced with a view to avail ineligible drawback. Based on statements of various persons recorded under section 108 of the Customs Act, 1962⁵, investigations into the remittances for the exports and the invoices for the same export consignments filed with the Delhi Chamber of Commerce⁶ to obtain the Country of Origin⁷ certificates, DRI concluded that the exported garments were actually of inferior quality and they were exported by over invoicing to avail ineligible drawback.

3. The Joint Commissioner issued Show Cause Notice dated 21.1.2021⁸ to the appellant. Deciding the proposals in their SCN, the Additional Commissioner passed the OIO confiscating the goods exported by 8 shipping bills under section 113 (d) and 113 (i) read with section 50 of the Act. Since the goods had already been exported and were not available, he did not impose any redemption fine. He also ordered recovery of the drawback under Rule 16 of the Customs and Central Excise Duties Drawback Rules, 1995⁹ along with interest and imposed penalties on the appellant under section 114 (iii) and 114AA of the Act and

4 DRI
5 Act
6 DCC
7 COO
8 SCN
9 Drawback Rules

imposed penalty on Shri Naveen Kumar Goel under sections 114 (ii) and 114AA of the Act.

4. On appeal by M/s. Simran Exports, the appellant herein, the Commissioner (Appeals) passed the impugned order upholding the OIO. Aggrieved, the appellant filed this appeal.

5. We have heard learned counsel for the appellant and learned authorized representative for the Revenue and perused the records.

Submissions of the appellant

6. Learned counsel for the appellant made the following submissions:

(i) The SCN relied on several statements recorded by the officers under section 108 of the Act which cannot be used as evidence as they have not gone through the process under section 138B. Many of these statements were also retracted later;

(ii) The allegation that the appellant had over-invoiced the export goods by exporting inferior quality goods is not correct;

(iii) All exports were allowed by the Customs officers at the time of export and remittances were received and Bank Realization Certificates¹⁰ were issued by the bank;

(iv) Since the goods had already been exported, they were not "export goods" as per section 2(19) of the Act

and, therefore, could not have been confiscated under section 113 of the Act;

(v) Consequently, no penalty could have been imposed under section 114;

(vi) The department relied on the invoices provided by the local vendors M/s. P D Imports and M/s. Asha Exports. The consistent position of the appellant has been that the goods supplied by these two vendors were the material using which the export goods were made and exported by the appellant. The invoices of the local vendors were not for the export goods;

(vii) Rule 16 of the Drawback Rules provides for recovery of wrongly paid drawback while Rule 16A provides for recovery of the drawback if export proceeds were not realized. In this case, the drawback was paid as per the Shipping Bills cleared by the customs authorities and the export proceeds were realized and BRCs were issued by the bank. Therefore, no recovery of drawback could be made;

(viii) The invoices for the same consignments for lower values were not submitted by the appellant to the DCC. They might have been submitted by the importer; and

(ix) The impugned order may be set aside with consequential relief to the appellant.

Submissions of the Revenue

7. Learned authorized representative for the Revenue vehemently supported the impugned order and asserted that it calls for no interference. He submitted as follows:

(i) From the statements of Shri Abdul Sattar made on 25.10.2009, statement of Shri Raj Kumar Jain, partner of M/s. Swati Fabrication, suppliers of the garments to the appellant and the statements of Shri Rajesh Kumar, employee of the appellant, it is clear that the appellant had procured cheap, inferior garments and exported them showing inflated values. The garments were procured from Tirupur and Ludhiana, unloaded at National Transport Co., Siraspur and transported to the appellant's godown by M/s. Sangam Transport Service and the documents were destroyed by Shri Rajesh Kumar on the appellant's directions;

(ii) As per the statement of Shri Suresh Mudgal of M/s. Sangam Transport, he had transported the goods from the appellant's godown to the ICD and no document was received by him and he was paid in cash;

(iii) The DCC provided copies of the invoices submitted to it by the appellant to obtain COO Certificates for the same consignments which showed much lower values. The value of consignments in the export documents was between 19.83 to 21.84 times the value in these invoices;

(iv) Initially, no remittance was received for the export consignments. After four months of the commencement of investigation by DRI and after 7 to 10 months after the export, remittances were received from different accounts to the appellant's account but not from the accounts of the overseas buyers of the exported goods. Further, the bank account showed that the remittances were advances by different other buyers and not receipts for the exported goods. Therefore, these are not sale proceeds of the exports. Shri Vinod Kumar Mulani, proprietor of the appellant failed to submit exchange control copies of the shipping bills to the bank;

(v) Since no remittances have been received, the drawback is recoverable under Rules 16 and 16A of the Drawback Rules along with interest under section 75A(2) of the Act;

(vi) The goods were liable for confiscation under section 113(d) and (i) of the Act and penalties were imposable under section 114(iii) and 114AA of the Act; and

(vii) The impugned order calls for no interference. It may be upheld and the appeal may be dismissed.

Findings

8. We have considered the submissions on both sides and perused the records.

9. The case of the department is that:

- (i) the appellant had bought cheap, inferior goods in the local market and exported them indicating highly inflated prices in the Shipping Bills to avail ineligible drawback;
- (ii) this undervaluation was discovered as a result of investigation in which statements of various persons were recorded and the correct invoices for the export goods submitted to the DCC were provided by it;
- (iii) the over valuation is about 20 times the actual value as can be seen from the difference between the invoices submitted to the customs and to the DCC;
- (iv) the drawback so availed is recoverable under Rules 16 and 16 A of the drawback Rules along with interest;
- (v) the exported goods were liable to confiscation under section 113 and hence have been confiscated but since they were no longer available, no redemption fine was imposed;
- (vi) the penalty under section 114 was correctly imposed on the appellant for actions which rendered the goods liable to confiscation; and
- (vii) the penalty under section 114A was correctly imposed on the appellant for wilful mis-declarations in the Shipping Bills.

10. Twenty two documents were relied upon in the SCN to prove the above. Of these, fifteen are statements recorded by officers under section 108 of the Act which are relevant to prove the contents in them if the adjudicating authority admits

them as evidence after following the procedure prescribed under section 138B of the Act. The adjudicating authority did not do so and therefore, these are not relevant to establish the case of the department.

11. Of the remaining seven relied upon documents, one is a panchnama drawn at the residence of the owner of the appellant Shri Vinod Kumar Mulani, one is a copy of the application filed by Shri Mulani before the court of ACMM, Patiala and the order of the court in connection with his arrest, two are letters of the Canara Bank, Uttam Nagar, Delhi, one is a letter of Delhi Chamber of Commerce providing copies of the invoices submitted to it with respect to the exports, one is letter of Assistant Commissioner (Drawback) and one is the letter of the CHA.

12. Of the above seven relied upon documents the one relevant to support the department's case that the exported goods were actually of a much lower value is the letter of the DCC along with the invoices submitted to it by the appellant by the appellant seeking COO certificates. These certificates are often required by the customs at the importing country to process and assess the imported goods and are not important for export. The exporter obtains these and sends them to the overseas importer along with other documents.

13. In this case, DCC was the authority competent to issue the COO certificates and it had issued them to the appellant on the basis of the invoices submitted by it. The

submission of the learned counsel for the appellant that the invoices might have been submitted to DCC by the importer has no force. The letter from DCC dated 11th November 2009 to the DRI at page 251 of the appeal clearly says 'we have checked our records from 1.4.2008 to 5.11.2009. We are enclosing photocopies from our records of the documents submitted by the companies for attestation as below:' It is followed by a table in which the appellant 'Simran Exports' is at S.No. 15 and the dates on which the documents were submitted for attestation is given as 30th April 2009, 25th June 2009 and 31st June 2009 and the corresponding numbers of the COO certificates have also been indicated.

14. We have no manner of doubt that the appellant had submitted the invoices to the DCC and submitted a different set of invoices to the Customs with values about 20 times more for the same consignments. Both sets of invoices cannot obviously be correct. One of the two is clearly a wrong set of invoices. The case of the department is that the invoices submitted to the DCC are correct and the invoices submitted to Customs were inflated to avail ineligible drawback. The case of the appellant is that the invoices submitted to Customs were correct. One way of deciding what was the correct invoice value is to examine how much was received as consideration for the invoices.

15. Next is the question of remittances. According to the learned counsel for the appellant, BRCs have been obtained from the bank for all the export consignments realizing full

value of the exports as per the export documents. The case of the department is that the remittances were obtained by the appellant after the DRI started investigation and that the remittances had not come from the consignees but from third parties and that in many cases, they were recorded as advances. Therefore, the remittances, according to the department, are not related to the exports.

16. We find that it is for the bank to determine if the remittances received were proper and issue the BRCs and unless the BRCs are cancelled by the bank, they must be accepted. It is for the bank to see if the remittance could have been sent by a third party as per the Regulations and if the remittance was relatable to the exported consignment as per FEMA and RBI Regulations.

17. The next question is whether in proceedings to recover drawback under Rule 16/16A of the Drawback Rules, the value of the goods can be changed. The High Court of Punjab & Haryana decided in **Jairath International vs Union of India**¹¹ that the proceedings to recover drawback under Rules 16/16A of the drawback rules are in the nature of execution proceedings and the value of the export goods cannot be changed in those proceedings. Relevant portion of the judgment is reproduced below:

"We on examination of the scheme of the 1962 Act and in view of the judgment of Hon'ble Supreme Court in case of [ITC Vs. CCE \(Supra\)](#) find that Rule 16 of Drawback Rules, 1995 is also in the nature of execution proceedings thus an officer even higher in rank than proper officer,

11 2019 (370) E.L.T. 116 (P & H)

who framed assessment at the time of export, cannot modify a shipping bill qua value and consequent entitlement of duty drawback while issuing notice or passing order under Rule 16 of the Drawback Rules, 1995. The contention 23 of 25 CWP No.702 of 2017(O&M) #24# of the counsel for Respondents that as per Valuation Rules, 2007 proper officer has power to re-assess value of goods even though already exported is untenable. As noted in [Famina Knit Fab](#) (Supra) and hereinabove, Valuation Rules are applicable to 'export goods' and these Rules are not enabling provisions to frame re-assessment. [Section 14](#) empowers to frame Rule to reject declared value and re-determine value of export goods. The Valuation Rules, 2007 are framed in exercise of power conferred by [Section 14](#) of 1962 Act. Rule 1(3) and 8 of Valuation Rules permit to reject value of 'export goods'. As per definition of export goods, the goods which stand exported are not 'export goods' so Valuation Rules, 2007 are not applicable to goods already exported. Valuation Rules, 2007 would come into play as soon as the proper officer gets power to reassess already assessed shipping bill. Prior to 8.4.2011, it was proper officer who used to frame assessment and w.e.f. 8.4.2011 he gets first opportunity to doubt the self assessed value at the time of export and, secondly, he may prefer an appeal before Appellate Authority. A team of Custom officers at the time of export of goods verify different particulars including value declared by an exporter. The declared value may be accepted or reassessed and in case re-assessed value is not accepted by exporter, proper officer has to pass speaking order. Thus, as per scheme of the 1962 Act, department is not remediless and courts are bound to interpret law as such. Courts while interpreting law can neither add nor subtract any word from the plain language irrespective of consequences. It is the legislature who has to rectify, repair or amend the law in case any judgment interpreting law is not acceptable or is contrary to intent and purport of enactment.

"17. On plain reading of Sections 17, 50 and 51 with Valuation Rules, 2007, we find that Respondent is neither vested with power of re-assessment of goods already exported under Rule 16 of Drawback Rules, 1995 nor Valuation Rules, 2007. The goods which stand exported do not fall within ambit of 'export goods' as defined under Section 2(19) of 1962 Act, thus Respondent cannot invoke Rules 6 & 8 of Valuation Rules, 2007. In view of judgment of Hon'ble Supreme Court in the case of *ITC v. CCE* (supra), we find that shipping bill either self-assessed or assessed by proper officer is amenable to appeal by both sides. Respondent by way of show cause notice under Rule 16 of the Drawback Rules, 1995 cannot modify assessed shipping bill.

18. Therefore, we hold that Respondent in terms of Rule 16 of Drawback Rules, 1995 as well Valuation Rules, 2007 has no power to reassess a shipping bill which was duly assessed by proper officer at the time of export of goods. In the present case, goods in question stood exported thus impugned order is

not sustainable in view of our aforestated findings as well.

19. Accordingly, present writ petitions are allowed on all the counts, namely, limitation, absence of mechanism and lack of power to frame re-assessment of goods already exported; and hence the impugned order dated 25-11-2016 (P-9) is hereby quashed. No costs."

18. Any contrary decision of the Supreme Court or any High Court has not been placed by the learned authorized representative of the department. Respectfully following **Jairath International**, we find that the value of the export goods could not have been changed in these proceedings to recover drawback under Rules 16/16A of the Drawback Rules. The assessed shipping bill can only be modified through one of the methods provided for in the Act viz.,

- a) An appeal before the Commissioner (Appeals) under section 128
- b) A notice under section 28 followed by an order to recover duties not levied, not paid, short levied, short paid or erroneously recovered. This section does not provide for modifying the assessment for any other purpose such as changing the eligible drawback amount.
- c) Finalisation of assessment if the original assessment was provisional under section 18
- d) Amendment of documents under section 149 by the exporter if the proper officer authorises the amendment.
- e) Correction of clerical errors by the proper officer under section 154.

19. In this case, no appeal has been filed against the assessment of the Shipping Bills under section 128. Notice under section 28 will not apply because no duty was short paid or not paid. Section 18 will not apply because the Shipping Bills were not provisionally assessed. There is no request by the exporter nor any authorization by the officer for amendment and therefore, section 149 will also not apply. Since the issue is not regarding clerical errors by the proper officer, section 154 will also not apply. Therefore, the values in the Shipping Bills could not have been changed in these proceedings to recover drawback under Rule 16/16A of the Drawback Rules. Learned authorized representative has not placed any other provision in the Act under which the values could have been changed in the facts of the case.

20. As far as the confiscation of the goods under section 113 is concerned, this section provides for confiscation of 'export goods' and not 'exported goods'. Export goods are defined in section 2(19) as follows:

"export goods" means any goods which are to be taken out of India to a place outside India;

21. The goods in all the Shipping Bills had already been exported and, therefore, they are outside the scope of section 113 and should not have been confiscated. Consequently, penalties under section 114 which are imposable on individuals for acts or omissions which render goods liable to confiscation under section 113 also should also not have been imposed.

22. Penalty under section 114AA is imposable for using false and incorrect material in any business for the purposes of the Act. It is not dependent on any confiscation of goods nor on any confirmation of demand of duty or interest. Section 114A reads as follows:

"Section 114AA. Penalty for use of false and incorrect material. - 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."

23. The alleged false declaration and false documents in the case are the invoices submitted along with the Shipping Bills showing values which are about 20 times the values in the invoices for the same consignments submitted to the Delhi Chamber of Commerce to obtain the COO certificates.

24. Remittances were received and BRCs were issued by the bank as per the invoices submitted to the Customs. The department's contention is that the remittances were not relatable to the invoices at all and that they were sent by third parties as advances for some other purposes.

25. We find that the validity of the remittances towards the export has to be decided by the bank. Once the BRCs are issued, they should be accepted unless the bank cancels them. If the bank issued the BRCs in violation of any FEMA or RBI guidelines, it is for the RBI to take further action.

26. In the factual matrix of this case we do not find sufficient evidence to sustain imposition of penalty under section 114AA.

27. **To sum up:**

- a) Once the goods have been exported after processing and assessment of the Shipping Bill, the assessment can only be modified through one of the five methods available in the Act viz., an appeal to Commissioner (Appeals) under section 128, a demand of duty through a notice under section 28, finalization of provisional assessment under section 18, amendment of documents under section 149 or correction of errors under section 154. Each of these methods has limitations and will not apply in every case. The shipping bills disputed in this appeal were not modified through any of these methods.
- b) The proceedings to recover the drawback under Rules 16/16A of the Drawback Rules are in the nature of execution proceedings and they cannot be used to modify the value or any other parameter in the Shipping Bills.
- c) Since the BRCs have been issued by the bank in respect of the invoices and they were not modified or withdrawn by the bank, it must be accepted that the remittances have been received as per the invoices. Therefore, no recovery of drawback under Rules 16/16A can be done in this case.
- d) Goods which have already been exported are not 'export goods' and hence they cannot be confiscated under section 113.

- e) Consequently, no penalty can be imposed under section 114; and
- f) Penalty imposed under section 114AA cannot be sustained in the facts of the case.

28 The appeal is allowed and the impugned order dated 22.10.2019 is set aside with consequential relief, if any, to the appellant.

[Order pronounced on **23.09.2025**]

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)