

REGISTERED SPEED POST AD



**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 373/396/DBK/14-RA / 014

Date of Issue: 29.01.2024

ORDER NO.03/2021-CUS (SZ) /ASRA/MUMBAI DATED 11.01.2024 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : M/s Sara Leathers
No. 86, Bajanai Koil Street,
Pammal, Chennai - 600 075

Respondent : Commissioner of Customs(Seaport - Export)
Custom House,
New No. 60, Rajaji Salai,
Chennai - 600 001

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against OIA C.Cus. No. 1540/2014 dated 26.08.2014 passed by the Commissioner of Customs(Appeals), Chennai.



ORDER

This revision application has been filed by M/s Sara Leathers, No. 86, Bajanaï Koil Street, Pammal, Chennai 600 075 (hereinafter referred to as "the applicant") against OIA C.Cus. No. 1540/2014 dated 26.08.2014 passed by the Commissioner of Customs(Appeals), Chennai.

2.1 The exports made by the applicant under seven shipping bills were investigated by the SIIB, Custom House, Chennai. On examining the live consignment it was found that the quantities actually available in each package did not tally with the quantity declared in the packing list. Moreover, the description of the goods did not tally. It was admitted by the applicant that they had prepared parallel invoices for the same cargo and submitted invoice with inflated quantity to the Customs in order to avail maximum duty drawback and evade value cap. A show cause notice was issued to the applicant and adjudicated by the Commissioner of Customs(Seaport-Export), Chennai vide OIO No. 6057/2007 dated 21.03/10.04.2007 rejected drawback claimed, ordered recovery of drawback already sanctioned and paid, ordered adjustment of excess drawback paid from pre-deposit made, confiscated goods with the option to redeem them on payment of redemption fine and imposed penalty.

2.2 On appeal by the applicant before the Tribunal, the Hon'ble CESTAT vide Final Order No. 32/10 dated 07.01.2010 reduced the penalty imposed in view of the finding that the applicant was eligible to drawback amount of Rs. 4,78,462/- and not eligible to the excess drawback claimed against certain shipping bills set out in the table appearing in the CESTAT Order. The applicants appeal was partly allowed in such manner.

2.3 In compliance with the CESTAT Order dated 07.01.2010, the Deputy Commissioner of Customs, Drawback Section took up the drawback claims for processing. He found that the eligible drawback for the shipping bills totally amounted to Rs. 7,15,894/- and out of the said amount, Rs. 5,20,498/- had already been sanctioned and released to the exporter. Further, the drawback



claims covered under shipping bill no. 2355804 dated 30.05.2006 and 2362036 dated 06.06.2006 were processed and subsequently suspended. He further observed that the exporter had paid the excess drawback amount of Rs. 1,01,071/- (Rs. 58,966/- + Rs. 42,105/-) vide TR-6 Challan No. MCM 1104412 dated 25.11.2010 claimed for the shipping bill no. 2355804 dated 30.05.2006 and 2362036 dated 06.06.2006. Since there was no dispute about the export of the goods in description and quantity, the Deputy Commissioner inferred that the applicant was eligible for actual drawback amount of Rs. 1,27,866/- and Rs. 67,530/- in respect of shipping bill no. 2355804 dated 30.05.2006 and 2362036 dated 06.06.2006. He found that the amount of Rs. 58,966/- and Rs. 42,105/- which was the excess amount of drawback claimed due to the inflated quantity shown in the shipping bills had been paid by the applicant. Although, no drawback had been sanctioned to the exporter applicant in respect of these shipping bills, the Deputy Commissioner held that these amounts paid by the exporter applicant cannot be sanctioned as drawback under Section 75 of the Customs Act, 1962 and that the exporter applicant would have to approach the Refund Section for refund of these amounts. The Deputy Commissioner therefore vide his OIO No. 18672/2012 dated __.04.2012 sanctioned drawback amounts of Rs. 1,27,866/- and Rs. 67,530/- in respect of shipping bill no. 2355804 dated 30.05.2006 and 2362036 dated 06.06.2006.

2.4 Aggrieved by the OIO No. 18672/2012 dated __.04.2012 passed by the Deputy Commissioner, the applicant filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) found that the amounts of Rs. 58,966/- and Rs. 42,105/- were not such which could be claimed as part of the applicants drawback claim. With regard to two other shipping bills, the Commissioner(Appeals) found that they have not at all been discussed by the original authority. The Commissioner(Appeals) therefore vide his OIA No. C. Cus No. 1540/2014 dated 26.08.2014 upheld the OIO No. 18672/2012 dated __.04.2012 and also directed the original authority to give fresh findings with reference to the two shipping bills for which he had not recorded findings.



3. The applicant thereafter filed revision application against the OIA No. C. Cus No. 1540/2014 dated 26.08.2014 on the following grounds:

(i) The applicant submitted that the directions of the Assistant Commissioner to approach the refund section for refund of the amount of Rs. 1,01,071/- after they had deposited the said amount as per the directions of the same authority is highly arbitrary. The applicant asserted that the Assistant Commissioner had vide letter dated 19.11.2010 directed the applicant to deposit the excess drawback claimed and that he would sanction the actual drawback claimed as there was no provision to sanction the eligible drawback. The applicant averred that the Assistant Commissioner should have sanctioned drawback of Rs. 1,86,832/- and Rs. 1,09,635/- in respect of shipping bill no. 2355804 dated 30.05.2006 and 2362036 dated 06.06.2006 but he sanctioned only Rs. 1,27,866/- and Rs. 67,530/-, respectively.

(ii) The applicant further submitted that the Assistant Commissioner had directed them to approach the refund section for refund of the said amount vide his Order dated April 2012 which was already more than a year from the date of payment. The applicant averred that it was impossible for them to approach the refund section as their claim is time barred. The applicant also made an alternate plea that the Revisionary Authority may dispense with the time limit for claiming refund and prayed that the Assistant Commissioner(Drawback) may be directed to sanction the amount paid by the applicant vide TR-6 Challan No. MCM 1104412 dated 25.11.2010.

4. The applicant was granted a personal hearing in the matter on 11.12.2020. Shri Derrick Sam, Advocate appeared on behalf of the applicant and reiterated submissions made in the revision application. He further submitted that the amount deposited on the directions of the Department was a pre-deposit and therefore it should be refunded to them.

5. Government has carefully gone through the case records, perused the impugned order-in-appeal and the order-in-original. The issue involved is the



refund of the amount of Rs. 1,01,071/- which the applicant had paid into the Government account in respect of excess drawback claimed by misdeclaring quantity of export goods in order to avail excess duty drawback.

6.1 The payment of the amount of Rs. 1,01,071/- made by the applicant on 25.11.2010 vide TR-6 Challan No. MCM 1104412 bears the shipping bill no.'s 2355804 dated 30.05.2006 and 2362036 dated 06.06.2006 and the remark "Excess drawback claimed". The applicants submission that they had deposited this amount as per the direction of the Assistant Commissioner(Drawback) vide his letter dated 19.11.2010 which has been appended to the revision application seems to be plausible explanation for the payment made on 25.11.2010. There could be no other reason why the applicant would have paid the amount which they had not received as drawback much after the culmination of investigation, the adjudication order and the CESTAT Order passed on 07.01.2010 on appeal by the applicant.

6.2 In the light of the fact that the applicant had deposited the amount of Rs. 1,01,071/- on the assurance of the Assistant Commissioner(Drawback), this was required to be taken into account while sanctioning drawback. The Department cannot renege on the commitment on the basis of which the applicant deposited the amount. Government therefore holds that the revision application filed by the applicant holds merit.

7. Government hereby modifies the impugned OIA No. 1540/2014 dated 26.08.2014 and directs the original authority to re-examine the case on merits considering the fact that the deposit of "excess drawback" was made at the behest of the Department.

8. The Revision Application is disposed off accordingly.

Shrawan
11/01/2021
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

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ORDER No. 63 /2021-CUS(SZ) /ASRA/Mumbai DATED 11.01.2021

To,
M/s Sara Leathers
No. 86, Bajanai Koil Street,
Pammal,
Chennai - 600 075

Copy to:

1. The Commissioner of Customs, Chennai-III Seaport Commissionerate
2. The Commissioner of Customs(Appeals-II), Chennai
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy

