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SPEED POST



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.373/201/DBK/14-RA 1239

Date of Issue: 19.01.22

ORDER NO. 07/2022-CUS (SZ)/ASRA/MUMBAI DATED 18.01.2022
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. Dwarka Exports

Respondent: Commissioner of Central Excise, Thiruvananthapuram.

Subject : Revision Application filed under Section 129DD of the Customs
Act, 1962 against the Order-in-Appeal No.18 to 41/2014-CUS TVM-EXCUS-
000-APP-105-128-13-14 dated 26.02.2014 passed by the Commissioner
(Appeals), Customs, Central Excise, and Service Tax, Cochin.

ORDER

This Revision Application is filed by the M/s. Dwarka Exports, Puthen Road, Pettah P.O., Thiruvananthapuram - 695024. (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. 18 to 41/2014-CUS TVM-EXCUS-000-APP-105-128-13-14 dated 26.02.2014 passed by the Commissioner (Appeals), Customs, Central Excise, and Service Tax, Cochin

2. Brief facts of the case are that the Applicant was granted drawback amount totalling to Rs.2,72,044/- for the exports done by them. As per the Rule 8 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, no amount of drawback shall be allowed, if the amount or rate of drawback is less than one percent of the FOB value thereof, except where the amount of drawback per shipment exceeds five hundred rupees. It appeared that the amount of drawback sanctioned was less than 1% of the FOB value of the entire Shipping Bill. Hence, sanctioned drawback was demanded from them under Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Section 75 A (2) of the Customs Act, 1962 vide Show Cause Notice No.21/2010 dated 01.11.2010 issued under F. No. VIII/22/2/2010ACC. The Adjudicating Authority, Assistant Commissioner of Customs, Air Cargo Complex, Trivandrum vide Order-in-Original No. 24/2013-Cus dated 22.03.2013, dropped the demand and held that the sanction of drawback amount is correct and in conformity with the relevant rules.

2.1 As per the provisions contained in Section 129D(2) of the Customs Act, 1962, the Department filed an appeal for the correct determination of the point whether after taking into consideration the facts, the order of the Assistant Commissioner of Customs, Air Cargo Complex sanctioning drawback where amount of drawback is less than 1% of the FOB value of the shipment in violation of provisions of Rule 8 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, is legally correct and proper?

2.2 The Appellate Authority, vide impugned Order-in-Appeal interalia observed that – *‘the Assistant Commissioner, Air Cargo Complex had held that a single shipping bill can be filed for the export of different goods falling under different CTHs and therefore sanction of drawback would be based on the respective items under different CTHs separately. In all the cases the amount of drawback per shipment has not exceeded five hundred rupees and is also less than 1% of the FOB value. For this purpose FOB value, Shipment wise [i.e., Shipping Bill wise] has to be taken into account whereas the adjudicating authority in those cases had taken into consideration the value of the individual items covered in a shipping bill, while determining the eligibility for draw back. Shipment as per ‘Webster’s Encyclopaedic Unabridged Dictionary of the English Language Portland House, New York means 1. The act or an instance of shipping freight or cargo. 2) a quantity of freight or cargo shipped at one time. 3) that which is shipped. Since the issue is relating to facts, only after due verification of entries recorded in each shipping bill [shipment], the decision on the demand for ineligible drawback should have been taken.’*

Accordingly, the Appellate Authority quashed the impugned Order-in-Original and allowed the appeal filed by the Department.

3. Hence the Applicant has filed the impugned Revision Application on the following grounds:

- i. It has also been rightly held by the original authority that drawback is sanctioned in respect of different goods appearing in a Shipping Bill. In the present case as per the illustrative example given in Para 5 of the order passed by the original authority the drawback sanctioned to the applicants was not less than Rs.50/- in any given case and therefore the drawback sanctioned to the applicants was perfectly in order. Be that it may, holding that the drawback claimed by the applicants was less than one per cent of FOB value is not tenable since the provisions of Customs Act, 1962 i.e. Rule 76(c) shall prevail over the provisions of Rule 8 of the Drawback Rules.

- ii. The legislative intent behind the Duty Drawback Scheme is to encourage exporters of goods so as to augment foreign exchange earnings for the country. The other intent behind schemes be it drawback or rebate is that goods and services alone are exported and not duties and taxes. In the present case drawback as admissible was sanctioned to the applicants after the goods were exported by them. There was no whimper of disagreement about the correctness of the drawback sanctioned to the applicants for more than two years. Belated proceedings were, however, initiated on the ground that the drawback sanctioned to the applicants was erroneous and hence liable to be demanded under Rule 16 of the Drawback Rules. Drawback being equivalent to refunds proceedings ought to have been initiated by the department under Section 28 of the Customs Act, 1962. However, even if proceedings for demand had been initiated invoking Section 28 of the Customs Act, 1962, such proceedings were clearly time-barred since the drawback had been sanctioned by the department based on computation adopted by the EDI system. Besides it is not alleged that the applicants had resorted to any mis-declaration as regards the goods exported by them and there is no allegation that the applicants had failed to realize export proceeds in respect of goods exported by them. Therefore, the initiation of belated proceedings alleging erroneous sanction of drawback even as the assessments had attained finality was totally against law.
- iii. The applicants most respectfully submit that the impugned order passed by the learned appellate authority is otherwise not legal for the reason that he has allowed revenue appeal even as it is held that " the issue is relating to facts, only after due verification of entries recorded in each shipping bill [shipment] the decision on the demand for ineligible drawback should have been taken In other words, in the absence of any categorical findings that the original authority had erred on facts, the appeal filed by the revenue has been allowed by the appellate authority.

In the light of the above submissions, the applicant prayed to set aside the impugned order with consequential relief.

4. Several personal hearing opportunities were given to the applicant viz. on 14.01.2020, 25.02.2020, 05.02.2021 and 06.07.2021. However, the applicant did not attend on any date nor have they sent any written communication.

4.1 Since sufficient opportunities have already been given, the matter is therefore taken up for decision based on available records.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government observes that Rule 2 (a) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 defines 'Drawback' as:

(a) "drawback" in relation to any goods manufactured in India and exported, means the rebate of duty or tax, as the case may be, chargeable on any imported materials or excisable materials used or taxable services used as input services in the manufacture of such goods;

As is evident from the definition, to qualify for obtaining drawback, the goods should be manufactured in India and then they need to be exported. The rebate of duty or tax used in manufacture of such goods will then be compensated in the form of Drawback. In the instant case, the applicant is engaged in export of fruits and vegetables and thus fulfilling both the conditions. The applicant therefore is eligible to get drawback.

6.1 Government observes that Rule 8 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 reads as under:

Rule 8. Cases where no amount or rate of drawback is to be determined.

(1) No amount or rate of drawback shall be determined in respect of any goods under rule 3, rule 6 or, as the case may be, rule 7, the amount or rate of drawback of which would be less than one per cent of the F.O.B. value thereof, except where the amount of drawback per shipment exceeds five hundred rupees.

Thus, drawback is not allowed to those goods where the amount of drawback is less than Rs.500/- and less than 1% of FOB value of such goods.

7. Government observes that the Original adjudicating authority had rightly taken into consideration the value of individual items covered in a shipping bill while determining eligibility for drawback instead of entire value of shipping bill. In the cases of impugned goods, viz. Fruits and Vegetables, Duty Drawback is to be calculated using percentage, as declared by Notification for All Industry Rates (AIR) issued during the material period, of the FOB value of the goods exported. A single shipping bill can contain multiple items having different values. To calculate duty drawback of an item, prevalent rate (percentage) and FOB value of that item would have to be considered and not the FOB value of entire shipping bill. This exercise needs to be carried out for each shipping bill mentioned in the impugned Show Cause Notice. This aspect is also observed by the Appellate Authority – ‘*Since the issue is relating to facts, only after due verification of entries recorded in each shipping bill [shipment], the decision on the demand for ineligible drawback should have been taken.*’

8. In view of the above discussion and findings Government sets aside Order-in-Appeal No. No.18 to 41/2014-CUS TVM-EXCUS-000-APP-105-128-13-14 dated 26.02.2014 passed by the Commissioner (Appeals), Customs, Central Excise, and Service Tax, Cochin.

9. The Revision Application is disposed of on the above terms.

Shrawan
18/01/22
(SHRAWAN KUMAR)

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

ORDER No. 07 /2022-CUS (SZ)/ASRA/Mumbai dated 18.01.2022

To,
M/s. Dwarka Exports,
Puthen Road, Pettah P.O.,
Thiruvananthapuram - 695024.

Copy to:

1. Commissioner of Central Goods & Service Tax,
GST Bhavan, Press Club Road,
Thiruvananthapuram - 695 001.
2. Sr. P.S. to AS (RA), Mumbai
3. ~~Guard file~~
4. Notice Board.