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**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. 371/72-75/DBK/15-RA

322

Date of Issue: २०.01.2022

ORDER NO. 12-15/2022-CUS (WZ) /ASRA/MUMBAI DATED 24.01.2022
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 Louis Dreyfus Commodities (I) Pvt. Ltd.,
8th floor, Tower 'A', Building No.5, Cyber City,
DLF Phase - III, Gurgaon - 122 002.

Respondent : Commissioner of Customs (Prev),
M & P Wing, New Custom House, Ballard Estate,
Mumbai - 400 001.

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal
No.MUM-CUSTM-PRV-APP-347-350/15-16 dated
27.08.2015 passed by the Commissioner of Customs
(Appeals), Mumbai - III.

ORDER

This Revision Application has been filed by M/s Louis Dreyfus Commodities (I) Pvt. Limited (here-in-after referred to as 'the applicant') against the Order-in-Appeal No.MUM-CUSTOM-PRV-APP-347-350/15-16 dated 27.08.2015 passed by the Commissioner of Customs (Appeals), Mumbai - III. The said Order-in-Appeal decided appeals against four Orders-in-Original dated 10.09.2012, 28.09.2012, 29.09.2012 and 31.05.2013, all passed by the Deputy Commissioner of Customs (Preventive), Marine & Preventive Wing, Alibag Division.

2. Brief facts of the case are that the applicant had exported Indian raw cotton falling under CTH 5201. They filed drawback claims against the Shipping Bills under which the said goods were exported. The same were sanctioned by the original authority. Aggrieved, Department preferred an appeal against the Orders-in-Original resulting in the impugned Order-in-Appeal. The Commissioner (Appeals) allowed the appeal of the Department by holding that the applicant would be ineligible for the Drawback claimed by them for the following reasons:-

- (a) That the goods exported by the applicant had not suffered any duty at any stage;
- (b) That the product exported by the applicant, viz. "Raw cotton", was not among the goods permitted to be exported from the port of Dharmatar as per Public Notice No.01/2001-CC(P) dated 03.10.2001 issued by the Commissioner of Customs (P); and
- (c) The sale proceeds have not been made as per actual export invoices and hence were required to be matched & verified.

3. Aggrieved, the applicant has filed the present Revision Application against the Order-in-Appeal dated 27.08.2015 on the following grounds:-

- (a) The grounds on which the Commissioner (Appeals) had set aside the Orders-in-Original were never raised in the appeal filed by the Department; hence the impugned Order-in-Appeal had traversed beyond the scope of the appeal;
- (b) That the Commissioner (Appeals) had not given any finding on the grounds of appeal and hence as per the principles of law these grounds would be deemed to be considered as rejected;
- (c) That they had claimed All Industry Rate (AIR) of Drawback; that the AIR was fixed by taking into account the average incidence of Customs and Excise duties paid on the inputs used in the manufacture of export product; the same was notified by notification no.68/2011-CUS(NT) dated 22.09.2011 and that they had claimed the Drawback as per the said notification;
- (d) That in the case of 'Cotton', the rate of Drawback as provided by the notification was 1%, irrespective of whether Cenvat was availed or not and hence it was clear that Drawback related to only Customs Duty;
- (e) That the Drawback has been calculated on the basis of Customs duty payable on consumables, packing materials etc., used in the manufacture of Cotton, viz. Customs duty payable on importation of seeds, Importation of pesticides and chemicals etc., and hence Drawback could not be disallowed to them on the ground that no duty had been paid on raw cotton;
- (f) CBEC Circular No. 23/2001-Cus dated 18.04.2001 and 24/2001-Cus dated 20.04.2001 had clarified that no proof of payment of duties has to be asked from the exporter since the rates were fixed on the concept of averages and hence it was submitted that actual incidence of duty on inputs is necessary for fixation of Brand rate of drawback;
- (g) That the CBEC had vide Circular no.19/2005-CUS had clarified that it was not open to the field officers to question as to how the rates have been determined;

- (h) That Rule 3(1)(ii) of the Drawback Rules and notification nò.44/91-CUS dated 30.05.1991 were not applicable to the present case;
- (i) That the 'Raw cotton' had been subjected to the process of 'Ginning' before being packed and exported and hence the finding of the Commissioner (Appeals) that no process had been carried out was incorrect;
- (j) That no notification had been issued by the Government prohibiting the export of 'Raw cotton' and also that they had duly received the Let Export Order under Section 51 of the Act, which was given after the proper officer had satisfied himself that the goods to be exported were not prohibited goods and hence the finding of the Commissioner (Appeals) that the goods exported by them were 'Prohibited goods' was incorrect'; and that the drawback could not be refused as the goods were exported from Dharamtar port;
- (k) That in the present case, the exports were completed; all the BRCs were verified at the time of sanctioning of the Drawback claim and the objections raised were also duly clarified; thus the proceeds were realized and hence Drawback could not be denied.

In light of the above submissions, they prayed that the impugned Order-in-Appeal may be set aside with consequential relief.

4. Personal hearing in the matter was granted to the applicant on 02.07.2021 which was attended by Shri Vishwanathan and Ms Laxmi Menon, both Consultants, on behalf of the applicant. They appeared online and reiterated their written submissions. They submitted that even if a port was not notified for export of Cotton, it does not debar them from claiming Drawback. They further submitted that the issue of whether material used for export was imported or otherwise had no impact on the Drawback. They also mailed a synopsis of their earlier submissions.

5. Government has carefully gone through the relevant case records available in the case file, the written and oral submissions and also perused the impugned Orders-in-Original and Order-in-Appeal dated 27.08.2015.

6. Government finds force in the submission of the applicant that the Commissioner (Appeals) had traversed beyond the scope of the appeal filed by the Department. The grounds on which appeal was preferred is reproduced below:-

1) The claimant is a Merchant exporter and he has not given prescribed declarations/related document in Drawback Declaration form in Annexure-1 w.r.t said shipping bills at the time of export as per conditions number 8(e), 8(f), 9(a), 9(b), 15 (i) of the notification no. 68/2011 Customs (N.T.) dated 22.09.2011. The conditions are detailed below. The said. conditions have been not discussed in the findings by the Adjudicator resulting violation of the conditions No. (8) & (9), 15(i) of the Notification No. 68/2011

A) Condition No. 8: The rates of drawback specified in the said Schedule shall not be applicable to export of a commodity or product if such commodity or product is -

(e) Manufactured or exported availing the benefit of the notification No.32/1997-Customs dated 01 April, 1997;

(f) Exported under the Duty Entitlement Pass Book Scheme as contained in the Foreign Trade Policy, read with the Hand Book of Procedures issued in pursuance of the provisions of the said policy.

B) The claimant is Merchant Exporter and has not furnished the declaration at the time of export in the format annexed to the Board Circular No.16/2009-Cus dated 25.05.2009 read with condition No.9(a) of the notification no.68/2011-Customs (N.T.) dated 22.09.2011. The necessary details are given in para 7 of the said Board Circular (Page-116 para-6-chapter-4 of Hand Book of Drawback) which states to fulfil two conditions for Merchant Exporter, which are as under:

(i) Merchant Exporters who purchase goods from local market for export shall henceforth be entitled to full rate of duty drawback (including the excise portion). However such Merchant Exporter shall have to declare at the time of export, the name and address of the traders from whom they have purchased the goods.

(ii) They shall also have to declare that no rebate (input rebate and also the final product rebate) shall be taken against the shipping bills under which they are exporting the goods.

Condition No. 9: The rates and caps of drawback specified in columns (4) and (5) of the said schedule shall not be applicable to export of a commodity or product if such commodity or product is;

(a) Manufactured or exported by availing the rebate of duty paid on materials used in the manufactured or processing of such commodity or product in terms of rule 18 of the Central Excise Rules, 2002;

(b) Manufactured or exported in terms of sub-rule (2) of rule 19 of the Central Excise Rules, 2002.

C) The claimant is a Merchant Exporter and he has not given prescribed declaration with a supporting manufacturer at the time of export w.r.t. condition no. 15(1) of the notification no. 68/2011-Cus (N.T.) dated 22.09.2011 read with Board Circular No.8/2003-Customs dated 17.02.2003. The said condition is detailed below.

The said condition has not been properly declared and correctly discussed in the findings by the Adjudicator resulting in violation of condition no. 15(1) of the said notification.

Condition No. 15:- The expressions "when Cenvat facility has not been availed", used in the said Schedule, shall mean that the exporter shall satisfy the following conditions, namely:

(i) the exporter shall declare, and if necessary establish to the satisfaction of the Assistant Commissioner of Customs or Assistant Commissioner of Central Excise or Deputy Commissioner of Customs or Deputy Commissioner of Central Excise, as the case may be, that no Cenvat facility has been availed for any of the inputs or input services used in the manufacture of the export product.

From the above details, it is seen that the claimant has not given prescribed declarations in drawback declaration proforma Annexure-1 w.r.t. said Shipping Bills at the time of export, in view of mandatory conditions No. 8(e), 8(f), 9(a), 9(b), 15(i) which resulted in violation of the said conditions of Notification No. 68/2011-Custom (N.T.) dated 22.09.2011. Hence, the rate of drawback specified in the schedule of Notification No. 68/2011 CUS (NT) dated 22.09.2011 is not applicable to the said Commodity as claimed by said claimant."

Government finds that the Commissioner (Appeals) has not discussed the grounds on which the appeal was filed and has instead raised issues which were not part of the appeal. The Commissioner (Appeals) has clearly traversed beyond the scope of the appeal which is not legal.

9. Government refrains from discussing the grounds on which the Commissioner (Appeals) has set aside the Orders-in-Original as these grounds have not been raised by the Department at any stage of the proceedings and are hence irrelevant to the issue on hand. In view of the above, Government sets aside the impugned Order-in-Appeal and remands the case back to the Commissioner (Appeals) for deciding afresh after taking into account the grounds on which the appeal was preferred by the Department. The applicant should be granted sufficient opportunity to present their case.

10. The Revision Application stands disposed of in the above terms.

Shrawan
24/01/22

(SHRAWAN KUMAR)

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

ORDER No. ¹²⁻¹⁵ /2022-CUS (WZ) /ASRA/Mumbai dated 24.01.2022

To,

M/s Louis Dreyfus Commodities (I) Pvt. Ltd.,
8th floor, Tower 'A', Building No.5, Cyber City,
DLF Phase - III, Gurgaon - 122 002.

Copy to:

1. Commissioner of Customs (Prev), M & P Wing, New Custom House, Ballard Estate, Mumbai - 400 001
2. Commissioner of Customs (Appeals), Mumbai - III, Awas Corporate Point, 5th floor, Makwana Lane, Mumbai - 400 059.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.