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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. 371/20-21/DBK/2016-RA/1338
F. No. 380/40/DBK/2016-RA

Date of Issue: 08-04-22

ORDER NO. 121-123/2022- CUS (WZ)/ASRA/MUMBAI DATED 07-4-2022
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 : 1) M/s. Pensala Exports (P) Ltd; 2) The Principal
Commissioner of Customs, Mundra.

Respondent : Commissioner of Customs (Appeals), Ahmedabad

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Orders-in-Appeal No. Mun-
Custm-000-App-251-252-15-16 dated 24.11.2015 passed
by the Commissioner of Customs (Appeals), Ahmedabad.

ORDER

The impugned Revision Applications have been filed by M/s. Pensala Exports Pvt. Ltd, E/7, Industrial Area, Sodal Road, Jalandhar, Punjab (hereinafter referred to as Exporter) and also the Principal Commissioner of Customs, Mundra, (hereinafter referred to as the department) against Orders-in-Appeal No. MUN-CUSTOM-000-APP-251-252-15-16 dated 24.11.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Brief facts of the case are that the Exporter (A Merchant Exporter), had filed a Drawback claim under Section 75 of the Customs Act, 1962. The drawback claim is preferred on account of having exported Clamp, Flat Iron, Threaded Rod, Base Square Washer, Nuts, Rapid used in Shutring Fitting, Pick Axe, Karni, Gurmala (Trowel), Garden Rakes, Clip, G I Bucket & W. Nuts through Mundra Port. The said merchant exporter is not availing Cenvat Credit and accordingly the amount of drawback is claimed at different rates on FOB of Customs Allocation in each corresponding Shipping Bills in terms of Chapter No. 73, 82 & 83 of the Drawback Schedule mentioned as per Notification No. 92/2012-Customs (N.T.) dated 04.10.2012. The adjudicating authority after due processing found that the goods exported vide shipping bills as shown in Sr .No.1 to 6 and Sr No. 9 has classified the goods under wrong H.S code and Drawback schedule. As per Customs Tariff the same should have been classified under H.S. Code 73084000 and Drawback schedule should be 730899A and drawback rate would be 8.1% or Rs. 4860/-per MT as the applicant has not availed Cenvat. In view of the same the drawback admissible would vary and the details of the Drawback claimed/admissible and sanctioned by the exporter are as under:

Sr. No	S/B No. and date	Qty in kg	DBK rate	DBK schedule	FOB value in US\$	Exchange rate at the time of noting of S/B	FOB value in Rs	DBK claim in Rs	DBK admissible	DBK sanctioned
1.	7641045/ 18.02.12	10330	7.6%	820599A	37966.5	49.4	1863195	141603	50204	50204
2.	8274414/ 30.03.12	13500	7.6%	820599A	46500.0	48.6	2245320	170644	44906	---
3.	1318358/ 16.08.12	17069	6.5/kg	731821A	76760.0	55.0	4212010	110949	82955	40961(Paid earlier) 41994
4.	1318432/ 16.08.12	10102	6.5/kg	731815A	44870.0	55.0	2458060	65663	49096	24240(Paid earlier) 24855
5.	1318435/ 16.08.12	15222	6.5/kg	731821A	72240.0	55.0	3951035	98943	73979	36533(Paid earlier) 37446
6.	2005278/ 02.10.12	12900	7.8/kg	731821A	61200.0	53.9	3278737	100620	62694	62694
7.	2469636/ 05.11.12	13650	22/kg	820103A	77940.0	53.5	4153873	300300	300300	300300
8.	2469635/ 05.11.12	13650	22/kg	820103A	77940.0	53.5	4153873	300300	300300	300300
9.	4337076/ 07.03.13	11016	7.6%	820599A 731816A	46217.0	53.9	2480313	173612	173612	---

Further in respect of the SB at Sr. No. 2 above, the drawback claimed is rejected since the EDI system showed as 'Short shipment Amendment and the same had not been amended by the applicant. Similarly in respect of SB at Sr No. 9 above, the net weight is not shown in the Invoice and the shipping bill and in absence of the same the admissible drawback amount cannot be ascertained and hence the same was rejected. Accordingly, Deputy Commissioner, Mundra vide OIO No. MCH/DC/1571/DBK/14-15 dated 17-02-2015, sanctioned the drawback amounting to Rs.8,17,793/- and rejected an amount of Rs.5,43,106/-.

Aggrieved by the said Order, the Exporter filed appeal with the Commissioner Appeals, against the drawback rejected and the department filed appeal against the drawback sanctioned of the claims at Sr. No. 3 to 5

above, on the grounds that the supplementary drawback claims have been sanctioned without examining the provisions relating to time limit prescribed under Rule 15 of Customs, Central Excise and Service Tax Drawback Rules, 1995.

Commissioner Appeal vide OIA No. MUN-CUSTOM-000-APP-251-252-15-16 dated 24.11.2015 held that:

A) Appeal filed by M/s Pensala Exports Pvt. Ltd.:

- i) The appeal filed by the exporter is allowed and the classification declared by them i.r.o SB No. 7641045 dated 18.02.12, 8274414 dated 30.03.12, 2005278 dated 2.10.12 and 4337076 dated 7.03.13 is upheld and the lower authority was directed to recalculate and sanction the drawback;
- ii) For sanctioning the Drawback claim pertaining to items covered under SB No. 4337076 (Excluding Clips), the lower authority was directed to ascertain net weight and sanction the Drawback claim.
- iii) For sanctioning the Drawback claim amount pertaining to the item/quantity, wherein export of goods have been questioned under shipping bill 8274414, the lower authority was directed to confirm the veracity of the documents/claim and sanction the Drawback claim, adhering the principle of natural justice.

B) Appeal filed by the Revenue:

The appeal filed by the department was allowed in respect to Shipping Bill No. 1318358 dated 16.08.2012, 1318432 dated 16.08.2012 & 1318435 dated 16.08.2012 and ordered recovery of the amount in dispute under the provisions of Rule 16 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Section 75A(2) of the Customs Act, 1962 along with interest.

3. Aggrieved by the aforesaid Commissioner Appeal's Order, the Exporter and the department filed Revision Applications viz 371/20-21/2016-RA and 380/40/DBK/2016-RA.

A. 371/20-21/2016-RA

The Exporter have filed the impugned Revision Applications mainly on the grounds that:

i) The Exporter submitted that the Commissioner (Appeals) erred in allowing the Appeal filed by the Revenue without appreciating the facts of the case and therefore the impugned order is misconceived both in facts and laws and cannot be sustainable in the eyes of law.

ii) In respect to Shipping Bill No. 1318358 dated 16.08.2012, 1318432 dated 16.08.2012, 1318435 dated 16.08.2012, the settlement of the Original drawback took place on 22.09.2012 but the Exporter was not satisfied with the less drawback sanctioned and therefore filed a letter dated 25.09.2012 to the Supt of Customs, Mundra to reconsider the amount of drawback. The Exporter submitted that the claim is a continuous claim to their original drawback claim and therefore the time limit prescribed under Rule 15 of the Rules would not be applicable on them.

iii) Even if the claim of the Exporter is considered as supplementary claim than also the claim, filed legitimately as the Assistant Commissioner or Deputy Commissioner is empowered to extend the period of three months by a period of nine months for the supplementary drawback claim and therefore the time limit for filing supplementary claim was ought to be extended. Commissioner Appeal factually erred in appreciating that the supplementary claim was filed on 02.08.2013. The Exporter submitted that the drawback claim was actually filed on 25.09.2012 and since the department didn't sanction the refund claim even after one year, the Applicant addressed a reminder letter dated 31.07.2013 (served on 02.08.2013) to sanction the drawback claim. It is submitted that the supplementary claim cannot be considered from the date of reminder letter

i.e. 31.07.2013 (served on 02.08.2013) and the same is required to be considered from 25.09.2012.

iv) Commissioner Appeal failed to appreciate that the Ld. Deputy Commissioner of Customs rightly sanctioned the drawback amount after calculating the time limit of three months from the date of settlement of original drawback claim and therefore the Appeal filed by the Revenue ought to be rejected.

v) The Exporter also submitted that Section 75A of the said Act provides to sanction the drawback within a period of one month from the date of filing of the claim and if such drawback is sanctioned after the prescribed period, then the assessee is entitled for interest as payable on the specified rates prescribed by the Central Government from time to time. In the present case, the amount of drawback was not sanctioned within a period of one month and therefore the Exporter is entitled for the interest on such belatedly sanctioned drawback.

vi) In the light of the above submissions, the Exporter prayed to quash and set aside the impugned Order-in-Appeal to the extent of allowing the Appeal of department in respect to Shipping Bill No. 1318358 dated 16.08.2012, 1318432 dated 16.08.2012, 1318435 dated 16.08.2012 and to provide interest under Section 75A of Customs Act on the amount of drawback which has not been paid to the Exporter.

B. 380/40/DBK/2016-RA

The Department have filed the impugned Revision Applications mainly on the grounds that:

i) The appellate authority has decided the case without keeping in view that the classification of export goods are decided following the General Rules of Interpretation. Accordingly, classification of goods in the Nomenclature shall be governed by the following principles of General Rules

for the interpretation of the Harmonized System. The said is reproduced hereunder:

“Rule-2(a)- Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

Rule-2(b)- Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule-3.”

Rule (3) of General Rules for the Interpretation of First Schedule, “When by application of Rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to heading providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if, one of them gives a more complete or precise description of goods. ”

(b)

(c)”

ii) The exporter has exported the goods viz. Clamp / Flat Iron Press made of Non Alloy Steel and has classified the said goods under C.T.H. 82057000/ 82055190 with Drawback Schedule 820599A. Clamps & Flat Iron Press made of Non Alloy Steel are generally used as Scaffolding. The meaning of Scaffolding, also called staging, is a temporary structure used to support people and material in the construction or repair of buildings and other structures.

As per Customs Tariff the goods classifiable under the C.T.H. 8205 are- *“Hand tools (including glaziers diamonds), not elsewhere specified or included; below lamps; vices, clamps and the like other accessories for and*

parts of machine tools: anvils: portable forges; hand or pedal-operated grinding wheels with frame works".

As per the Customs Tariff, the goods specified under C.T.H. 7308 are "*Structures (excluding prefabricated buildings of heading 94.06) and parts of structures (for example, bridges and bridge-sections, lock gates, towers, lattice masts, roofs roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel: Plates, rods, angles, shapes, sections, tubes and the like prepared for use in structures of iron and steel*".

Therefore, the goods exported are "Clamp" & "Flat Iron Press made of Non Alloy Steel", which are nothing but part of the main products of scaffolding i.e. temporary structure used to support people and material in construction or repair or building and other structure and thus more appropriately classifiable under C.T.H. 7308 and Drawback Schedule is 730899A & 730814A.

iii) The exporter has exported Threaded Rod/Bar and Base Square Washer has classified the said goods under C.T.H. 73181900 & 73182200 respectively with Drawback Schedule 731821A & 731815A respectively. Threaded Bars are generally used as Scaffolding.

As per Customs Tariff the goods specified under the said heading C.T.H. 73181900 are "*Screws, bolts, nuts, coach-screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles of iron and steel*".

Therefore, the goods exported are "Threaded Rod/Bar" & Base Square Washer, which are nothing but part of the main products of scaffolding i.e. temporary structure used to support people and material in construction or repair or building and other structure and thus more appropriately classifiable under C.T.H. 7308 (supra) and Drawback Schedule is 730899A & 731815A respectively.

iv) The exporter has exported Clip classifying under C.T.H. 83024200 with DBK Sr. No. 820599A, these goods are generally used as Scaffolding (supra).

As per Customs Tariff the goods falling under Chapter 8302 are "*Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddler, trunks, chest, caskets or the like; Base metal hat-racks, hat-pegs, brackets and similar fixtures; Castors with mountings of base metals; Automatic door closers of base metal*". Whereas, the goods exported are Clip which are more appropriately classifiable under C.T.H. 7308 (supra) and the Drawback Schedule is 730899A.

v) The appellate authority did not go into facts, that the goods/items exported by the exporter are clamp, Flat Iron, Threaded Rod/ Bar, Base Square Washer, Clip etc. which are nothing but part of the main products of scaffolding i.e. temporary structure used to support people & material in construction or repair or building and other structure and are more appropriately classifiable under Chapter 7308.

vi) Though the goods were declared by the exporter by classifying them under C.T.H. 7318/8205/ 8302 under the claim of drawback, the same were actually parts of scaffolding items which are appropriately classifiable under C.T.H. 7308.

In view of the above, the department prayed to set aside the impugned Order in Appeal to the extent of holding that the classification declared by the exporter is correct.

4. Personal hearing in the case was fixed for 26.10.2021. Shri Amit Laddha, Advocate, attended the online hearing and submitted that they have filed the appeal as part amount was rejected on time bar. He states

that the claim was not time barred. Regarding the department application contesting the classification ordered by Commissioner Appeal, he submitted that classification by Commissioner (Appeal) is in Order.

5. Government has carefully gone through the relevant case records available in case files, written & oral submissions and perused the impugned Order-in-Original, Orders-in-Appeal and both the Revision Applications i.e filed by the Exporter and the department.

6. Government observes that the issue involved in the Exporter's Revisionary Application (371/20-21/2016-RA), is whether the supplementary drawback claims filed by them in respect of Shipping Bill No. 1318358 dated 16.08.2012, 1318432 dated 16.08.2012, 1318435 dated 16.08.2012, the settlement of the Original drawback took place on 22.09.2012 was time barred under Rule 15 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

i) The applicable provisions of Rule 15 of the relevant Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 are as under:

“Rule 15. Supplementary Claim: (1) Where any exporter finds that the amount of drawback paid to him is less than what he is entitled to on the basis of the amount or rate of drawback determined by the [Central Government or Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be], he may prefer a supplementary claim in the form at Annexure III [See Customs Series Form No. 112 in Part 5].

Provided that the exporter shall prefer such supplementary claim within a period of three months, -

(i) where the rate of drawback is determined or revised under rule 3 or 4, from the date of publication of such rate in the Official Gazette;

(ii) where the rate of drawback is determined or revised upward under rule 6 or rule 7, from the date of communicating the said rate to the person concerned;

(iii) in all other case, from the date of payment of settlement of the original drawback claim by the proper officer :

Provided further that the aforesaid period of three months may be extended by the Assistant Commissioner of Customs or Deputy Commissioner of Customs for a further period of nine months on being satisfied that the exporter was prevented by sufficient cause from filing his supplementary claim within the aforesaid period of three months.

(2) Save as otherwise provided in this rule, no supplementary claim for drawback shall be entertained.

(3) The date of filing of the supplementary claim for the purpose of Section 75A shall be the date of affixing the Dated Receipt Stamp on such claims which are complete in all respects and for which an acknowledgement shall be issued in the form prescribed by the [Commissioner of Customs].

(4)(a) Claims which are not complete in all respects or are not accompanied by the required documents shall be returned to the claimant with a deficiency memo in the form prescribed by the [Commissioner of Customs] within fifteen days of submission and shall be deemed not to have been filed.

(b) Where the exporter resubmits the supplementary claim after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed under sub-rule (1) for the purpose of Section 75A]”.

ii) Government observes that the said provisions stipulate that supplementary drawback claim is to be filed within 3 months of payment or settlement of the original drawback claim by proper office. This period of 3 months can be extended by AC/DC Custom for a further period of 9 months on being satisfied that exporter was prevented by sufficient cause from filing claim in time. Further the date of filing the supplementary claim would be the date, when the claim was submitted complete in all respects. In this case the draw back was deposited on 22.09.2012 and Exporter had just submitted a letter on 25-09-2012 without enclosing the claim as prescribed. The supplementary claim along with the necessary documents were submitted by the exporter only on 31.07.2013.

iii) The Exporter in his grounds of appeal has stated that his claim dated 25-09-12 is a continuous claim to the original drawback and not a supplementary claim, further if the claim is considered as a supplementary claim, AC/DC is empowered to condone the delay in terms of Rule 17 of Drawback Rules. Govt. finds that there is no other provision to condone the

impugned delay except proviso to Rule 15(1)(iii) which stipulates that the jurisdictional Assistant/Deputy Commissioner needs to be satisfied that the "cause" was sufficient and the exporter was "prevented" from filing of his-supplementary (DBK) claim. In this regard, Government observes that Exporter has not sought any such condonation of delay from designated proper authority. Hence Government finds, Commissioner Appeal has correctly allowed the department's appeal and held that the supplementary claim filed are time barred.

7 Government observes that the issue involved in the Department's revisionary application (380/40/2016-RA), is the classification of the exported goods viz Clamp, Flat Iron, Threaded Rod/Bar and Base Square, Clip as under 82057000, 82055190, 73182200 and 83024200 and claimed drawback by the Exporter under the corresponding drawback schedule. The adjudicating authority vide OIO No. MCH/DC/1571/DBK/14-15 dated 17.02.2015 found that the aforesaid products are generally used as Scaffolding and appropriately classifiable under Heading 73084000 and the Drawback Schedule is 730899A. The Appellate Authority held that classification declared by the Exporter in respect of Clamp (SB No.7641045 dated 18.02.2012), Flat Iron (SB No.8274414 dated 30.03.2012), Base Square Washer (SB No.8274414 dated 2.10.2012) and Clip (SB No.4337076 dated 07.03.2013) is correct and to recalculate and sanction the drawback. The department has filed the instant Revision Application seeking the classification of the said goods under 73084000.

7.02 As per Customs Tariff the goods classifiable under the C.T.H. 8205 are- *"Hand tools (including glaziers diamonds), not elsewhere specified or included; below lamps; vices, clamps and the like other accessories for and parts of machine tools: anvils: portable forges; hand or pedal-operated grinding wheels with frame works"*.

As per the Customs Tariff, the goods specified under C.T.H. 7308 are- *"Structures (excluding prefabricated buildings of heading 94.06) and parts of*

structures (for example, bridges and bridge-sections, lock gates, towers, lattice masts, roofs roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel: Plates, rods, angles, shapes, sections, tubes and the like prepared for use in structures of iron and steel)".

As per Customs Tariff the goods falling under Chapter 8302 are "*Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddler, trunks, chest, caskets or the like; Base metal hat-racks, hat-pegs, brackets and similar fixtures; Castors with mountings of base metals; Automatic door closers of base metal"*.

On going through the above Chapters, Government finds that the heading Ch 7308 covers complete or incomplete metal structures, as well as parts of structures. For the purpose of this heading, these structures are characterized by the fact that once they are put in position, they generally remain in that position. Parts of structures include clamps and other devices, specially designed for assembling metal structural elements. The impugned goods in the instant case like clamps, Flat Iron/Iron Press, Threaded Rod/Bar, Base Square washer, Clips and other devices, are used for the construction of the scaffold.

7.03 Government finds that in the instant case, the Exporters are manufacturers and exporters of Scaffolding fittings. **Scaffold** or **staging**, is a temporary structure used to support a work crew and materials to aid in the construction, maintenance and repair of buildings, bridges and all other man-made structures. The impugned goods in the instant case like clamps, Flat Iron/Iron Press, Threaded Rod/Bar, Base Square washer, Clips and other devices, are used for the construction of the scaffold/or are parts of the complete structure namely Scaffold.

7.04 The Government finds that the classification of any product should be determined in adherence to the guidelines under Rule 3(a) of the General rules to the Schedule to the Customs tariff Act, 1975. The rule states that

"3. When by application of Rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to heading providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if, one of them gives a more complete or precise description of goods. "

In view of the above General rules of Interpretation, Government notes that the impugned items exported by the Exporter as detailed above are nothing but part of the main products of scaffolding i.e. temporary structure used to support people and material in construction or repair or building and other structure and are more appropriately classifiable under 'Equipment for Scaffolding,...' under Chapter 7308 40 00.

7.05 Further Government observes that the Exporter has **not contested anywhere, neither before this authority nor have they questioned it in the grounds of appeal before the Commissioner (Appeals) and before the adjudicating authority, that the exported goods are not goods or fitting used for scaffolding. They have merely stated that they have correctly classified the products.** The exporter had been claiming more drawback than what they were entitled to by classifying the export goods as stated above. These goods merit classification under Ch 7308 and the lower adjudicating authority has accordingly sanctioned the eligible drawback.

8. In view of above findings with respect to the department's revisionary applications regarding classification issue, Government modifies the impugned Orders-in-Appeal No. MUN-CUSTOM-000-251-252-15-16 dated 24-11-2015 passed by the Commissioner of Customs (Appeals), Ahmedabad

and affirms the classification decided by the adjudicating authority. In respect to the exporter's revisionary application regarding time limit, Government does not find any infirmity in the OIA No. MUN-CUSTM-000-251-252-15-16 dated 24-11-2015 and upholds the same.

9. These Revision Applications are disposed of on above terms.


7/4/22
(SHRAWAN KUMAR)

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

ORDER No. 121-123 /2022-CUS(WZ)/ASRA/Mumbai dated 07.04.2022

To,

1. M/s. Pensla Exports Pvt. Ltd.,
E/8, Industrial Area, Sodal Road,
Jalandhar, Punjab-144004

Copy to:

1. The Principal Commissioner of Customs, 5B, Port User Building, Adani
Port, Mundra, Kutch, Gujarat-370421
2. Sr P.S. to AS (RA), Mumbai
3. ~~Guard file~~
4. Notice Board.