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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,

Mumbai-400 005

F. No. 373/212/DBK/14-RA 5108 Date of Issue 17.09.2020

ORDER NO.122/2020-CUS (SZ) / ASRA / MUMBAI/ DATED 04.08.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : M/s Panachamoottil Exporters,
T.C. 14/1351, CRA-77 Chennilode,
Medical College P.O., Trivandrum – 695 011
Kerala.

Respondent : The Commissioner of Customs,
Cochin.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 18-41/2014-Cus dated 26.02.2014 passed by the Commissioner of Customs (Appeals), Cochin.

ORDER

The Revision Application is filed by M/s Panachamoottil Exporters, Trivandrum, Kerala (herein after referred to as 'the applicant) against the Order in Appeal No. 18-41/2014-Cus dated 26.02.2014 passed by the Commissioner of Customs (Appeals), Cochin.

2. Brief facts of the case are that the applicant had exported fruits and vegetables under various shipping bills and availed the drawback of Rs. 2, 20,382/- (Rupees Two Lakh Twenty Thousand Three Hundred Eighty Two Only). On scrutiny of the documents the Drawback Sanctioning Authority observed that even in cases where the drawback was less than 1% of the FOB value shown in the shipping bills, the drawback amount was sanctioned and paid. As per Rule 8 of the Customs and Central Excise Duties & Service Tax Drawback Rules, 1995, no amount of drawback shall be allowed, if the amount or rate of drawback is less than 1% of the FOB value thereof, except where the amount of drawback per shipment exceeds five hundred rupees. Hence, the payment of duty drawback amounting to Rs. 2,20,382/- appeared to be incorrect and was paid erroneously. The applicant were served with a Show Cause Notice directing them to show cause as to why the ineligible duty drawback amounting to Rs. 2,20,382/- availed by them should not be recovered from them under Rule 16 of the Drawback Rules read with Section 75 A(2) of the Customs Act, 1962.

2. The Adjudicating Authority dropped the demand vide Order in Original No. 08/2013-Cus dated 16.03.2013. The adjudicating authority on examination of records observed that major portion of goods exported by the applicant under the claim of drawback were vegetables classified under Chapter 7 and Fruits classified under Chapter 8 of Customs Tariff and both these items are eligible for drawback at the rate of 1% of FOB

value. Drawback is determined on the basis of the data in respect of the goods exported as available in the respective shipping bills. Rule 8 of Drawback Rules specifies that no amount or rate of drawback shall be determined in respect of 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 1% of the FOB value thereof, except where the amount of drawback per shipment exceeds five hundred rupees. The drawback amount is determined on the basis of the FOB value of the goods exported for which the drawback is eligible. 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 CTH separately. The drawback amount is automatically calculated by the system and the system is programmed in such a way that no drawback less than 1% of the FOB value would be sanctioned. As per Rule 76(C) of the Customs Act, 1962, no drawback shall be allowed where the drawback due in respect of any goods is less than Rs. 50/-. The system automatically shows that drawback amount as zero, in such cases.

3. The department preferred an appeal against the impugned Order in Original. The Appellate Authority quashed the Order in Original passed by the Original Authority vide Order in Appeal 'No. 18 to 41/2014-Cus dated 26.02.2014.

4. Being aggrieved by the impugned order, the applicant filed instant Revision Application on the following grounds :-

4.1 There is absolutely no dispute that in the present case the applicant had exported their goods out of the country and realised the foreign exchange.

4.2 The drawback was automatically computed by the EDI system which only implies that no ineligible or irregular amount would have been sanctioned and credited to the applicant in the first place.

4.3 The original authority as per Section 76 (C) of the Customs Act, 1962 drawback cannot be claimed only such cases where drawback amount is less than Rs. 50/-

4.4 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 applicant was not less than Rs. 50/- in any given case. Hence the drawback claimed by the applicants was less than 1% of FOB value is not tenable since provisions of Section 76(c) of the Customs Act, 1962 shall prevail over the provisions of Rule 8 of Drawback Rules.

4.5 Proceedings initiated by the department on the ground that the drawback sanctioned to the applicant 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. 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.

4.6 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.

5. Personal Hearing was held on 14.01.2020. Shri Pradyumna G H, Advocate attended the same on behalf of the applicant. However, no one appeared for the same on behalf of the respondent.

6. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the rival submissions.

7. The Government finds that the core issue involved in the instant Revision Application is whether after taking into consideration the facts

stated above, the Order of the Assistant Commissioner of Air Cargo Complex, Trivandrum 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 and Central Excise duties and Service Tax Drawback Rule, 1995 is legally correct and proper.

8.1 The Government observes that the Section 76 of the Customs Act, 1962 contains the provisions in respect of prohibition and regulation of drawback and the same are reproduced below for reference;

> *"SECTION 76. Prohibition and regulation of drawback in certain cases. - (1) Notwithstanding anything hereinbefore contained, no drawback shall be allowed -*
>
> *[28][***]*
>
> *(b) in respect of any goods the market-price of which is less than the amount of drawback due thereon;*
>
> *(c) where the drawback due in respect of any goods is less than [29][fifty rupees].*
>
> *(2) Without prejudice to the provisions of sub-section (1), if the Central Government is of opinion that goods of any specified description in respect of which drawback may be claimed under this Chapter are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that drawback shall not be allowed in respect of such goods or may be allowed subject to such restrictions and conditions as may be specified in the notification."*

It is gathered that the above prohibitive section provides that no drawback is admissible under Section 75 if the market price is less than the amount of drawback claimed. Also, drawback is also not admitted if the claim is less than Rs.50/- in individual shipments.

8.2 The Drawback Rules also further lay down in Rule 8 some further limitations pertaining to amount / rate of drawback admissible to the

exporters. As such, the discussion of provisions under said Rule are significant in the instant case. The Rule reads as follows :-

> *"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. Provided that this sub-rule shall not apply in the case of -***
>
> *(a) drawback on exports made in discharge of export obligation against an Advance Licence issued under the Export and Import Policy notified by the Central Government under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), or*
>
> *(b) export made by post.*
>
> *(2) No amount or rate of drawback shall be determined in respect of any goods or class of goods under rule 6 or rule 7, as the case may be, if the export value of each of such goods or class of goods in the bill of export or shipping bill is less than the value of the imported materials used in the manufacture of such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture of such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf."*

Thus, Rule 8, as above, provides that no amount of drawback shall be determined in respect of any goods, where the amount or rate of drawback is less than 1% of FOB value except where the amount of drawback per shipment exceeds Rupees Five Hundred.

8.3 In brief, when a single shipping bill is filed for the export for the export of different goods falling under different CTHs, the sanction of drawback should be respective items under different CTHs and no drawback amount shall be sanctioned if it is less than Rupees Fifty in individual shipment. The EDI system would show the drawback amount as zero in pursuance of such provisions under Section 76 of the Customs Act, 1962.

8.4 The Government finds that the Adjudicating Authority had

dropped the demand for ineligible drawback without determining the tangible outcome of the FOB Value per shipment i.e. without taking full value of a shipment while computing the percentage of drawback for determination of eligibility of drawback of the shipment. The Commissioner (Appeals) has also taken note of the fact that the in all the cases, the amount of drawback per shipment had not exceeded five hundred rupees and is also less than 1% of the FOB Value and for this purpose FOB value, shipment wise [i.e. Shipping Bill wise] has to be taken into account where as 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 of drawback.

8.5 The Government holds that the methodology followed by the adjudicating authority while sanctioning the drawback in the instant case is non commensurate with the provisions under the Act and Rules made there under and hence cannot be made applicable to the facts of the present case.

9. In view of the above discussion, Government holds that the Commissioner (Appeal) has rightly quashed the Original Order. As such, Government finds no reason to set aside the impugned order-in-appeal.

10. In view of above circumstances, Government finds no infirmity in the impugned order-in-appeal and therefore upholds the same.

11. The revision applications are dismissed.

12. So ordered.

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No.22/2020-CUS (SZ) /ASRA/ DATED 04.08.2020

To,

M/s Panachamoottil Exporters,
T.C. 14/1351, CRA-77 Chennilode,
Medical College P.O., Trivandrum – 695 011
Kerala.

Copy to:

1. The Principal Commissioner of Central Goods & Service Tax, Thiruvananthapuram, GST Bhavan, P.B. No. 13, Press Club Road, Thiruvananthapuram- 695001.
2. The Commissioner of Central Tax & Central Excise, Cochin Appeals, 4th floor, C.R. Building, I.S. Press Road, Ernakulam, Kochi- 682 018.
3. The Assistant Commissioner of Customs, Air Cargo Complex, Shanghumughom, Thiruvananthapuram- 695 008.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard File.
6. Spare Copy.