SPEED POST
REGISTERED 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.371/19 (I to IV)/DBK/17-RA/1484 Date of Issue: 21.04.2022

ORDER NO. 139-142 /2022-CUS (WZ) /ASRA/Mumbai DATED 19.04.2022 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 IFGL Exports Limited Plot no.638-644, Kandla Special Economic Zone, P.O. Gandhidham – 370230, Dist: Kutch, Gujarat.
Respondent	:	Commissioner of Customs, Kandla Special Economic Zone, Customs House, Near Balaji Temple, Kandla – 370210.
Subject	:	Revision Application filed under Section 129 DD of the Customs Act, 1962 against the Order-in-Appeal No. KAL-CUSTM-000-APP- 43 TO 46/16-17 dated 21.03.2017 passed by the Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This Revision Application has been filed by M/s IFGL Exports Limited (here-in-after referred to as 'the Applicant') against the subject Order-in-Appeal passed by the Commissioner of Customs (Appeals), Ahmedabad which decided the appeals filed by the applicant against letters of the Deputy Commissioner of Customs, Kandla Special Economic Zone (KASEZ), Gandhidham, rejecting their claims for Drawback.

2. Brief facts of the case are that the applicant is a unit operating in the Kandla Special Economic Zone (KASEZ) and manufactured refractories. They had procured imported inputs from various suppliers in the Domestic Tariff Area which were used to manufacture the said refractories. They filed duty drawback claims under Section 74 of the Customs Act, 1962 in terms of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 claiming drawback of the duties paid in terms of Section 26(1)(d) of the Special Economic Zone Act, 2005 (SEZ Act). The applicant filed claims before the Deputy Commissioner of Customs, KASEZ, for sanction of drawback of Customs duties on the purported import of goods by the DTA dealer under Section 74 of the Customs Act, 1962; they filed the dealer's invoices from the Central Excise dealer-supplier of LPG along with the said claims. These claims were returned/rejected by the Department on the grounds that the applicant did not fulfill the conditions of Rule 30(2), 30(3) and 30(5) of the Special Economic Zone Rules, 2006 (SEZ Rules, 2006) read with Rule 4(a) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 and also that procurement of the said goods by a unit in the SEZ from a DTA dealer does not qualify the SEZ unit to claim drawback on the said goods under Section 74 of the Customs Act, 1962 read with the provision of Rule 2(b) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995.

3. Aggrieved, the respondent preferred appeals against the letters returning/rejecting the drawback claims filed by them before the Commissioner of Customs (Appeals), Ahmedabad resulting in the subject Order-in-Appeal. The Commissioner (Appeals) rejected the appeals filed by the applicant on the grounds that – there was no deeming provision in Rule

2(b) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995; that the applicant had failed to follow the procedure of Rule 4(a) & 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 and also the provisions of Rule 24, 30, of the SEZ Rules, 2006.

4. Aggrieved, the applicant has filed the present Revision Application against the impugned Order-in-Appeal on the following grounds:-

a) Non-filing of Bill of Export / ARE-1 is a mere procedural lapse; and that substantive benefit of drawback of the duties of paid on goods procured cannot be denied;

b) Section 26(1)(d) of the SEZ Act, 2005 specifically allows drawback of duties paid on goods brought from DTA into a unit in the SEZ for the purpose of carrying on authorized operations;

c) There was no disagreement on the fact that goods had actually been received in their premises for use in authorized operations under the cover of invoices; they placed reliance on the case of Essel Propack Ltd. [2014 (312) ELT 946 (GOI)] wherein it was held that - when the receipt of duty paid goods was not disputed, non-submission of Bill of Export was a mere procedural lapse which could be condoned and that such lapse could not take away the substantial benefit of export entitlement. They also relied upon the following case laws wherein similar views were expressed, in support of their case:-

- Nov Sara India (P) Ltd. [2014 (313) ELT 898 (GOI)]
- KEI Industries [2014 (313) 895 (GOI)]
- Indo Alusys Industries Ltd [2013 (297) ELT 305 (GOI)]
- Shree Parvati Metal P. Ltd. [2013 (290) ELT 638 (GOI)]

(d) The Order-in-Appeal had erroneously held that the condition of Rule 30(7) had not been satisfied as the notice issued to them had not alleged that non-filing of the Bill of Export had resulted in the non-examination of the goods by the SEZ authorities and in the event had such a request been made the goods in question would been identified to the satisfaction of the concerned authorities;

(e) Since they were themselves claiming the drawback benefit and there was no reason for a disclaimer certificate under Rule 30(5) of the SEZ Rules as the same was required only when the domestic supplier wished to claim the drawback;

(f) The Commissioner (Appeals) had travelled beyond the initial rejection Order of the Deputy Commissioner inasmuch as the Order-in-Appeal has alleged that the applicant had not followed the conditions, procedures laid down under Rule 30(4), 30(7) and 30(8) of the SEZ Rules and was liable to be set aside on this grounds alone;

(g) The condition under Rule 30(8) of the SEZ Rules was satisfied by them inasmuch as the payment for the goods in question were made through their PCFC account in which the payments received in Foreign Currency were credited and subsequently converted to INR; that the Annual Performance Report indicating the details of inflow of Foreign Currency and its subsequent use to buy inputs in relation to which drawback had been claimed has not been questioned;

(h) The supplies made by the unit in the DTA to them were exports in terms of Section 2(ii) of the SEZ Act, 2005 and Section 2 (18) of the Customs Act, 1962 as Section 53 of the SEZ Act, 2005 provides that Special Economic Zones shall be deemed to be a territory outside the Customs territory of India for the purpose of undertaking the operations they were authorized; and hence the Commissioner (Appeals) had erred in holding that supplies from the DTA were not exports; they placed reliance on the decision of the High Court of Chattisgarh in the case of UOI vs Steel Authority of India Ltd. [2013 (297)ELT 166] in support of their case; they further submitted that the DTA supplier is not engaged in manufacturing activity, they had merely imported and supplied goods to them and hence Rule 18 of the Central Excise Rules, 2002 would not be applicable in the instant case;

(i) They relied on CBEC Circulars no.29/2006-Customs dated 27.12.2006, No.06/2010 dated 19.03.2010 and No.1001/8/2015-CX

dated 28.04.2015 to submit that supplies by a DTA unit to the an unit in the SEZ has to be treated as 'export';

In light of the above, the applicant submitted that the subject Order-in-Appeal be set aside and the drawback claimed by them may be sanctioned to them.

5. Personal hearing in the matter was granted to the applicant on 29.03.2022. Ms Priyanka Rathi, Advocate and Ms Preity, Consultant, appeared online on behalf of the applicant. They submitted that identical issue in their own case has been decided by Order dated 01.02.2022. They requested that their application may be allowed.

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

7. Government notes that the applicant has rightly pointed out that this issue, in the case of the applicant themselves, was decided by the Revisionary Authority vide Order dated 01.02.2022.

8. Government notes that drawback of the duties paid on the inputs received from suppliers situated in the DTA sought by the applicant has been denied by the Department. The Commissioner (Appeals) vide the impugned Order-in-Appeal had rejected the appeals filed by the applicant on the grounds that sale of goods by a unit in the DTA to a SEZ unit cannot be treated as 'export' in terms of Rule 2(b) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 and also for the reason that the applicant did not follow the procedure laid down under various sub-sections of Rule 30 of the SEZ Rules, 2005 and Rule 4(a) and Rule 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995.

9. Government finds that Section 2(m)(ii) of the SEZ Act, 2005 clearly states that supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer in the SEZ would be treated as export. Further, Section 53 of the SEZ Act, 2005 lays down that a SEZ shall be deemed to be

a territory outside the Customs territory of India for the purposes of undertaking the operations for which they have been authorized. A combined reading of Section 2(m)(ii) and Section 53 of the SEZ Act, 2005, as discussed above, clearly indicate that as per the SEZ Act, 2005 the applicant, a unit in a SEZ, is outside the Customs territories of India and supplies made by a DTA unit to them would fall under the definition of 'export'. Government notes that once the relevant Sections of an Act provides that such supplies would be export, it is incorrect to rely on a narrow interpretation of the Rules subservient to it, to hold the opposite. Government finds support in the judgment of the Hon'ble High Court of Chattisgarh in the case of UOI vs Steel Authority of India [2013(297)ELT 166 (Chattisgarh)] wherein it was held that supplies from DTA to a developer in the SEZ are to be treated as exports in terms of Section 2(m) of the SEZ Act, 2005. Thus, Government holds that supplies made by the units in the DTA to the applicant in the SEZ would fall under the category of exports. In view of the above, Government sets aside this portion of the impugned Order-in-Appeal and holds that the supplies made by the DTA units to the applicant will be treated as 'exports'.

10. Government finds that 'drawback' in relation to any goods exported out of India, as defined under the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 means refund of duty paid on importation of such goods in terms of Section 74 of the Customs Act, 1962. In the present case, Government finds that the Order-in-Appeal has clearly recorded that the goods were procured from a Dealer in the DTA who was registered with the Central Excise Department. The applicant has sought drawback of the duties indicated as paid in the invoice raised by the DTA unit against supply of inputs to them in the SEZ. Government finds that neither the original Order of the Deputy Commissioner nor the Orders-in-Appeal have cast any doubt on the claim of the applicant with respect to the nature of goods supplied by the unit in the DTA, its receipt in the SEZ and the duty paid on it of which drawback has been claimed. Government notes that the drawback claimed has sought to be denied on the grounds that procedures prescribed for claiming drawback have not been followed by the applicant. Government finds that in present case, though the applicant has admittedly failed to follow certain procedures, the same cannot be held against them to

deny the substantive benefit of drawback for which they are legally eligible. Government finds that there are a plethora of judgments of various Courts on this issue wherein it has been held that substantive benefit cannot be denied on grounds of procedural irregularities. In view of the above, Government holds that drawback claimed by the applicant cannot be denied to them on the grounds of certain procedure not being followed and sets aside the impugned Order-in-Appeal dated 21.03.2017. In view of the findings recorded above, Government holds that the supplies made by the units in the DTA to the applicant would qualify as export and the applicant would be eligible to the drawback of duties paid on such supplies received from the DTA.

11. In view of the above, Government sets aside the Order-in-Appeal dated 21.03.2017 and holds that the applicant is eligible to the drawback claimed by them.

12. The subject Revision Application is allowed.

Shrawan 19/4/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 139-142 /2022-CUS (WZ) /ASRA/Mumbai dated 19.04.2022

To

M/s IFGL Exports Limited
Plot no.638-644, Kandla Special Economic Zone,
P.O. Gandhidham – 370230,
Dist: Kutch, Gujarat.

Copy to:

1. Commissioner of Customs, Kandla Special Economic Zone, Customs House, Near Balaji Temple, Kandla – 370210.
2. The Commissioner (Appeals), Customs, Ahmedabad, 7th floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad – 380009.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.
5. Notice Board