



**REGISTERED
SPEED POST**

F.No. 371/13-23/DBK/14-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6 FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue..19/5/14

Order No. 145-155/2014-Cus dated 19.05.2014 of the
Government of India, passed By Shri D.P.Singh, Joint Secretary to the
Government of India, under Section 129DD of Customs Act, 1962.

Subject : Revision application filed under Section 129DD
of Customs Act, 1962 against orders-in-appeal (as
reflected in the table of this order) passed by the
Commissioner of Customs (Appeals), Mumbai-III

Applicant : As shown in table in para-I of this order

Respondent : Deputy Commissioner of Customs (Drawback) Air
Cargo Complex Shahar, Andheri(W), Mumbai

ORDER

These revision applications are filed by applicants against the orders-in-appeal passed the Commissioner of Customs (Appeals), Mumbai-III with respect to orders-in-original passed by the Deputy Commissioner of Customs (DBK), ACC, Sahar, Mumbai as detailed below:-

S.No	R.A. No.	Order-in-appeal No. & date	Name of the applicant
1.	371/13 /DBK/14-R.A.	MUM – CUSTM – AXP APP –294 & 295/13 - 14 dated 11.11.2013	M/s Kegien Enterprise, Haji jumma Compound, Sewri Cross Road, Sewri (W), Mumbai - 400015.
2.	371 /14 /DBK/14-R.A.	MUM – CUSTM – AXP – APP – 304 & 305 / 13 - 14 dated 11.11.2013	M/s Aqsa Sea Food, Sewri Cross Road, Nr. Sewri Rly. Station, Plot no. 9, Scheme 57, Sewri (W), Mumbai- 400015.
3.	371/15/DBK/14-R.A.	MUM – CUSTM – AXP – APP – 296 & 297 / 13 - 14 dated 11.11.2013	M/s H.P. Enterprise, 285(2-15) Godown No.2, Scheme No. 57, Sewri Cross Road, Sewri (W), Mumbai - 400 015.
4.	371/16/DBK/14-R.A.	MUM – CUSTM – AXP – APP – 300 & 301 / 13 - 14 dated 11.11.2013	M/s Reliable Trading Co., GIDC, Plot no. 813, Veraval, Gujarat - 362265.
5.	371/17/DBK/14-R.A.	MUM – CUSTM – AXP – APP – 286 & 287 / 13 - 14 dated 11.11.2013	M/s Khizar Exports, Sewri Cross Road, Nr. Sewri Rly. Station, Mumbai - 400015.
6.	371/18/DBK/14-R.A.	MUM – CUSTM – AXP – APP – 302 & 303 / 13 - 14 dated 11.11.2013	M/s National Sea Food Corporation, Sewri Cross Road, Sewri (W), Mumbai - 400013.
7.	371/19/DBK/14-R.A.	MUM – CUSTM – AXP – APP –292 & 293 / 13 - 14 dated 11.11.2013	M/s SKF .Exports. Sewri Cross Road, Sewri (W), Mumbai - 400 015
8.	371/20/DBK/14-R.A.	MUM – CUSTM – AXP – APP – 288 & 289 / 13 - 14 dated 11.11.2013	M/s Global Impex Trading, 36/3 Haji jumma Compound, Sewri Cross Road, Sewri (W), Mumbai - 400015.
9.	371/21/DBK/14-R.A.	MUM – CUSTM – AXP – APP – 298 & 299 / 13 - 14 dated 11.11.2013	M/s Rehmania Sea Food, Sea Breeze Apartment, Gr, Floor, Koliwada, Vasai West, Dist: Thana
10.	371/22/DBK/14-R.A.	MUM – CUSTM – AXP – APP – 290 & 291 / 13 - 14 dated 11.11.2013	M/s Star Marine Exports, Dnyaneshwar Nagar CHSL, C-2, Flat No. 40, 4th Floor, R.a. Kidwai Road, Wadala, Mumbai - 400031.
11.	371/23/DBK/14-R.A.	MUM – CUSTM – AXP – APP – 306 & 307 / 13 - 14 dated 11.11.2013	M/s Nizami Sea Eood, Harun Trading Compound, Sewri Cross Road, Sewri (W), Mumbai - 400015.

2. Brief facts of the case are that the applicants, the merchant exporters dealing in the export of fish and fish products, in particular Fish Maws

exported consignments of fish maws during 2011-12 under claim of drawback by classifying it under drawback schedule Sr.No.0305 claiming drawback @2%. The said drawback claims were sanctioned to the applicants. Subsequently, the investigations conducted revealed that the exporters were wrongly classifying Fish Maws under Drawback S.No.0305 to claim drawback at higher rate of 2% whereas correct drawback schedule Sr.No. is 0511 attracting drawback @ 1%.

2.1 During the course of investigation conducted by DRI, it came to light that exporters had been wrongly classifying the product 'Frozen Fish Maws' 'dried fish Maws' under various RITC Codes i.e. 03074990, 03037991, 03055990, 03054900, 03079920 and 05119130. Upto 30.09.2011 such fish products were eligible for claim of DEPB (Post Export).

2.2 In the DEPB scheme fish products were listed under product Code 66. Sr. No 1 A: Fish, Crustaceans, Molluscs, Invertebrates and any Aquatic Animal product of marine or fresh water origin in live or chilled form, including Ornamental Fish and any Aquatic Animal product of marine or fresh water origin not covered under S.No.2.

Sr. No 1 B: Fish, Crustaceans, Molluscs, Invertebrates and any Aquatic Animal product of marine or fresh water origin in dried form, including Ornamental Fish and any Aquatic Animal product of marine or fresh water origin not covered under S.No.2.

Sr. No.2: Fish, Crustaceans, Molluscs, Invertebrates and any Aquatic Animal product of marine or fresh water origin in frozen form.

2.3 From 01.10.2011 export incentives under DEPB scheme were withdrawn by the Commerce Ministry and 2130 items earlier eligible under DEPB were included in the Drawback schedule. Fish and fish products were listed out in the Drawback Schedule as under:

0302: Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0304

0303: Fish, frozen, excluding fish fillets and other fish meat of heading 0304

0304: Fish fillets and other fish meat (whether or not minced), fresh, chilled or frozen

030401 In fresh chilled form

030402 In frozen form

0305: Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals and pellets, of fish fit for human consumption.

2.4 For the purpose of claim under DEPB the classification of the export product was not material. However, for claims under Drawback the classification and description are important factors and as such items need to be products of Chapter 03 only. As mentioned above Fish Maws has been classified under various Tariff Items of Chapter 03 for claim of drawback.

2.5 As per the Finance Bill 2011-12 certain changes have been made in the Customs Tariff. The first Schedule to the Customs Tariff Act was amended as on 1st January, 2012. The following amendments were made applicable in Chapter Heading 0305. A new classification has been included for fish fins, heads, tails, maws etc.

-Smoked fish, including fillets

changed to:- Smoked fish, Including fillets, other than edible fish offal;

-Dried Fish, whether or not salted but not smoked

changed to:- Dried fish other than edible fish offal, whether or not salted but not smoked;

-Fish salted but not dried or smoked and fish in brime

changed to:- Fish salted but not dried or smoked and fish in brime, other than edible fish offal.

THE NEW SUB-CLASSIFICATION to Chapter Heading 0305 reads as:

- Fish fins, heads, tails, maws and other edible fish offal.
- 03057100 - Shark fins
- 0305 72 00 - Fish heads, tails and maws

- 0305 79 00 - Others

2.6 Prior to the changes in the Customs Tariff (before 01.01.2012) 'Fish Maws' (Swim bladder of fish) being an offal would merit classification under chapter heading 0511 for the following reasons.

(a) Note 1 (a) of chapter 5 of the Customs Tariff reads as ' This Chapter does not cover edible products (other than guts, bladders and stomachs of animals, whole and pieces thereof, and animal blood, liquid or dried)". This, by inference, means that edible bladders of animals are covered under chapter 5.

(b) HSN explanatory notes for CTH 05.11 reads as:

This heading includes:

(1) -----

(2) -----

(3) Animal blood, liquid or dried edible or not

(4) -----

(5) -----

(6) Waste of fish or crustaceans, mollusks or other aquatic invertebrates.

(i)---

(ii) fish bladders, raw dried or salted, used in the manufacture of isinglass and fish glues or fit for human consumption.'

This clearly shows that Fish bladders i.e. 'Fish Maws' were correctly classifiable under CTH 0511 till 31.12.2011.

2.7 As stated above the Fifth Schedule of Finance Bill, 2011 is effective from 01.01.2012. The heading 0305 has been amended and tariff items 03057100, 03057200 and 03057900 have been inserted. Specific tariff item 03057200 for 'Fish Maws' has been added from this date (01.01.2012). The tariff item 'Fish Maws' and 'Shark fins' being offal/waste, would therefore effectively be classified upto 31.12.2011 under tariff item 05119130 i.e. as 'other fish waste' and after 01.01.2012 under tariff item 03057200.

2.8 The applicants were issued demand-cum-show cause notices asking them to deposit "excess" drawback on the ground of wrongly classifying the products under SS No.0305 attracting drawback @2% at the material time instead of the correct Drawback SS No.0511 attracting 1% drawback. The said entry referred in the said Notice under Chapter 5 which reads "Products of Animal Origin Not elsewhere specified or included and specifically SS No.0511 which reads:

"0511 Animal products not elsewhere specified Or included; dead animals of chapter 1 or 3, Unfit for human consumption"

2.9 After following the due process of law, the Deputy Commissioner vide impugned orders-in-original confirmed the recovery of excess drawback along with interest.

3. Being aggrieved by the impugned orders-in-original, applicants filed appeals before Commissioner (Appeals) who rejected the same.

4. Being aggrieved by the impugned orders-in-appeal the applicants have filed these revision applications under Section 129 DD of the Customs Act, 1962 before Central Government on the following grounds:

4.1 The Applicants submit that the item exported by them is "Fish Maws" which is a bladder/part of a fish and is an edible delicacy in Chinese food Preparations as evidenced by a large literature on the subject available, freely on the internet. Being an item specifically of fish origin, its classification has necessarily to be under the chapter which is "Fish" namely Chapter 3 of the duty drawback schedule. It is clearly recognized that the fish as a species is distinct from Animals, therefore parts of fish are rightly classifiable under Chapter 3 and not under Chapter 5 which covers Animal Products not elsewhere specified. Therefore on this ground also the impugned order is liable to be set aside.

4.2 Kind attention is also invited to entry 0511 which reads as Animal products not elsewhere specified or included; dead animals of chapter 1 or 3, unfit for human consumption. The qualifying words "unfit for human consumption" would mean that without prejudice to the foregoing argument, Fish Maws being edible products of fish origin cannot be classified u/h 0511 at all hence the entire proceedings including the Demand cum Show Cause Notices proceed on wrong premise that Fish Maws were classifiable u/h 0511 of the duty drawback Schedule. Therefore on this ground also the impugned order is liable to be set aside.

4.3 The Commissioner in the impugned order has erroneously referred to the date 1.1.2012 when "a specific entry of fish maws was inserted" in Chapter 3 namely 03057200 in the Customs Tariff. According to him, prior to this date, there was "ambiguity" as there was no specific entry for "fish maws". The Commissioner has failed to appreciate that the issue before him was under what heading of the duty drawback schedule, was the item "fish Maws" covered/classifiable. It will be seen from the duty drawback schedule that the description of goods under Chapter 03 and Chapter 05 remain unchanged both before and after 1.1.2012 and that no specific entry of fish maws has been inserted or transferred nor has any amendment been made to the duty drawback schedule on that date. There was therefore no ambiguity as far as duty drawback schedule was concerned. Argument of the Commissioner is therefore without factual or legal basis.

4.4 The Commissioner has failed to appreciate that the duty drawback schedule is aligned with the First Schedule of the Customs Tariff Act 1975 at the four digit level only. Reference Note 1 to Notification 92/2012-Cus (NT) dated 4.10.2012 (earlier Notification 68/2011-Cus (NT) dated 22.9.2011). Therefore without prejudice to the aforesaid arguments, the amendment to the first schedule of the Customs Tariff Act 1975 at the Six digit level only by insertion of entry 03057200 in the Customs Tariff vide fifth schedule to the Finance Act 2011 has no application to the duty drawback schedule which

remained unchanged. The impugned order is therefore without factual or legal basis and is therefore liable to be set aside on this ground also.

4.5 The Commissioner has attempted to find fault in the specific clarification viz: Clarification letter issued by the Asst. Commissioner of Customs, ACC, Ahmedabad Ref VIII/48-573/ACC 2011 dated 29.3.2011 wherein it was clarified that fish maws were correctly classifiable under 0305. In fact contrary to what the Commissioner observes, the Assistant Commissioner has referred to and relied upon the relevant HSN explanatory notes while giving his opinion. Commissioner failed to appreciate that the clarification of the Assistant Commissioner was neither rescinded nor modified and was therefore binding upon the department. Argument of the Commissioner therefore is unsustainable and the impugned order liable to be set aside on this ground also.

4.6 The applicants also submit copy of letter of clarification No.01/61/180/48/AM14PC3 dated Dec 2013 of the Ministry of Commerce according to which Fish Maws was correctly classifiable u/h 0305 both prior to and after 1.1.2012 and eligible for export benefit accordingly. The impugned order is clearly liable to be set aside on the basis of this clarification as well.

5. Personal hearing was scheduled in this case on 5.5.2014 & 13.5.2014. Hearing held on 13.5.2014 was attended by Shri Ravinder Jain, Consultant on behalf of the applicants who reiterated the grounds of revision applications.

6. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned orders-in-original and orders-in-appeal.

7. Government observes that the applicants exported the goods namely 'Fish Maws' under claim of drawback under drawback schedule Sr.No.0305 claiming drawback @2% which was initially sanctioned to them. Subsequently, the original authority confirmed the demand of already sanctioned drawback in excess of rate 1% on the ground that the said fish maws are appropriately classifiable under drawback heading 0511 attracting

drawback @1%. Commissioner (Appeals) upheld impugned orders-in-original. Now, the applicant has filed these revision applications on ground mentioned in para (4) above.

8. Government notes that fish products were listed under DEPB Scheme Product Code 66 up 30.9.2011. Subsequently w.e.f. 1.10.2011, export incentive under DEPB Scheme for fish products was withdrawn by Commerce Ministry and same were made eligible for duty drawback benefit by including Fish & Fish products in the drawback schedule. The drawback schedule Sr.No.0305 is as under:

"0305 Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals and pellets, of fish fit for human consumption."

Applicant had been classifying the fish maw under drawback schedule Sr.No.0305 and claiming duty drawback @2%. Government notes that the Fish Maws is a bladder/part of fish which is fit for human consumption as the same is used in chinese food preparations. The chapter-3 of drawback schedule covers fish and crustaceans, Molluses and other Aquatic Invertebrates whereas chapter-5 covers products of Animal organ not elsewhere specified or included. Since the fish/fish maws specifically covered in chapter-3, its classification is to be considered in chapter-3 itself. Department has classified the fish maws in Sr.No.0511 which reads as – Animal products not elsewhere specified or included; dead animals of chapter 1 or 3, unfit for human consumption. The said heading covers animal products not specified elsewhere and are unfit for human consumption. Fish maws is a fish dried product and fit for human consumption and therefore it cannot be classified in Sr.No.0511.

8.1 Department has relied upon HSN explanatory notes for Custom tariff heading 0511. In this regard, Government observes that vide Finance Act 2011 w.e.f. 1.1.12, the CTH 0305 has been amended and Tariff item 03057100, 03057200 and 03057900 have been inserted. Item No.03057200 is for fish maws. Despite the above said HSN notes, the item is classified in CTH 03057200 w.e.f. 1.1.12. The description, use and nature of said product

remained same and it will be anomalous to classify it under drawback Sr.No.0511 upto 31.12.11 and under Sr.No.0305 after 1.1.12. The entries have been changed in custom tariff heading and not in drawback schedule. In the instant case the dispute relates to classification of item under drawback schedule. So, there is no logic for classifying said item differently during the period prior to and after 1.1.12. Moreover the drawback schedule entry in Sr.No.0305 has remained the same before 1.1.12 and after 1.1.12 though rate of drawback has changed. As per reference Note 1 of Notification No.92/2012-Cus(NT) dated 4.10.12 and earlier Notification No.68/11-Cus(NT) dated 22.9.11, the duty drawback schedule is aligned with the first schedule to Customs Tariff Act 1975 at the four digit level only. The drawback schedule entry 0305 remained unchanged before and after 1.1.12 and therefore classification of fish maw in Sr.No.0511 before 1.1.12 is not legally sustainable. Fish maws is rightly classifiable under drawback schedule Sr.No.0305 for the period prior to 1.1.12 also.

8.2 Government further notes that Deputy Director General Foreign Trade Ministry of Commerce vide letter No.01/61/180/48/AM14PC3-717 dated December 13 has clarified as under:

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*No.01/61/180/48/AM14PC3-717
Government of India
Ministry of Commerce
Directorate General of Foreign Trade
Maulana Azad Road, Udyog Bhavan,
New Delhi-110011*

Dated: Dec. 2013

To

*The Regional Authority
Kolkata*

Subject: Eligibility to export offish maws under VKGUY Scheme

Sir,

Kindly refer to e-mail dated 13.06.013 of Shri Agneshwar Sen, Jt. DGFT, Kolkata on the above matter. A clarification has been sought regarding classification

of 'fish maws' before 1.1.2012 on a reference received by RA, Kolkata from SIB, Customs on the matter.

2. It is mentioned in the above mentioned e-mail that claim under VKGUY benefit 'fish maws' had been filed under Chapter 3 of ITC HS. On the basis of information provided in your e-mail, the matter has been examined. In the current ITC HS classification fish maws are specifically classified under Chapter 3 of ITC HS and is regarded as an edible product. Before 01.01.2012 through this item was not specifically listed in ITC HS, it could not have been regarded as unfit for human consumption and now be regarded as fit for consumption. Accordingly it is informed that fish maws if exported under ITC HS 0305 is eligible for VKGUY benefit irrespective of period of export (i.e. before 1.1.2012 or after 01.01.2012).

This issues with the approval of DGFT.

Yours faithfully,

*[Nirmal Kumar]
Deputy Director General of Foreign Trade
Tele.No.23061562 Extn:255"*

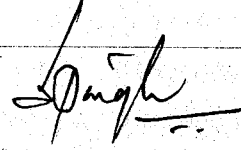
As per above said classification, the fish maws for the purpose of VKGUY scheme is to be classified under ITC HS0305 and eligible for VKGUY benefit irrespective of period of export whether before 1.1.12 or after 1.1.12. Similarly, AC, Customs, Air Cargo Complex Ahmedabad has also issued clarified vide letter F.No.VIII/48-573/ACC/2011/2596 dated 29.3.11 that fish maws is correctly classified under Sr.No.0305. The said clarification also lends support to the view that fish maws is classifiable under drawback schedule Sr.No.0305 for the period before or after 1.1.12.

9. In view of above discussion, Government observes that fish maws is rightly classifiable under drawback schedule heading 0305 during the period prior to 1.1.12 and after 1.1.12. The drawback claims initially sanctioned to the applicants were in order and order for recovery of drawback claim @1%

is not legally sustainable. Therefore Government sets aside the impugned orders and uphold the orders sanctioning drawback claim @2%.

10. Revision applications thus succeed in above terms with consequential relief.

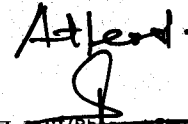
11. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

1. M/s Kegien Enterprise, Haji jumma Compound, Sewri Cross Road, Sewri (W), Mumbai - 400015.
2. M/s Aqsa Sea Food, Sewri Cross Road, Nr. Sewri Rly. Station, Plot No. 9, Scheme 57, Sewri (W), Mumbai - 400015.
3. M/s H.P. Enterprise, 285(2-15) Godown No.2, Scheme No. 57, Sewri Cross Road, Sewri (W), Mumbai - 400 015.
4. M/s Reliable Trading Co., GIDC, Plot no. 813, Veraval, Gujarat - 362265
5. M/s Khizar Exports, Sewri Cross Road, Nr. Sewri Rly. Station, Mumbai - 400015.
6. M/s National Sea Food Corporation, Sewri Cross Road, Sewri (W), Mumbai - 400013.
7. M/s SKF Exports. Sewri Cross Road, Sewri (W), Mumbai - 400 015
8. M/s Global Impex Trading, 36/3 Haji Jumma Compound, Sewri Cross Road, Sewri (W), Mumbai - 400015.
9. M/s Rehmania Sea Food, Sea Breeze Apartment, Gr, Floor, Koliwada, Vasai West, Dist: Thana
10. M/s Star Marine Exports, Dnyaneshwar Nagar CHSL, C-2, Flat No. 40, 4th Floor, R.A. Kidwai Road, Wadala, Mumbai - 400031.
11. M/s Nizami Sea Eood, Harun Trading Compound, Sewri Cross Road, Sewri (W), Mumbai - 400015.



(भागवत अधवा/Adhwa Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C -O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev)
भारत सरकार/Govt of India
नई दिल्ली/New Delhi

GOI Order No. 145-155/14-CX dated 19.05.2014

Copy to:

1. Deputy Commissioner of Customs (Drawback) Air Cargo Complex, Shahar, Andheri(W) Mumbai
2. Commissioner of Customs (Appeals), Mumbai-III, 5th Floor, Awas Corporate Point, Makwana Lane, Behind S.M.Centre, Andheri Kurla Road, Marol, Mumbai-400059
3. Shri Ravinder Jain, Consultant
4. Guard File.
- ✓ 5. PS to JS (RA)
6. Spare Copy

ATTESTED



(B.P.Sharma)
OSD (Revision Application)