

REGISTERED SPEED POST AD



**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. 371/04/DBK/14-RA

8831

Date of Issue: 22.02.2021

ORDER NO. 72/2021-CUS (WZ) /ASRA/MUMBAI DATED 20.7.2021
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 Duratex Silk Mills Ltd.
Sanjay Building No. 5, 122, A-Wing,
Mittal Industrial Estate,
Andheri-Kurla Road,
Andheri(E), Mumbai - 400 059

Respondent : Commissioner of Customs(Export Promotion), Mumbai

Subject : Revision Application filed under Section 129DD of the Customs Act,
1962 against OIA No. 61/MCH/AC/DBK/2012 dated 22.02.2012
passed by Commissioner of Customs(Appeals), Mumbai Zone-I.

ORDER

This revision application has been filed by M/s Duratex Silk Mills Ltd, Sanjay Building No. 5, 122, A-Wing, Mittal Industrial Estate, Andheri-Kurla Road, Andheri(E), Mumbai - 400 059(hereinafter referred to as "the applicant") against OIA 61/MCH/AC/DBK/2012 dated 22.02.2012 passed by Commissioner of Customs(Appeals), Mumbai Zone-I.

2. The applicant has claimed to have submitted photocopies of the documents under their letter dated 09.10.2009(received on 03.03.2010) and requested that drawback amount be released to them. The Assistant Commissioner, Drawback Section, Export Promotion found that the claimant had not filed the original triplicate copy of the DGFT attested Export Promotion Copy of the Shipping Bills. He therefore rejected the drawback claim as it could not be entertained on the basis of the photostat copy of the triplicate copy of the shipping bills under Rule 13 of the Drawback Rules, 1995 vide his OIO No. S/10-08/2010 DBK/AC/SPP dated 28.09.2010.

3. Aggrieved by the OIO No. S/10-08/2010 DBK/AC/SPP dated 28.09.2010, the applicant filed appeal before the Commissioner(Appeals). Commissioner(Appeals) averred that the submission of the applicant that they had submitted all original triplicate copies of the 12 shipping bills alongwith customs attested copies of invoices, bill of lading, AR-4's, bank attested copy of BRC, EP copy of shipping bills, copy of brand rate letter and para declaration could not be substantiated by merely writing the shipping bill no.'s and original triplicate shipping bills enclosed. The appellate authority averred that the letter dated 09.10.2009 had been written in relation to the reference given therein on the particular subject and accordingly the relevant documents mentioned at Sr. No. 1 to 7 were submitted under the said letter on 03.03.2010(or on 12.10.2009). It was further observed that Circular No. 71/99-Cus clearly envisaged that the exporter who could not trace the triplicate copy of shipping bill should file photostat copy of the export promotion copy of shipping bill duly attested by DGFT officer. However, the

applicant had expressing unwillingness to fulfill the said requirement. The Commissioner(Appeals) therefore concluded that the drawback could not be granted in the absence of the required documents and therefore rejected the appeal vide OIA No. 61/MCH/AC/DBK/2012 dated 22.02.2012.

4. The applicant being aggrieved by the OIA No. 61/MCH/AC/DBK/2012 dated 22.02.2012 has filed revision application on the following grounds :

(i) The applicant submitted that the Assistant Commissioner and the Commissioner(Appeals) have deliberately ignored that the applicant has submitted original documents on 12.10.2009 and that these documents had been misplaced by the Department. They further stated that they had re-submitted a duplicate set of the same documents with the previous acknowledgment on 03.03.2010.

(ii) The applicant has placed reliance on the judgments of the Hon'ble Supreme Court in the case of Suksha International vs. UOI[1993(39)ELT 503(SC)], UOI vs A. V. Narasimhalu[1983(13)ELT 1534(SC)], Formica India vs. CCE[1995(77)ELT 51(SC)] and Mangalore Chemicals and Fertilizers Ltd. vs. Dy. Commissioner[1991(51)ELT 437(SC)] to contend that genuine claim should not be denied on technical grounds.

(iii) The applicant further contended that rebate/drawback are export oriented schemes and unduly restricted and technical interpretation of procedure is to be avoided in order to not defeat the very purpose of such scheme which serves as export incentive to boost export and earns foreign exchange. In case, the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches.

(iv) The applicant placed reliance upon the judgments in the cases of Commissioner of Customs vs. Terai Overseas Ltd.[2003(156)ELT 841(Cal)], Binny Ltd., Madras[1987(31)ELT 722(Trb)], T. I. Cycles[1993(66)ELT 497(Trb)], Atma Tube Products[1998(103)ELT 270(Trb)], Birla VXL Ltd.[1998(99)ELT 387(Trb)], Krishna Filaments Ltd.[2001(131)ELT 726(GOI)], Modern Process Printers[2006(204)ELT 632(GOI)] and GTC Exports

Ltd.[1994(74)ELT 468(GOI)] and contended that these judgments upheld the view that if the goods have actually been exported, then all procedural conditions can be waived. In the present case, the said textile fabrics have actually been exported and this is an undisputed fact. Moreover, all substantial requirements have been fulfilled. The applicant therefore pleaded that the impugned order is required to be set aside on this ground.

(v) The applicant further submitted that the revision application filed by them was not time barred as they had received the OIA only on 18.10.2013 and that the revision application had been filed within the mandatory time limit. The applicant requested that they may be allowed immediate payment of Brand Rate of Drawback with applicable interest. As the issue relates to non-payment of drawback for the year 1999, the applicant requested that the case be heard and decided out of turn at the earliest.

5. The Assistant Commissioner of Customs, DBK, NCH, Mumbai submitted comments to the revision application vide his letter F. No. S/26-Misc-16/2018-19/DBK dated 14.10.2019. It was reiterated that the applicant had added certain words by writing them by hand on the letter dated 09.10.2009. It was further stated that the words added in handwriting were missing in the original acknowledgment of the said letter. It was contended that by merely writing the words original triplicate shipping bills, it cannot be substantiated that the applicant had submitted the same alongwith their claim for drawback. This contention had been upheld by the Commissioner(Appeals). It was further stated that the applicant had been requested vide letter dated 23.07.2010 to produce acknowledgment evidencing filing of export promotion copy of shipping bills in the DGFT office but they did not do so. The applicant had also been requested to produce DGFT attested photocopy of export promotion copy of shipping bills as per Circular No. 71/99 but the applicant had vide their letter dated 23.07.2010 declined to do so. It was averred that the circular clearly envisages that the exporter who couldn't file the original triplicate copy of shipping bill was required to file Photostat copy of export promotion copy of shipping bill duly attested by an officer of

DGFT. However, the applicant had failed to co-operate in the process of finalizing the drawback claim.

6.1 Thereafter, the applicant filed a written submission dated 19.11.2019 where they made out certain additional grounds. They stated that there was no delay in filing revision application as they had received the impugned order the Assistant Chief Accounts Officer, Appeal Unit, Mumbai-I alongwith letter F. No. S/49-346/Cus/Mum-I/2010 NCH dated 15.10.2013 only on 18.03.2013. They submitted that the delay had occurred only because of non-receipt of the order from the Office of Commissioner of Customs(Appeals). They further prayed that the unintentional delay in filing revision application may be condoned in the interest of justice. The applicant stated that in case of any doubt, the Revisionary Authority may ask the concerned office to prove delivery of the OIA by providing postal receipt issued by the post office where it was posted from and also the acknowledgment from the post office from where it was delivered to the applicant. The applicant placed reliance upon the judgment dated 26.07.2019 in the case of PSL Tex-Styles Pvt. Ltd. vs. UOI in W.P. No. 1768 of 2019 to contend that in the absence of evidence it may be considered that the revision application had been filed in time.

6.2 The applicant stated that the Department had rejected their legitimate claim on the plea that they had neither filed the original of the triplicate copy of shipping bill or DGFT attested shipping bills and that their claim cannot be entertained on the basis of photocopies of the said triplicate copy of the shipping bills. It was further stated out that the Department had received the claim & the original of the triplicate copy of shipping bills and issued File No. 144 dated 13.11.2009 for the said claim and that this fact was clearly evidenced in the office inward register. They enclosed a copy of the relevant page of the inward register as Annexure-2 to the letter. The applicant submitted that after verifying the inward register with the file number of the said claim, Shri M. J. Motiramani, Assistant Commissioner of Customs(DBK), NCH issued a Tracer Circular on 05.04.2010 and also called up the copies of shipping bills of the said claim from MCD for processing the said claim. It was

also pointed out that the same Custom House had arbitrarily used powers in allowing similar cases and paid Brand Rate of Duty Drawback payment in respect of claims pertaining to OIO No. 586/AC/N. Kumar/DBK/15 dated 31.03.2015 of M/s Nahar Textiles Pvt. Ltd. In that case, the original files had been misplaced but the drawback had been paid on the basis of photocopies of documents. The applicant averred that the arbitrary rejection of their drawback claim was clearly in violation of Article 14 of the Constitution of India and that the original authority had himself taken a contradictory stand which is not permissible under law.

7. The applicant filed letter dated 08.01.2021 stating that the contents of the revision application filed by them and written submissions filed on 21.11.2019 be taken into consideration to decide the case while deciding the case. They waived their right to personal hearing. Since the original file containing the revision application was not available with this office, a request was made to the applicant to submit photocopy of the revision application. In response the applicant submitted photocopies of the revision application with exhibits. The applicant again waived their right to personal hearing and requested that the matter be decided early.

8. Government has carefully gone through the case records, perused the impugned order-in-appeal, the order-in-original, and the written submissions filed by the applicant. The issue involved in the present case is that the applicant has claimed to have originally filed drawback claim alongwith supporting documents on 12.10.2009. Thereafter, the applicant enquired with the Department about the status of the drawback claim and was told that the file submitted was not traceable. They were then asked to submit duplicate set of documents. In response, the applicant purportedly filed duplicate set of documents on 03.03.2010. However, the lower authority as well as the Commissioner(Appeals) concluded that the drawback claim had not been filed with the original copy of triplicate copy of shipping bills or photocopies of export promotion copy of shipping bills duly attested by the DGFT and

therefore rejected the drawback claims. There is also a delay in filing revision application.

9. Government observes that there is no record of the applicant having been put to notice about the delay in filing revision application. In the circumstances, the revision application is considered to have been filed within the stipulated time limit.

10. On going through the revision application filed by the applicant it is noticed that the dispute centers around the veracity of the claim made by the applicant that they had originally filed a drawback claim alongwith various documents including the original copies of the triplicate copies of shipping bills on 09.10.2009. The applicant have further stated that since they were not sanctioned drawback they had made enquiries with the Department in this regard and as advised by the Department, they had again filed the claim with photocopies of the documents on 03.03.2010. The Department has rejected the drawback claim as the applicant had neither filed original copy of the triplicate copy of shipping bills nor did they file Export Promotion copies of the shipping bills attested by DGFT.

11. Government observes from the para 5.2(ii) of OIO dated 28.09.2010 passed by the Assistant Commissioner that it records the submission that the Assistant Commissioner Shri Motiramani had informed the applicant that the file of the applicant containing the drawback claim was not traceable and that the "Photostat copy" of the letter dated 09.10.2009 had been filed as per his directions. The applicant has also appended as Annexure-3 to their submission dated 19.11.2019, a photocopy of a "Tracer Circular" dated 05.04.2010 issued by Shri M. J. Motiramani, Assistant Commissioner, Drawback Deptt. stating that "F. No. S/26-Misc144/09 DBK dt. 13/11/2009 of M/s Duratex Silk Mills Ltd." was not traceable in the Drawback Dept. The fact that a specific File No. has been mentioned in the tracer circular and that the tracer circular mentions that the same file is not traceable is testimony to the fact that the applicants submission that they had originally filed drawback

claim alongwith original copies of triplicate copies of shipping bills. Moreover, Annexure-2 to the submission dated 19.11.2019 is purportedly a copy of the office inward register of the drawback section which details the no.'s of the 12 "Original Triplicate" shipping bills which go to the root of the dispute in the present case. The applicant has also appended as Annexure-4 a copy of the record whereby the Drawback Section has called for copies of the very same shipping bills from the MCD.

12. After going through these submissions, Government finds that the applicants case holds substantial force. It is apparent from the record that the applicant had filed drawback claim with the relevant documents and it was misplaced by the Department. It is unacceptable that the applicant would have to suffer in such a situation and forego the drawback admissible to them. Government therefore modifies the OIA No. 61/MCH/AC/DBK/2012 dated 22.02.2012 and directs the drawback sanctioning authority to verify the claim on the basis of available documents and dispose of the drawback claim within a period of eight weeks from the date of receipt of this order. The revision application filed by the applicant is disposed off in the above terms.


20/7/21
(SHRAWAN KUMAR)

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

ORDER No. 172/2021-CUS(WZ) /ASRA/Mumbai DATED 20.7.2021

To,
M/s Duratex Silk Mills Ltd.
Sanjay Building No. 5, 122, A-Wing,
Mittal Industrial Estate,
Andheri-Kurla Road,
Andheri(E), Mumbai - 400 059

Copy to:

1. The Commissioner of Customs(Export Promotion), Mumbai
2. The Commissioner of Customs(Export), JNCH
3. The Commissioner of Customs(Export), ACC, Mumbai

4. The Commissioner of Customs(Appeals), Mumbai-I
5. The Commissioner of Customs(Appeals), Mumbai-II
6. The Commissioner of Customs(Appeals); Mumbai-III
7. Sr. P.S. to AS (RA), Mumbai
8. Guard file
9. Spare Copy