

F.No. 380/07/DBK/2018-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue 29/1/21

Order No. 18/21-Cus dated 29-01-2021 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/Cus(CCP)/AA/1614/2017 dated 01.11.2017, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Principal Commissioner of Customs (Preventive), Kolkata

Respondent : M/s Nandan Denim Limited

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**ORDER**

A Revision Application No.380/07/DBK/18-RA dated 19.04.2018 has been filed by Commissioner of Customs (Preventive) Kolkata, (hereinafter referred to as the applicant) against the OrderNo.KOL/Cus(CCP)/AA/1614/2017 dated 01.11.2017, passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals), vide the above mentioned Order-in-Appeal has allowed the appeal of M/s Nandan Denim Ltd, (herein after referred to as the respondent) by setting aside Order-in-Original No. 51/AC(DBK)/2016-17 dated 21.03.2017 on the ground that the respondent had availed cenvat credit available on capital goods only and not on input or input services used in the manufacture of exported product. The drawback claims of the respondent have been allowed in appeal under Drawback Sl. No. 520905A.

2. Brief facts of the case are that the respondent filed drawback claim in respect of one Shipping Bill No. 6827/DB/16 dated 09.10.2011 with the Dy. Commissioner of Customs, Drawback Cell (CCP), Kolkata. The said claim were sanctioned by the jurisdictional Dy. Commissioner of Drawback (CCP), Kolkata. However, on post disbursal scrutiny of the drawback claim, it was observed by the applicant that the respondent had availed cenvat credit on the goods exported under the above said Shipping Bill and thereby the exported goods should have been classified under Drawback Sl. No. 520905B wherein the Drawback rate was 1%, instead of 4.7% under sl. No. 520905A as earlier granted to respondent, in terms of Notification No. 75/2011 –Cus (N.T) dated 28.10.2011. Accordingly, a show cause

notice was issued to the respondent for the recovery of excess drawback availed amount of Rs.1,09,470/- along with interest, in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995. Vide the above said Order-in-Original dated 21.03.2017, the demand was confirmed by the Dy. Commissioner of Customs, Drawback Cell, CCP, Kolkata. Aggrieved, the respondent filed an appeal before the Commissioner (Appeals) who passed the Order as above.

3. The instant revision application has been filed, mainly, on the ground that the respondent had availed cenvat credit and, as such, was not eligible for higher rate of drawback @ 4.7% under Drawback Sl. No.520905A.

4. Personal hearing in virtual mode was held on 27.01.2021, which was attended by Sh. P.P. Jadeja, Advocate, on behalf of the respondent. He reiterated the contentions made in the cross objections dated 05.06.2018. He, mainly, opposed the revision application on the ground that the amount involved in present revision application is only Rs. 1,09,470/- and, therefore, the revision application has been filed in contravention of Government's instructions dated 17.12.2015 wherein it is stated that appeals should not be filed against the orders of Commissioner (Appeals) where amount involved is less than Rs. 10 lakhs; that the revision application is delayed by 72 days and the application should therefore be rejected as time barred; on merits, Sh. Jadeja supported the order of Commissioner (Appeals). The respondent also submitted their written submissions on 27.01.2021 wherein the grounds of revision have been reiterated. None appeared for the applicant. Vide letter dated 09.01.2020, it has been stated on behalf of the applicant that no

additional submission is required and the case may be decided on merits. Therefore, the case is taken up for disposal based on records.

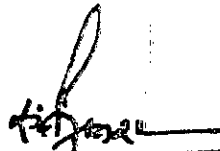
5. The instant RA has been filed with a delay of 72 days. Administrative exigency has been pleaded for condonation. Delay is condoned.

6. The respondent has contended that the revision application has been filed in contravention of Government's instructions issued vide F.No. 390/Misc.//163/2010-JC dated 17.12.2015. Government has noticed that the said instructions are applicable only in respect of appeals filed in CESTAT, Hon'ble High Court and Supreme Court only. In fact, the Board had, vide earlier instruction dated 17.08.2011, specifically clarified that the monetary limits specified therein are not applicable in respect of revision applications. The subsequent instructions dated 17.12.2015 do not modify this part of the instructions dated 17.08.2011. Thus, there is no merit in the present contention of the respondent.

7. On examination of the matter on merits, it is noted that that the revision application has been filed, mainly, only on the ground that the respondent had availed cenvat credit and, therefore, was not eligible for composite rate of drawback as mentioned in column A of the drawback schedule i.e. of Customs, Central Excise and Service Tax portion under Sl. No. 520905A. Government finds that at sl. 15 of Notes & Conditions of Notification No. 68/2011 – Customs (N.T) dated 22.09.2011, it is stated that the expression "when Cenvat facility has not been availed", used in the Drawback Schedule, shall mean that the exporter shall satisfy the condition that "no cenvat facility has been availed for any of the inputs or input services used in the manufacture of export product". It is specified in

condition No. 6 of the said Notification No. 68/2011 that drawback "when cenvat facility has not been availed refer to the total drawback (Customs, Central Excise and Service tax component put together)" refers to the drawback as mentioned in Column A of the drawback schedule and if the cenvat facility has been availed then the exporter is eligible for drawback as mentioned in column B of the drawback schedule i.e. only in respect of Customs component. Thus, on a combined reading of sl. 6 and sl. 15 of the Notes and conditions, it is clear that the drawback under Column A of the schedule shall be admissible where no cenvat facility has been availed for any of the inputs or input services used in the manufacture of export product. It is on record, as mentioned in OIO dated 21.03.2017, that the respondent had produced a certificate from the Central Excise authorities to the effect that they had availed cenvat credit available in respect of capital goods and not for any input or input services used in the manufacture of exported product. The Government observes that there is no condition in the Notification No. 68/2011-Customs (NT) that requires non avilment of cenvat facility on capital goods as well for eligibility to drawback under column A of the schedule. Hence, there is no infirmity in the impugned OIA.

8. In view of the above, the revision application is rejected .

  
(Sandeep Prakash)  
Additional Secretary to the Government of India

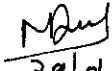
The Principal Commissioner of Customs (Preventive),  
15/1 Strand Road, Custom House,  
Kolkata - 700001.

Order No. 18 /21-Cus dated 29-01-2021

Copy to:

1. M/s Nandan Denim Ltd., Survey No. 198/1,203/2, Saijpur, gopualpur, Pirana Road, Ahmedabad 382405 ~~Eastern Traders, 163/B, M.G. Road, Kolkata-700007.~~
2. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata- 700001.
3. Deputy Commissioner, (Drawback, Preventive), 15/1 Strand Road, Custom House, Kolkata - 700001.
4. PS to AS(RA)
5. Guard File.
6. ~~Spare Copy~~

Attested

  
29/01/2021

(Nirmala Devi)

Section Officer (REVISION APPLICATION)