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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.371/104/DBK/2013-RA/ 5288

Date of Issue: 08.10.2020

ORDER NO. 205/2020-CUS(WZ)/ASRA/MUMBAI DATED 15.09.2020 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 Suraj Impex Trade India Pvt. Ltd.

Respondent : Commissioner of Customs & Central Excise(Appeals), Nashik

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. NSK-EXCUS-000-APP-247-13-14 dated 28.08.2013 passed by the Commissioner of Customs & Central Excise(Appeals), Nashik.

## ORDER

This Revision Application is filed by M/s Suraj Impex India Pvt. Ltd., Cabin No. 2, Bizsolindia, Bizsol House, Plot No. 22, Near Vascon IT Park, Indira Nagar, Wadala Road, Nashik - 422 006 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. NSK-EXCUS-000-APP-247-13-14 dated 28.08.2013 passed by the Commissioner of Customs & Central Excise(Appeals), Nashik.

2. The issue in brief is that the Applicant is a Merchant Exporter and engaged in export of Polypropylene Woven Fabrics, Polypropylene Woven Sacks & Polypropylene Woven Fabrics in Cut Pieces, falling under Chapter Heading No. 39269090 and 39232990 of Customs Tariff Act, 1975. The Applicant had filed two applications dated 08.04.2009 for Rs. 6,50,494/- and dated 20.04.2009 for Rs. 7,93,990/- for fixation of Brand Rate under Rule 6(1)(a) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The Additional Commissioner, Central Excise & Customs vide Order-in-Original No. 48/Addl/Tech/2010 dated 30.07.2010 rejected the drawback claims. Aggrieved, the Applicant then filed appeal with the Commissioner (Appeals), Central Excise & Customs, Nashik and the Commissioner (Appeals) vide Order-in-Appeal No. AKP/316/NSK/2010 dated 16.12.2010 rejected their appeal.

3. Against this Order-in-Appeal, the Applicant filed a Revision Application with the Revisionary Authority. The Joint Secretary, Government of India vide Order No. 340//12-Cus dated 13.08.2012 set aside the Order-in-Appeal and remanded the case back to the original adjudicating authority for denovo consideration. The case was taken up for decision by the Additional Commissioner, Central Excise & Customs, who vide Order-in-Original No. 23/Addl/Tech/2013 dated 28.03.2013 again rejected the drawback claims. Aggrieved, the Applicant then filed appeal with the Commissioner(Appeals), Central Excise & Customs, Nashik. The Commissioner (Appeals) vide Order-in-Appeal No. NSK-EXCUS-000-APP-247-13-14 dated 28.08.2013 rejected their appeal as it was not found maintainable.

4. Being aggrieved, the Applicant filed the current Revision Application on the following grounds:

- (i) They are Merchant Exporter and they have to carry out some process on imported goods before export for which they require manufacturing unit. Since there is no dispute that goods were exported, the substantial benefit of Drawback claim cannot be denied to them.
- (ii) The Commissioner (Appeals) erred in understanding the Notification and also got confused between supporting Manufacturer and Job Worker. As per Para 9.39 of Foreign Trade Policy "*Merchant Exporter means a person engaged in trading activity and exporting or intending to export the goods*" and in Para 9.33 Jobbing has been defined as "*Jobbing means processing or working upon of raw material or semi-finished goods supplied to job worker, so as to complete a part of process resulting in manufacture or finishing of an article or any operation which is essential for aforesaid process.*" In the present case Applicant had sent material for jobbing purpose to the job-workers and Applicant had not traded the goods and therefore, there was no need to write the name of supporting manufacturer.
- (iii) The Condition No. 2 of Customs Notification No. 53/2003 dated 01.04.2003 stipulates that the goods imported shall not be transferred or sold and in the present case they had not transferred or sold the goods but did some job-work. They had sent imported inputs against DFCE license under challans to their job-worker M/s Marvel Industries Ltd. for conversion for "*own use*" i.e. the material was to be processed on job work and brought back and then exported out of India by the Applicant.
- (iv) The endorsement of the job-worker under the Condition No. 2 of Customs Notification No. 53/2003 dated 01.04.2003 is required only if the importer of the material under DFCE license would like to sale/transfer (ownership) of such imported material to other customers in India including the job-worker, otherwise endorsement of job-worker for conversion of material meant for "*own use*" of the importer is not required at all.

- (v) It is an un-disputed fact that the material had been imported by the Applicant under DFCE License, sent it to job-worker for conversion of Applicant's "own use" and after processing, the resultant products were exported, for which all the imports documents, challans under which the said material was sent to the job-worker and export documents are submitted and in view of this, there is no non-compliance of any of the law/notification and hence drawback should be kindly be sanctioned by the concerned authorities.
- (vi) The Applicant was not knowing the fact about getting the name of the job-worker endorsed and when it was brought to their notice, the Applicant got endorsed the other DFCE license except these two license which had already expired and that being the case they were not in a position to get the same endorsed which is a procedural lapse and it is a well settled law that the substantial benefits cannot be withdrawn if there are procedural lapses.
- (vii) The observation of the Commissioner(Appeals) as well as the Additional Commissioner holding that the order passed by the Hon'ble CESTAT in the case of Tetrapack (I) Ltd. is not relevant in the present case.
- (viii) The issued involved in their case is identical to the case of Tetra Pack. The policy to issue DFCE License was adopted by Government to encourage incremental exports and the Applicant received the said licenses after having fulfilled the conditions of the policy and the Applicant was entitled to pay Customs Duty by debit of this license. When the actual user condition was also fulfilled, the Applicant is fully entitled to the benefit of Notification No. 53/2003 dated 01.04.2003 even if the procedural condition of endorsing the name of supporting manufacturer (job worker in this case) on the license was not complied.
- (ix) They placed reliance on the case law of K.Y.P. Kulkarni Vs Commr. of Cus., Jamnagar [2006 (205) ELT 791 (Tri.-Mumbai)] towards the proposition that if the Applicant has fulfilled mandatory conditions, he should not be deprived of the benefit just for the sake of non-compliance of any procedural requirement.

(x) The Applicant prayed that the Order-in-Appeal dated 28.08.2013 be set aside and their drawback claim of Rs. 14,44,484/- may kindly be granted to them.

5. A personal hearing in the case was held on 07.11.2019 which was attended by Shri Ashutosh Upadhyaya, Advocate on behalf of the Applicant and reiterated their written submission. The Applicant submitted that the supporting manufacturers name was not in the License and subsequently the license was amended after export. Duty had been paid and the actual user condition was not contested by the department. Tetra Pak (I) Ltd. case not held relevant despite the Revisionary Authority Order.

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

7. The issue in the current Application are

- (i) whether the Applicant is eligible or not for fixation of drawback against the export made under the licenses when the Applicant had not got endorsed the name of the job-worker in these licenses;
- (ii) whether there is negative valuation addition in export value of exported goods attracting violation of Rule 8(2) of Drawback Rules or not.

8. Duty Free Entitlement Credit Certificate (DFCE) Notification No. 53/2003 dated 01.04.2003 as amended and Target Plus Scheme vide Notification No. 32/2005 dated 04.04.2005 as amended, the exemption contained in both the Notifications are subjected to the condition:

*“that the said certificate and goods imported against it shall not be transferred or sold :*

*Provided that where the goods are imported by a merchant exporter having supporting manufacturers(s) whose name and address is specified on the license, the said goods may be utilized by the said supporting manufacturer(s).”*

9. On perusal of the 04 licenses submitted by the Applicant, Government observes that at the time of export these licences were issued subject to "ACTUAL USER CONDITION". As per the conditions of these Licences, Import Export Policy, Handbook of Procedures and the Customs Notification No. 53/2003 dated 01.04.2003 as amended and Target Plus Scheme vide Notification No. 32/2005 dated 04.04.2005 as amended, the Applicant was all the more required to get the name of the job worker M/s Marvel Industries Ltd. either as supporting manufacturer at the initial stage or even afterwards when their entire imported goods were transferred to M/s Marvel Industries Ltd for complete manufacturing of their final products. It was only nearly a year after the goods were exported vide Shipping Bills dated 04.03.2009 to 21.03.2009, did the Applicant get the said licences amended to include the name of the Job-worker i.e M/s Marvel Industries Ltd when imports are made for 'own use'. Government finds that the imported goods were meant for actual user by the Applicant only and the Applicant had transferred the imported goods to the job worker M/s Marvel Industries Ltd without the name of the said job worker endorsed on these licenses. This is a clear violation of the conditions of Notification No. 53/2003 dated 01.04.2003 and Notification No. 32/2005 dated 04.04.2005, hence the Applicant is not eligible for fixation of drawback against the exports made under their licenses.

10. Government notes that the issue at Para 7(ii) supra has already been dealt by the Commissioner(Appeals) vide order dated 28.08.2013. The relevant para 7.5 is reproduced below:


*"7.5 .....This point was, however, examined by me and it is noticed that on mere perusal of the OIO it is explicit that the appellant had exported the goods of Rs. 1,30,80,289/- was against the value of imported goods of Rs. 1,03,97,244.88. Being value of exports more than the value of imports it is obvious that there is no negative value addition in respect of value of exported goods so as to attract Rule 8(2) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. "*

11. Further, Government also finds that the Applicant in their appeal before the Commissioner(Appeals) had not confined to the two issues, but had filed appeal on other grounds also and has mainly emphasized on their initial stand that they

were not required to have the name of Job worker/supporting manufacturer on the licences issued to them. Hence, Government holds that the Applicant is not eligible for fixation of drawback against the exports made under their licenses.

12. In view of the above, Government finds no infirmity in the Order-in-Appeal No.NSK-EXCUS-000-APP-247-13-14 dated 28.08.2013 passed by the Commissioner of Customs & Central Excise(Appeals), Nashik and therefore, upholds the same and dismisses the Revision Application filed by the Applicant being devoid of merits.

13. So, ordered

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

ORDER No.205/2020-CUS (WZ)/ASRA/Mumbai DATED 15.09.2020.

To,  
M/s Suraj Impex India Pvt. Ltd.,  
Cabin No. 2, Bizsolindia, Bizsol House,  
Plot No. 22, Near Vascon IT Park,  
Indira Nagar, Wadala Road,  
Nashik - 422 006.

Copy to:

- 1) The Commissioner of Goods & Service Tax, Nashik, Plot No. 155, Sector-P-34, NH, Jaishtha & Vaishakh, CIDCO, Nashik - 422 008
- 2) Shri Ashutosh Upadhyay, Advocate, 4, Kishan Colony, 567, M.G. Road, Opp. High Court, Indore (M.P.) 454 001.
- 3) Sr. P.S. to AS (RA), Mumbai
- 4) Guard file
- 5) Spare Copy.