

REGISTERED SPEED 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. 373/75/DBK/13-RA / 4068

Date of Issue:- 04.11.19

ORDER NO. 23/2019-^{SU}EX(SZ)/ASRA/MUMBAI DATED 30.9.2019 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.

Sl. No.	Revision Application No.	Applicant	Respondent
1	373/75/DBK/13-RA	M/s Geethanjali Knit Garments, Tirupur	Commissioner, Customs, Chennai.

Subject: Revision applications filed under Section 129DD of the Customs Act, 1962, against the Order in Appeal No. C. Cus. No. 763/2013 dated 31.05.2013 passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

This Revision application is filed by M/s Geethanjali Knit Garments, Tirupur (hereinafter referred to as the 'applicant') against the Orders-In-Appeal C. Cus. No. 763/2013 dated 31.05.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. The Brief facts of the case are that the applicants have filed 124 Nos. Shipping Bills from 09.05.2003 to 09.02.2004 under the drawback scheme. The lower authority had sanctioned only customs portion of the drawback but had not paid the Central Excise portion of the drawback since the applicant did not produce "Modvat Certificate". Aggrieved by the act of the Department, the applicant filed appeal before the Commissioner (Appeals). The Commissioner of Customs(Appeals), Chennai vide OIA No. 606/2011 dated 26.08.2011 remanded back the case to the original authority with directions to process the drawback claims as per law after giving an opportunity to hear the applicants.

3. Aggrieved by the OIA No. 606/2011 dated 26.08.2011, the department filed a revision application under Section 129DD of the Customs Act, 1962. The Revision Authority observed that Commissioner (Appeals) power to remand back the case to the adjudicating authority for denovo proceedings withdrawn with effect from 11.05.2001 and hence set aside the order in appeal with directions that the Commissioner (Appeals) has to decide the case on merits with reasonable opportunity of hearing to the parties.

4. In view of the directions by Revision Authority, the Commissioner (Appeals) after giving reasonable opportunity of personal hearing, vide Order in Appeal No. C. Cus. No. 763/2013 dated 31.05.2013 rejected the appeal on the ground that the supplementary claims are hit by limitation. The Commissioner (Appeals) further observed that

4.1 the applicant had received only the Customs portion of drawback and hence there was a short payment of Excise portion, which the appellant necessarily had to claim as Supplementary Claim only.

4.2 First Proviso to Rule 15 of the Drawback Rules clearly states that such supplementary claims are to be filed within a period of three months from the date of payment or settlement of the original drawback claim by the proper officer.

Aggrieved by the said order, the applicant filed an application before Revision Authority.

5. A Personal Hearing was held in matter on 24.10.2019, 31.10.2018 and 19.08.2019. Neither the applicant nor the respondent attended any of the personal hearings so granted to them. In the event, the revision application is taken up for decision on the basis of documents and evidences available on record.

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

7. On perusal of records, Government observes that the Drawback Sanctioning Officer had sanctioned the drawback for Customs portion only and the drawback of Central Excise portion was not disbursed for want of 'MODVAT Certificate' which was not submitted by the applicant alongwith the drawback claim. As per the CBEC Circular 8/2003-Cus dated 17.02.2003 & 96/2003-Cus dated 14.11.1991 for claiming Drawback of Central Excise portion, the Certificate of non-availment of MODVAT Credit is essential.

8. Further Government observes that the Commissioner (Appeals) had rejected the appeal on the ground that claim was hit by limitation of time. The Commissioner (Appeals) categorically mentioned in the impugned order that the subject drawback claim is a supplementary claim and hence should have been filed within three months period from date of rejection.

9. The Government observes that submission of the MODVAT Certificate alongwith the shipping bill is essential for processing 'Let Export' by the Customs Authority. It is also an essential document for claiming the Central Excise portion of drawback as per Public Notice No. 76/98 and 95/2002. The applicant in the instant case did not respond to query raised by the system regarding non submission of MODVAT Certificate and hence the query was cancelled by the system and the drawback claim was processed accordingly to sanction the eligible drawback amount i.e. Customs

portion to the applicant. The drawback procedure and activities to be followed are from time to time informed to the trade through Public Notices, Standing Orders, Circulars etc. and not complying with the same will result in denial of such drawback benefits. As such, the drawback sanctioning authority released only customs portion of drawback amount and the same was credited to applicant's account. The verification of credit and debit to drawback account is the onus of the applicant. Further, the Government holds that the applicant's claim that they have not been informed the reasons for denial of Central Excise Portion of drawback is not tenable since they were aware of the fact that they have not produced 'Modvat Certificate' at the time to 'Let Export' only. The blame cannot be put on the department for their failure. It is also observed that no efforts were made by the applicant to ascertain reasons for short payment of drawback by the department and take corrective measures to claim such short payment. The applicant made their first claim for discrepancy only on 25.02.2010 i.e. after almost 5 years and four months when their Auditors checked their account.

10. The Government holds that there was short payment of drawback amount to the extent of Central Excise Portion by the Department due to failure on the part of applicant to submit the requisite documents alongwith shipping bills at the time of processing the impugned claims. As such, the original claim ceased to be alive and the only option left to the applicant then is to claim drawback in respect of short payment by following the provisions regarding submission of Supplementary Claim as laid down under Rule 15 of the Drawback Rules.

The extracts of Rule 15 of the Drawback Rules are produced herebelow to understanding the issue in better perspective :

Rule 15. Supplementary claim. -

- (1) *Where any exporter finds that the amount of drawback paid to him is less than what he is entitled to on the basis of the amount or rate of drawback determined by the Central Government or Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, he may prefer a supplementary claim in the form at Annexure III:*

Provided that the exporter shall prefer such supplementary claim within a period of three months, -

- (i) *where the rate of drawback is determined or revised under rule 3 or rule 4, from the date of publication of such rate in the official Gazette;*
- (ii) *where the rate of drawback is determined or revised upward under rule 6 or rule 7, from the date of communicating the said rate to the person concerned;*
- (iii) *in all other cases, from the date of payment or settlement of the original drawback claim by the proper officer.*

Provided further that the aforesaid period of three months may be extended by the Assistant Commissioner of Customs or Deputy Commissioner of Customs for a further period of nine months on being satisfied that the exporter was prevented by sufficient cause from filing his supplementary claim within the aforesaid period of three months.

(2) *Save as otherwise provided in this rule, no supplementary claim for drawback shall be entertained.*

(3) *The date of filing of the supplementary claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on such claims which are complete in all respects and for which an acknowledgement shall be issued in the form prescribed by the Commissioner of Customs.*

(4) (a) *Claims which are not complete in all respects or are not accompanied by the required documents shall be returned to the claimant with a deficiency memo in the form prescribed by the Commissioner of Customs within fifteen days of submission and shall be deemed not to have been filed.*

(b) *Where the exporter resubmits the supplementary claim after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed under sub-rule (1) for the purpose of section 75A.*

In view of the provisions of Rule 15 of Drawback Rule stated above, the exporter is required to file supplementary claims in format Annexure-III within a period of 3 months from the date of payment or settlement of the original drawback claim by the proper officer and the Assistant Commissioner is empowered to extend this period of three months for a further period of nine months on being satisfied that the exporter was prevented by sufficient cause from filing his supplementary claim within aforesaid period of three months. In this regard, the applicant failed to file the supplementary

claim within the stipulated period and hence the findings that claim was hit by time limitation is correct.

11. In view of above discussions and findings, Government holds that the impugned order of Commissioner (Appeals) is legal and proper and hence, required to be upheld. Government, thus, finds no infirmity in impugned order and upholds the impugned order in appeal.

12. The Revision Application is thus rejected being devoid of merit.

13. So, ordered.


(SEEMA ARORA)

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

To

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Copy to :

1. The Commissioner of Customs (Export), Customs House, 60, Rajaji Salai, Chennai- 600 001.
2. The Commissioner of Customs (Appeals), 60, Rajaji Salai, Chennai- 600 001.
3. The Assistant Commissioner of Customs (Review Cell-AIR), New Customs House, Chennai - 600 027.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare copy.