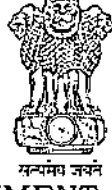


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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.380/39/DBK/16-RA
F.No.371/18-19/DBK/16-RA

1439

Date of Issue: 08-02-2022

ORDER NO 23-25/2022-CUS (WZ)/ASRA/MUMBAI DATED 01.02.2022
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. Vinod Electroplating Works.

Respondent: Pr. Commissioner of Customs, Mundra.

Subject : Revision Application filed under Section 129DD of the Customs
Act, 1962 against the Order-in-Appeal No. MUN-CUSTM-000-APP-249-250-
15-16 dated 19.11.2015 passed by the Commissioner of Customs (Appeals),
Ahmedabad.

ORDER

Following two Revision Applications have been filed under Section 129DD of the Customs Act, 1962 against Order-in-Appeal No. MUN-CUSTOM-000-APP-249-250-15-16 dated 19.11.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad.

	R.A. No. and Date	Name of the Applicant	Name of the Respondent
Applicant No.1	380/39/DBK/16-RA dated 29.02.2016	Principal Commissioner of Customs, Mundra	M/s. Vinod Electroplating Works
Applicant No.2	371/18-19/DBK/16-RA dated 01.03.2016	M/s. Vinod Electroplating Works, Backside Sodal Mandir Road, Jagyasu Estate, Jalandhar - 144004 (Punjab)	Principal Commissioner of Customs, Mundra

2. Brief facts of the case are that the Applicant No.2, a merchant exporter, had filed 15 drawback claims under section 75 of the Customs Act, 1962. The rebate sanctioning authority, Deputy Commissioner of Customs, Mundra, vide Order-in-original No. MCH/DC/1574/DBK/14-15 dated 19.2.2015 sanctioned drawback of Rs.7,07,847/- and rejected the remaining amount of Rs.9,46,278/- on the grounds of mis-classification of goods exported:-

Sr. No.	S/B No. & Date	DBK Claimed	DBK already paid	DBK admissible	DBK sanctioned	DBK Rejected
01.	5791683 / 11.10.2011	78031/-		66213/-	66213/-	11818/-
02.	5791585 / 11.10.2011	80337/-		66213/-	66213/-	14124/-
03.	6900471 / 29.12.2011	169383/-	55718/-	62218/-	6500/-	107165/-
04.	6915947 / 30.12.2011	103783/-	34131/-	46107/-	11976/-	57676/-
05.	7086542 / 12.01.2012	199196/-		67797/-	67797/-	131399/-
06.	7563018 / 14.02.2012	157009/-		71734/-	71734/-	85275/-
07.	7563113 / 14.02.2012	132483/-	4986/-	60580/-	55594/-	71903/-

08.	8999432 / 19.05.2012	240571/-		64954/-	64954/-	175617/-
09.	1593119 / 03.09.2012	102408/-		76569/-	76569/-	25839/-
10.	2189480 / 15.10.2012	154226/-		154226/-		154226/-
11.	2169499 / 13.10.2012	62790/-		46948/-	46948/-	15842/-
12.	2469564 / 05.11.2012	117390/-		87771/-	87771/-	29619/-
13.	2469608 / 05.11.2012	94685/-		70795/-	70795/-	23890/-
14.	3838212 / 06.02.2012	25121/-		6553/-	6553/-	18568/-
15.	3838206 / 06.02.2012	31547/-		8230/-	8230/-	23317/-
		1748960/-	94835/-	956908	707847	946278/-

Aggrieved, the Applicant No.2 filed an appeal with Commissioner of Customs (Appeals), Ahmedabad.

2.1 The Applicant No. 1 also filed an appeal with Commissioner of Customs (Appeals), Ahmedabad against the said Order-in-Original on the grounds that the Adjudicating Authority had erred in sanctioning the supplementary drawback claim in respect to Shipping Bills No. 6900471 dated 29.12.2011; 6915947 dated 30.12.2011 and 7563113 dated 14.02.2012, without examining the provisions relating to time limit prescribed for filing supplementary claims under Rule 15 of Customs, Central Excise and Service Tax Drawback Rules, 1995.

3. In response to appeal filed by Applicant No.1, the Commissioner of Customs (Appeals), Ahmedabad vide Order-in-Appeal No. MUN-CUSTOM-000-APP-249-250-15-16 dated 19.11.2015 observed that Applicant No.2 had merely submitted that their claims were not supplementary but continuous claims and had failed to substantiate his claim with evidence in respect of compliance of provision of section 75 of the Customs Act, 1962 as well as provisions of Rule 15 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. He therefore allowed the appeal filed by revenue and ordered recovery of the amount in dispute along with interest under the

provisions of Rule 16 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Section 75A(2) of the Customs Act, 1962.

3.1 As regards the appeal by the Applicant No.2, the Appellate authority observed that the classification declared by them is correct and the classification decided by the Lower Authority is not based on facts and is against the provisions of law. Therefore, he allowed the appeal and directed the Lower Authority to re-calculate and sanction the Drawback.

4. Hence the Applicant No. 1 has filed the impugned Revision Application No. 380/39/DBK/16-RA dated 29.02.2016 mainly on the following grounds:

i. The appellate authority has decided the case without keeping in view that the classification of export goods are decided following the General Rules of Interpretation. Accordingly, classification of goods in the Nomenclature shall be governed by the following principles of General Rules for the interpretation of the Harmonized System. The said is reproduced hereunder:

a. Rule-2(a)- "Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

b. Rule-2(b)- "Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule-3."

- c. Rule (3) of General Rules for the Interpretation of First Schedule, "When by application of Rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows :
- (a) The heading which provides the most specific description shall be preferred to heading providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if, one of them gives a more complete or precise description of goods. "
- ii. The exporter (Applicant No.2) had classified the Threaded Bar under C.T.H. 73181900 with Drawback Schedule 731821A, Crow Bar & Bar Clamp under C.T.H. 82055990 & 82057000 respectively with Drawback Schedule 820599A, Base Square Washer under H.S Code 73182200 with Drawback Schedule 731815A, Clip under C.T.H. 83021090 with DBK Sr. No. 830299A, Clamp & Joint Nut under C.T.H. 73181900 & 73181600 respectively with Drawback Schedule 731821A.
- iii. Though the goods were declared by the exporter by classifying them under C.T.H. 7318 / 8205 / 8302 under the claim of drawback, however, the same were actually parts of scaffolding items which are appropriately classifiable under C.T.H. 7308.
- iv. The appellate authority without going into facts that the goods / items exported are Threaded Bar, Crow Bar, Clamp, Chiesel, Combination Stone, Base Square Washer, Garden Rake, G.I Bucket, Curtain Rod, Hoe Wooden Handle, Pick Axe Wooden Handle, Clip, Joint Nuts & W Nuts etc. which are nothing but main products of scaffolding i.e. temporary structure used to support people & material in construction or repair or building and other structure and are more appropriately classifiable under Chapter 7308.

4.1 The Applicant No. 2 has filed the impugned Revision Application No. 371/18-19/DBK/ 16-RA dated 01.03.2016 mainly on the following grounds:

- i. The Commissioner (Appeals) erred in allowing the Appeal filed by the Revenue without appreciating the facts of the case and therefore the impugned order is misconceived both in facts and laws and cannot be sustainable in the eyes of law.
- ii. The Respondent ought to have appreciated that with respect to Shipping Bill No.6900471 dated 29.12.2011, 6915947 dated 30.12.2011, the settlement of the Original drawback took place on 22.06.2012 and the Applicant filed the supplementary drawback claim on 03.07.2012 vide registered post No. 145 dated 03.07.2012 which is within the prescribed time limit of three months as provided under Rule 15 of the Rules and therefore the drawback claim ought to be sanctioned.
- iii. The Respondent factually erred in appreciating that the supplementary claim was filed on 02.08.2013. The Applicant submits that the drawback claim was actually filed on 03.07.2012 and since the department didn't sanction the refund claim even after one year, the Applicant addressed a reminder letter dated 31.07.2013 (served on 02.08.2013) to sanction the drawback claim. It is submitted that the supplementary claim cannot be considered from the date of reminder letter i.e. 31.07.2013 (served on 02.08.2013) and the same is required to be considered from 03.07.2012.
- iv. The Respondent ought to have appreciated that with respect to Shipping Bill No.7563113 dated 14.02.2012, the settlement of the Original drawback took place on 18.04.2012 and the Applicant filed the supplementary drawback claim on 28.07.2012 which is although filed after three months but the Assistant commissioner or Deputy Commissioner is empowered to extend the period of three months by a period of nine months and therefore the time limit for filling supplementary claim was ought to be extended.

- v. The Respondent failed to appreciate that the Ld. Deputy Commissioner of Customs, Mundra rightly sanctioned the drawback amount after calculating the time limit of three months from the date of settlement of original drawback claim and therefore the Appeal filed by the Revenue was ought to be rejected.
- vi. The Respondent ought to have sanctioned interest on the drawback belatedly sanctioned. It is submitted that Section 75A of the said Act provides to sanction the drawback within a period of one month from the date of filing of the claim and if such drawback is sanctioned after the prescribed period, then the assessee is entitled for interest as payable on the specified rates prescribed by the Central Government from time to time.

In the light of the above submissions, the applicant prayed to set aside the impugned order with consequential relief.

5. Personal hearing in the case was fixed for 26.10.2021. Shri Amit Laddha, Advocate attended the online hearing and submitted that they have filed application as part amount was rejected on time barred issue. He stated that supplementary claim was filed on time. Regarding Department appeal contesting classification ordered by Commissioner (Appeals), he submitted that classification by Commissioner (Appeals) is in 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. Government observes that the main issues involved in the instant case are as follows:

- i. Whether the items exported by Applicant No. 2 are parts of Scaffolding and hence classifiable under Customs tariff heading 7308?

ii. Whether the supplementary claims in respect of 3 Shipping bills were time barred?

8. Government observes that following commodities are sought by Applicant No.1 to be classified under Customs Tariff Heading 7308:

S. No.	Commodity	Classification by exporter (Applicant No.2)
1	Threaded Bar	73181900
2	Crow bar	82055990
3	Bar Clamp	82057000
4	Base Square Washer	73182200
5	Clamp	73181900
6	Joint Nut	73181600

All the above commodities are allegedly main parts of Scaffolding, which is classified under H.S.Code 7308. Government observes that neither from impugned Order-in-Original nor from the Revision Application, the basis/grounds for arriving at the conclusion that all the above commodities were meant to be used in Scaffolding by the end user is mentioned. The commodities are generic in nature and are used in erection/manufacture/making of many products including wood work. Government further observes that all the aforementioned commodities were exported on different dates, as can be observed from the following table:

S. No.	Commodity	Shipping bill date
1	Threaded Bar	11.10.2011
2	Crow bar	29.12.2011
3	Bar Clamp	29.12.2011
4	Base Square Washer	03.09.2012
5	Clamp	13.10.2012
6	Joint Nut	13.10.2012

Therefore, their usage in erection of a particular scaffolding is also ruled out. Government observes that the Appellate authority has rightly observed that the exported goods namely, Threaded Bar, Bar Clamp, Clamp, Base Square Washer, Joint Nut, W.Nut & Clip, are specifically covered under respective Chapter Heading of the Customs Tariff and that the reasons given by the

Lower Authority that the exported goods are generally used in manufacture/ repair of structures is illogical and that the classification decided by the Lower Authority is not based on facts and is against the provisions of law.

9. Government observes that the Applicant no. 2 has submitted forwarding letters alongwith postal receipts in respect of supplementary claims which were termed as filed beyond the prescribed time limit by the Appellate Authority. The details observed from submissions and these letters are as under:

Shipping Bill No./ Date	Date of settlement of original claim	Date of filing supplementary claim	Postal receipt No.
6900471/29.12.2011	22.06.2012	03.07.2012	145/03.07.2012
6915497/30.12.2011			
756113/14.02.2012	18.04.2012	28.07.2012	1432

Government observes that as per Rule 15 of the Customs, Central Excise Duties and Service Tax Drawback Amendment Rules, 1995, a supplementary claim can be filed within three months from the date of payment or settlement of the original drawback claim by the proper officer. Further this period can be extended by the Assistant Commissioner/Deputy Commissioner of Customs for a further period of nine months on being satisfied that the exporter was prevented by sufficient cause from filling his supplementary claim within the aforesaid period of three months. Thus, the original authority was well within his powers when he allowed drawback on aforesaid rebate claims.

10. In view of the above discussion and findings Government passes following order –

i. Revision Application No. 380/39/DBK/16-RA dated 29.02.2016

Government finds no reason to annul or modify the Order-in-Appeal No. MUN-CUSTM-000-APP-249-250-15-16 dated 19.11.2015 passed

by the Commissioner of Customs (Appeals), Ahmedabad and rejects the Revision Application filed by Applicant No.1.

- ii. Revision Application No. 371/18-19/DBK/ 16-RA dated 01.03.2016
Government sets aside the impugned Order-in-Appeal No. MUN-CUSTM-000-APP-249-250-15-16 dated 19.11.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad and allows the Revision Application filed by Applicant No.2.

11. The impugned Revision Applications are disposed of on the above terms.


1/2/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 23-25/2022-CUS (WZ)/ASRA/Mumbai dated 01.02.2022

To,
M/s. Vinod Electroplating Works,
Backside Sodal Mandir Road,
Jagyasu Estate, Jalandhar - 140 004.

Copy to:

~~1.~~ Pr. Commissioner of Customs,
5B, Port User Building,
Adani Port, Mundra, Kutch,
Gujarat - 370 421.

2. Sr. P.S. to AS (RA), Mumbai

3. Guard file

4. Notice Board.