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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. 380/26/DBK/10-RA (REMAND) / 5807 Date of Issue : ~~.09.2021~~ 06/10/2021

ORDER NO. 239/2021-CUS (SZ)/ASRA/MUMBAI DATED 30.09.2021 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 : Commissioner of Customs, Chennai.

Respondent : Kaling Vanidhya (HUF), New Delhi.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order In Appeal No. C. Cus No. 115/2010 dated 01.02.2010 passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

The instant Revision Application is taken up for decision in pursuance of orders given by the Hon'ble High Court of Judicature at Madras in respect of Writ Petition No. 14681/2012 and M.P. No. 1 of 2012 dated 16.04.2021 filed by the applicant against Revision Order No. 43/2012-Cus dated 24.01.2012 passed by the Government of India.

2. The brief facts of the case are that M/s Kaling Vanidhya (hereinafter referred to as "the respondent") situated at Shed No. 16, Type A, Okhla Industrial Estate, Phase II, New Delhi – 110 020 had exported 'Woven woollen ladies vests' under five (5) shipping bills under Sun serial No. 62.01 of the Duty Drawback Schedule 1999-2000. The Total amount of drawback of Rs.5,14,694/- (Rupees Five Lakh Fourteen Thousand Six Hundred Nine Hundred Ninety-Four Only) claimed by the respondent was sanctioned in the month of July and August 1999.

2.1 It was noticed after audit of export documents i.e. the exported item of 'Woollen Garments' were not covered by the duty drawback schedule for the year 1999-2000 and that as per schedule woollen garment namely suits / blazers/trousers and jackets excluding those made from shoddy fabric / yarn only are classifiable under Sub Serial No. 62.09 and eligible for drawback and required the department to recover the amount paid as drawback. A show cause cum demand notice dated 23.06.2003 was issued to the respondent. The adjudicating authority vide Order in Original No. 7606/2008 dated 15.04.2008 ordered to recover the total amount of Rs. 5,14,694/- along with interest under Rule 16 of the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995.

3. Aggrieved by the impugned Order in Original, the respondent filed an appeal before the Commissioner of Customs (Appeals), Chennai. The Appellate Authority vide Order in Appeal No. C. Cus No.115/2010 dated 01.02.2010 set aside the impugned order in original and allowed the appeal

filed by the respondent. The Appellate Authority, while passing the impugned Order in Appeal observed that:

3.1 The Rule 16 does not specify any time limit to issue demand for recovery of erroneously sanctioned drawback. The respondent had misplaced notion that the demand to recover the drawback was issued under Section 28 of the Customs Act, 1962.

3.2 The demand in the instant case had been issued under Rule 16 of the Drawback Rules, 1995 which was not hit by limitation in absence of any time limit prescribed therein.

3.3 Chapter 62 of the Drawback Schedule covers 'articles of apparel and clothing accessories, not knitted or crocheted.'.

3.4 It was not department's case that the goods were knitted or crocheted apparel and clothing accessories, readymade garments made of sild and readymade garments made of shoddy fibre/yarn / fabric and hence excluded from the heading. The goods were admittedly woven woollen garments.

3.5 As regards the argument of the department that the subject goods were not eligible for drawback under heading 62.01 in terms of Ministry's Circular No. 55/99 dated 25.08.1999, it is found that the said Circular is issued after sanction of drawback and hence this cannot be given retrospective effect. The Circular also do not speak of retrospective effect.

4. Being dissatisfied with the impugned Order in Appeal, the department filed a Revision Application on the ground that the Order in Appeal had failed to distinguish the fact that Board Circular is in the nature of clarification and when same issue is clarified it is obvious that the cause on such clarification should have been based on some objection on an issue which was in existence before the said clarification was issued and such circular cannot be compared with a tariff or non-tariff notification which has a prospective effect.

5. The Revision Authority vide Order NO. 43/2012 dated 24.01.2012 set aside the impugned Order in Appeal passed by the appellate authority. The Revision Authority observed that :-

a) the clarification issued by CBEC cannot be held to be applicable prospectively as it has not effected any change in the drawback schedule but only clarified the scope of sub-serial No. 62.09 for the guidance of all the concerned.

b) Hon'ble High Court, Karnataka has held in the case of CCE, Bangalore Vs. Central Manufacturing Technology Institute reported as 2002 (142) ELT 336 (Kar.) that clarificatory notifications are retrospective in nature.

c) The adjudicating authority had not decided the issue/classification on the basis of CBEC Circular but on merit. So, it was wrong to say that error / mistake had arisen on the basis of subsequent event.

d) The adjudicating authority had ordered recovery of erroneously paid drawback under Rule 16 of Drawback Rules where no time is prescribed. Respondent had wrongly stated that demand was issued under Section 28 of the Customs Act, 1962.

6. The respondent filed Writ Petition under Article 226 of the Constitution of India before Hon'ble Madras High Court praying for issuance of writ of Certiorari, to call for the records relating to the impugned revision order dated 24.01.2012 and quash the same on the ground that officer acting as R.A did not have the competency. The Hon'ble Madras High Court set aside the impugned Revision Order and remitted the case back with directions to pass a fresh order by an officer having capacity to sit as Revisional Authority.

7. A personal hearing in this case was held 02.09.2021. Shri S. Mutthu Venkararaman, Advocate appeared online and reiterated that Hon'ble High Court has directed to consider their representation within four weeks. He prayed that rebate should be allowed as held under para 9 of the Revision Order as export and duty paid nature of goods is not in doubt.

7.1 The applicant filed documents to substantiate their case along with brief note explaining the one to one co-relation of the documents.

8. Government has carefully gone through the relevant case records available in the file, submissions of the applicants and respondents, the Order in Appeal as well as the Revision Order issued in this regard.

8.1 Government observes that the only ground which has been argued by the respondent before the Hon'ble Madras High Court was that the order passed by the Commissioner (Appeals) had been challenged before the Joint Secretary (Revision Application), Government of India who was also in the rank of Commissioner of Central Excise. It was therefore contended that this was impermissible in law. However, this anomaly has now been corrected by reconstituting an Additional Secretary as Revision Authority.

9. On perusal of records, it is observed that respondent had exported woven woolen ladies vests vide 5 shipping bills and claimed drawback of duty under S.S.No.62.01. The total drawback claims of Rs. 5,14,694/- were sanctioned and paid to exporter in July/ August, 1999. Subsequently, on the basis of audit objection it was noticed that said goods are neither covered under drawback schedule S. S. No. 62.01 nor any other heading and therefore they were not eligible for All Industry Drawback Rate. After due process of law, the demand for erroneously paid draw back was confirmed under Rule 16 of Custom, Central Excise Duties and Service Tax Drawback Rule, 1995. In appeal, Commissioner (Appeals) allowed the appeal of the respondents and set aside impugned order-in-original. The department contested the said order-in-appeal which was set aside by the Joint Secretary (Revision Application). As per the order of the Hon'ble Court, matter is again being reexamined.

10. Government observes that the respondent has claimed drawback on export of goods which were classified by them under S.S No. 62.01. It is further noted that S.S. No 62.09 covers woollen garments namely woollen

suits/trousers/blazers/jackets excluding those made of shoddy fabrics/yarn. The items exported by the respondent i.e 'Woven woollen ladies vests' does not fall in S.S No 62.09 and there is no heading in the Drawback Schedule 1999-2000 which covers the subject exports of the respondent.

11. Government notes that the CBEC vide Circular No 55/99 dated 25.08.1999 has clarified as under:-

"since doubts has been raised by the field formations and certain sections of The Trade as regards the applicability of All Industry Rate of Drawback under S.S. No. 62.01 of the Drawback Table to the Woollen Garments not specified in S.S.No 62.09 ibid

The issue has been examined and it is clarified that sub-serial No 62.01 of the Drawback Table is not applicable to Woollen Readymade Garments. It is also clarified that S.S. No 62.09 is applicable to only woollen Suits/Trousers/Blazers/Jackets, therefore woollen garments other than these categories are not covered by any of the S.S. Nos of Drawback Table and hence the exporters can only claim Brand Rate for the same"

12. Government notes and opines that the Appellate Authority has failed to distinguish that the Boards Circular dated 25.08.1999 is in the nature of a clarification and when an issue is clarified the cause of such clarification would have been based on some confusion on an issue which was in existence before the said clarification was issued and thus has been issued to bring clarity by removing confusion, if any, and would therefore, have a retrospective effect in its implementation.

13. Government notes that the question whether the issue of circular and notifications are retrospective or prospective in nature has been settled by the Karnataka High Court in the case of CCE Bangalore vs Central Manufacturing Technology Institute reported as 2002 (142) ELT 336(Kar) wherein it has been held that clarificatory notifications are retrospective in nature. Instant circular is clearly a clarificatory circular.

14. Government notes that issue clarified in the CBEC circular dated

25.08.1999 is akin to the issue in the instant case and justifies the rejection of the drawback claim in the impugned order in original which was set aside by the Appellate Authority

15. Government notes that the Appellate Authority has erred in holding that the Circular cannot be given retrospective effect and allowing the appeal of the respondent.

16. In light of the above discussion, Government observes that the Order-in-Appeal No.C. Cus No.115/2010 dated 01.02.2010 passed by Commissioner of Customs (Appeals), Chennai is not sustainable and therefore the same is set aside. The impugned order in original is restored.

17. Revision Application is disposed off on the above terms.

Shrawan 30/9/21

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

ORDER No. 239/2021-CUS (SZ)/ASRA/Mumbai DATED 30.09.2021

To,
The Commissioner of Customs,
Custom House,
60, Rajaji Salai,
Chennai- 600 001.

Copy to:

1. Kaling Vanidhya (H.U.F.), D-10/3, Okhla Industrial Area, Phase – II, New Delhi – 110 020.
2. The Commissioner of Customs (Appeals), Custom House, 60, Rajaji Salai, Chennai- 600 001.
3. The Assistant Commissioner of Customs (Drawback), Custom House, 60, Rajaji Salai, Chennai- 600 001.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy