

SPEED POST
REGISTERED



F.No.372/11/DBK/2012-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHICAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue...01/10/15

ORDER NO. 26/2015-CUS DATED 24.09.2015 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision application filed, under Section 129 DD of the Customs Act, 1962 against the Order-in-Appeal No. Kol/CUS/CKP/62/2012 dated 16.04.2012 passed by the Commissioner of Customs (Appeals), Kolkata

Applicant : M/s Rajlakshmi Cotton Mills Pvt. Ltd, Kolkata

Respondent : Commissioner of Customs , Air Cargo, Kolkata

ORDER

This revision application is filed by M/s Rajlakshmi Cotton Mills Pvt. Ltd (herein after referred as Applicant) against the Order-in-Appeal No. Kol/Cus/CKP/62/2012 dated 16.04.2012 passed by the Commissioner of Customs(Appeals), Kolkata with respect to Order-in-Original No. S.41(Misc)-97/2011/ACC(DBK) dated 30.01.2012, passed by the Assistant Commissioner of Customs, Drawback, Air Cargo Complex, Kolkata.

2. Brief facts of the case are that the applicant vide an application dated 08.10.2007 filed a claim of duty drawback under Section 74 of Customs Act, 1962 against export made vide Shipping Bill No. 6703509 dated 05.06.2007 and 6704286 dated 05.07.2007 before the Assistant Commissioner of Customs, NSCB International Airport, Kolkata.

2.1. The applicant had imported 2500 kgs of "Lavender Flowers" vide Bill of Entry No. 439541 dated 13.04.2007. Thereafter they exported "Cotton Neck Pillows filled with Lavender Flowers" vide Shipping Bill No. 6703509 dated 05.06.2007 and 6704286 dated 05.07.2007. As per their Drawback claim filed they have stated that they have exported a total quantity of 2256 kgs of the "Lavender Flowers" filled in the neck pillow.

2.2. The Export group had given the following examination order:-

"Pl. open all the packages for appraisalment and examine the goods in presence of AC(Shed) in terms of Section 74 of Customs Act, 1962. Check description of the goods, net weight and quantity. Please check identity of the goods wrt import documents vis-à-vis rep. sample drawn by S/A at the time of importation under CH seal. Allow shipment if otherwise found to be in order."

2.3. The examination report is as follows:-

"Opened all the cartoons in the presence of AC(Shed) in terms of Section 74 of CA 1962. The goods were found to be Neck pillow. One of the Neck pillow was opened and it is noticed that the plant product stored in the imported rep. sample was stuffed in the pillow rep. sample drawn from ctn no. 53 & 118 are sealed with CH seal and forwarded to group for inspection and n/action to ascertain the weight, identity etc. The import sample is also resealed with customs seal and sent to group for n/action. Opening of 100% of the Neck pillow may damage the goods which is evident on a perusal of the rep. sample. Quantity is found in order."

2.4 On scrutiny of the documents, it is observed that the goods imported were "Lavender Flower" and the goods exported were "Cotton Neck Pillows". In terms of Section 74 of the Customs Act, 1962 the goods imported should be identical to the goods exported.

2.5. Assistant Commissioner of Customs, Drawback, Air Cargo Complex, Kolkata, vide impugned Order-in-Original therefore rejected the said claim.

3. Being aggrieved by the impugned Order-in-Original, the applicant filed an appeal before the Commissioner (Appeals), who rejected the same vide Order-in-Appeal No. Kol/Cus/CKP/62/2012 dated 16.04.2012.

4. Thus, the applicant filed this revision application under Section 129DD of Customs Act, 1962 before the Central Government on the following grounds:

4.1 That the order passed by Assistant Commissioner of Customs and Commissioner of Customs (Appeals) are wrong, not maintainable and liable to be set- a-side.

4.2. That as per the order of group the goods were examined in presence of Assistant Commissioner (Shed) in term of Section 74 of Customs Act, 1962. That after examination Assistant Commissioner (Shed) was satisfied with the identity of goods therefore allowed the shipment and sample was forwarded to group for further identity.

4.3. That identity of the goods was established before the group Assistant Commissioner, but the same was rejected on technical grounds. That the applicant exported Lavender Flower and Cotton Neck Pillow but for saving the space they filed the Lavender Flower in the pillow. That due to lack of technical knowledge they only mentioned Cotton Neck Pillow and separately shown Lavender Flower below the Cotton Neck Pillow . That for this their claim should not be rejected when the identity of the import and exported goods has been established. That by the sample drawn at the time of import and export it is established that Lavender Flowers were exported without altering its form.

4.4. That sample was drawn for examination at the time of re-export and the report says as 'that on opening one of the Neck Pillow it is noticed that the plant product stored in the representative sample was stuffed in the pillow'. That department cannot allow shipment without identifying import product as order by the group.

4.5. That Lavender Flowers and there quantity have been highlighted in all the Shipping Bills, Invoice and Packing List and shipment has been allowed considering all the facts otherwise export should be held up before export sample was drawn after inspection of the import sample thereafter under seal and signature of the port shed Customs Officials forwarded to group. That the import was made under Section 74 which was clearly cited in the Bill of Entry and also at the time of re-export it was mentioned on the Shipping Bill.

4.6. That the Assistant Commissioner of Customs rejected their claim by stating that examination report does not specify the identity of the exported goods vis a vis imported goods. That the adjudicating authority have both the samples with them but failed to see the sample for natural justice but mechanically rejected the claim filed by the applicant in spite of identity of import and export goods established.

4.7. That the findings of Commissioner of Customs (Appeals) is totally wrong and not maintainable.

5. Personal hearings in the case matter were fixed on 20.07.2015, 11.08.2015 and 07.09.2015 but no one from Applicant nor Respondent either sought adjournment or attended the hearing.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of case records, Government observes that the applicant had imported 2500 kgs of "Lavender Flowers" vide Bill of Entry No. 439541 dated 13.04.2007. Thereafter they exported Neck Pillows filled with Lavender Flowers in a cotton pouch vide Shipping Bill No. 6703509 dated 05.06.2007 and 6704286 dated 05.07.2007. As per their Drawback claim filed they have stated that they have exported a total quantity of 2256 kgs of the "Lavender Flowers" filled in the neck pillow. On scrutiny of the documents, it is observed that the goods imported were "Lavender Flower" and the goods exported were "Cotton Neck Pillows". In terms of Section 74 of the Customs Act, 1962 the goods imported should be identical to the goods exported. The Assistant Commissioner of Customs, Drawback, Air Cargo Complex, Kolkata, vide impugned Order-in-Original rejected the said claim. Being aggrieved by the same, the applicant filed an appeal before the Commissioner (Appeals), who also rejected their claim. Now the applicant has filed this Revision Application on the grounds mentioned at Para 4 above.

8. Government further observes that the applicable statutory provision under reference is Section 74(1)(a) of the Customs Act, 1962 which reads as under:-

"SECTION 74. Drawback allowable on re-export of duty-paid goods. -

(1) When any goods capable of being easily identified which have been imported into India and upon which any duty has been paid on importation, -

(i) are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51; or

(ii) are to be exported as baggage and the owner of such baggage, for the purpose of clearing it, makes a declaration of its contents to the proper officer under section 77 (which declaration shall be deemed to be an entry for export for the purposes of

this section) and such officer makes an order permitting clearance of the goods for exportation; or

(iii) are entered for export by post under section 82 and the proper officer makes an order permitting clearance of the goods for exportation, ninety-eight per cent of such duty shall, except as otherwise hereinafter provided, be re-paid as drawback, if -

(a) the goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;

(b) the goods are entered for export within two years from the date of payment of duty on the importation thereof:

Provided *that in any particular case the aforesaid period of two years may, on sufficient cause being shown, be extended by the Board by such further period as it may deem fit.*

(2). Notwithstanding anything contained in sub-section (1) the rate of drawback in the case of goods which have been used after the importation thereof shall be such as the Central Government having regard to the duration of use, depreciation in value and other relevant circumstances, may, by notification in the Official Gazette, fix.

(3) The Central Government may make rules for the purpose of carrying out the provisions of this section and, in particular, such rules may-

(a) provide for the manner in which the identity of goods imported in different consignment which are ordinarily stored together in bulk may be established.

(b) specify the goods which shall be deemed to be not capable of being easily identified; and

(c) provide for the manner and the time within which a claim for payment of drawback is to be filed.

(4) For the purpose of this section-

(a) goods shall be deemed to have been entered for export on the date with reference to which the rate of duty is calculated under Section 16;

(b) in the case of goods assessed to duty provisionally under Section 18 the date of payment of the provisional duty shall be deemed to be the date of payment of duty".

8.1. The above provisions permit drawback on re export of duty paid imported goods if the said goods are easily identifiable to the goods which had been imported

on payment of duty. The condition under which such drawback is permitted is that the goods were identified to the satisfaction of the Assistant Commissioner as those which were imported.

8.2. As from the examination report identification of exported goods vis a vis imported goods could not be established to the satisfaction of the Assistant Commissioner, supporting evidence from the applicant was called for by him. The applicant vide their letter dated 26.05.2011 stated that they had imported "Lavender Flower" and exported "Cotton Neck Pillows". The applicant has also agreed that the description of the goods have been changed and the imported goods have been used as a component filled inside the finished product and re-exported as per the provisions of the Customs Act, 1962.

9. Government finds that it is an established fact that the identity of the goods could not be established to the satisfaction of the Assistant Commissioner as required under law. The applicant had admittedly imported "Lavender Flowers" and exported a new product namely "Cotton Neck Pillow" and the two goods are not same. In fact even the tariff heading under which each of these items has been classified changed from "Lavender Flower" under Custom Tariff Heading 06039000 to "Cotton Neck Pillows" under Custom Tariff Heading 62179090. In terms of Section 74 of the Customs Act, 1962 only those goods which are capable of being easily identifiable and which after being imported into India, are exported within two years of importation, are identified to the satisfaction of the Assistant/Deputy Commissioner of Customs as the goods which were imported earlier are entitled for drawback. In the instant case, the criterion is not satisfied at the time of exportation because the goods exported are clearly not the same goods which were imported. Moreover, the goods imported bear no distinguishing marks and numbers which can clearly establish that the goods which were imported are the same as those exported. This view also finds support in the order of the Hon'ble High Court of Madras in the case of Perfetti Van Melle India Pvt. Ltd Vs UOI 2009 (243) ELT 654 (Mad) wherein it is held that for claiming drawback under Section 74 ibid identity of goods is the prime criteria.

10. Government further notes that the applicant in their grounds of appeal have mentioned that due to lack of technical knowledge they only mentioned "Cotton Neck Pillow" and separately shown "Lavender Flower" below the "Cotton Neck Pillow". The explanation given by the applicant cannot be held to be genuine and creditworthy. In any case ignorance of law is no excuse not to follow something which is required to be done by the law in a particular manner. This principle has been recognized and followed by the Apex Court in a catena of its judgements. A liberal attitude therefore, cannot be adopted in case where the acts are deliberate acts or even negligence on part of the applicant. In the circumstances, it cannot be said that the order passed by Commissioner (Appeals) is not proper and legal.

11. In view of above circumstances, Government finds that Commissioner (Appeals) has rightly upheld the decision of the adjudicating authority and rejected the appeal of the applicant. There is no infirmity in the said Order-in-Appeal and therefore, the same is upheld.

12. The revision application is, therefore, rejected as devoid of merit.

13. So, ordered.



(RIMJHIM PRASAD)
Joint Secretary to the Govt. of India

To

M/s. Rajlakshmi Cotton Mills Pvt. Ltd,
FMC Fortuna, 4th Floor,
234/3A, A.J.C. Bose Road,
Kolkata-700020

ATTESTED

शुक्रेश अली
Shukra Ali
अधीक्षक (स.स.)
Under Secretary (RA)

ORDER NO. 26/2015-CUS DATED 24.09.2015

Copy to:

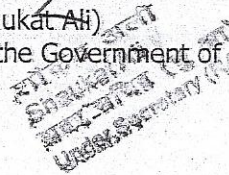
1. The Commissioner of Customs (Port), Customs House, Kolkata
2. The Assistant Commissioner(Customs), Drawback Section, Air Cargo Complex, NSCBI Airport, Kolkata-700052
3. Guard File.
- ✓ 4. PA to JS (RA)
5. Spare Copy

ATTESTED



(Shaukat Ali)

Under Secretary to the Government of India



शुकात अली
Under Secretary to the Government of India

GOI ORDER NO. 26/2015-CUS DATED 24.09.2015

Copy to:

1. Commissioner of Customs(Appeal) , Customs House, 15/1, Strand Road,
Kolkata-700001.

ATTESTED



(Shaukat Ali)

Under Secretary to the Government of India



