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F.No. F.No.372/03/DBK/14-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue.....

Order No. 27/2018-6 dated 5-2-18 of the Government of India passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 08/Cus/DBK/KOL/P/2014 Dated 13.01.2014 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s. Eveready Industries India ltd

Respondent : Commissioner of Customs, Kolkata

ORDER

A Revision Application No. F.No.372/03/DBK/14-RA dated 15.04.2014 has been filed by M/s. Eveready Industries India Ltd. (hereinafter referred to as the applicant) against the order No. 08/Cus/DBK/KOL/P/2014 Dated 13.01.2014, passed by Commissioner of Customs(Appeals), Kolkata .

2. Brief fact of the case are that the applicant had imported lanterns out of which some of the lanterns were re-exported by the applicant on being found defective after inspecting/testing. On re-exportation, the applicant filed a drawback claim under Section 74 of the Customs Act, 1962. However, it was rejected by the jurisdictional Assistant Commissioner on the ground that since the goods had been put to use by the applicant, 98% drawback of duty of customs is not admissible by virtue of Section 74(2) of the act . Being aggrieved, the applicant filed an appeal before the Commissioner (Appeals) who, vide his above mentioned order, rejected the appeal of the applicant and upheld the order of the Assistant Commissioner. The applicant has filed the instant revision application challenging the order of Commissioner (Appeals) on the ground that they have fulfilled all the criteria for re export as per Section 74 of the Customs Act, 1962 and the goods were new and not used.

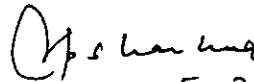
3. Personal hearing in this case was held on 09.01.2018 and the same was attended by Sh. Raghav Khurana, advocate, who reiterated the grounds of revision already pleaded in their revision application.

4. On examination of the revision application, the Commissioner (Appeals)'s order and pertinent legal provisions, it is observed by the Government that for getting drawback @ 98 % of duty under section 74 of Customs Act, 62, the following ingredients are to be satisfied :-

- i) The imported goods should be capable of being easily identified
- ii) Duty of customs should be paid on importation and the imported goods should be exported within 2 years from the date of payment of duty on imported goods and
- iii) The re-exported goods should be identified with the imported goods to the satisfaction of Assistant/Dy. Commissioner of Customs
- iv) The goods are new and should not have been used.

5. While no doubt has been expressed either by the Assistant Commissioner or by the Commissioner (Appeals) in their order regarding fulfilment of the first three mentioned above ingredients in this case, the Assistant Commissioner has denied duty drawback to the applicant on the ground that the goods were not new and were used by the applicant before re-export of the goods. In fact testing of goods is considered as use of goods. The order of the Commissioner (Appeals) holding that testing of goods amounts to use of goods is not denied by the applicant also. But it is claimed that they had only inspected the goods and not tested. But no evidence has been provided to support their above claim. It does not sound otherwise also logical as the defects in the product like lanterns cannot be found out merely on physical verification and the functional defects can be actually found out on testing of the lantern. The applicant has also not produced any copy of correspondence with the Chinese supplier of lanterns to ascertain the type of defects found in the lanterns from which it can be ascertained whether the defects in lanterns could be found out on mere physical inspection or testing of the goods was required. Whereas the Commissioner (Appeals) has clearly held in his order that the goods in question were tested and comes under the category of used goods as envisaged under Section 74 of the Customs Act, 1962. The applicant has failed to rebut his finding and, therefore, the government does not find any reason for interfering in the order of Commissioner (Appeals).

6. In view of the above discussions, the revision application filed by the applicant is rejected.


(R.P.Sharma) 5.2.18

Additional Secretary to the Government of India

M/s. Everyady Industries India Ltd.,
2, Rainey Park,
Kolkata 700019

ATTESTED

(Ravi Prakash)
OSD (REVISION APPLICATION)

Attested
NDVJ
5/2/18

(निर्मला देवी/NIRMALA DEVI)
अनुभाग अधिकारी/Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Order No. 27/18 Cus dated 5-2-2018

Copy to:

1. The Commissioner of Customs, 15/1 Strand Road, Custom House, Kolkata, 700001.
2. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata, 700001.
3. Deputy Commissioner, (Drawback), 15/1 Strand Road, Custom House, Kolkata, 700001.
4. V. Lakshmi Kumaran, 2nd kanak Building, Opposite Jeevan Deep, 41, Jawahar Lal Nehru Road, (Chopwringhee Road) Kolkata 700071
5. PS to AS(RA)
- ✓ 6. Guard File.
7. Spare Copy