

SPEED POST
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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. 371/65/DBK/15-RA/6826

Date of Issue: 25.11.2021

ORDER NO.295/2021-CUS (WZ) /ASRA/MUMBAI DATED 22.11.2021 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 : M/s Samruddhi Engineering,
Siddhi House, 6, Virkung Society,
Near Vidyanagar School, Usmanpura,
Ahmedabad, Gujarat – 380 014.

Respondent : Commissioner of Customs.
Customs ICD – Khodiyar,
Jamiyatpura Road, Nr. S.G. Highway,
Gandhinagar – 382 423.

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. AHM –CUSTM-000-APP-047-15-16 dated 11.06.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad.

ORDER

The subject Revision Application has been filed by M/s Samruddhi Engineering (here-in-after referred to as 'the applicant') against the Order-in-Appeal No. No. AHM -CUSTM-000-APP-047-15-16 dated 11.06.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad. The said Order-in-Appeal dated 11.06.2015 decided an appeal against the Order-in-Original dated 22.11.2014 passed by the Assistant Commissioner (Customs), ICD - Khodiyar.

2. Brief facts of the case are that the applicants had exported 'Steel Cops' falling under Customs Tariff Head No.73269099 under the description of 'Other - Other Articles of Iron and Steel' vide four Shipping Bills dated 29.06.2012, 28.07.2012, 27.08.2012 and 11.10.2012. They claimed duty drawback on the same under Drawback Sr.No.731902B. However, notification no.68/2011-CUS (NT) dated 22.09.2011, which was in force at the material time, mandated that the first four digits of the Tariff item should match with the corresponding entry in the Drawback Schedule; on applying the same it was noticed that the item exported would fall under DBK Sr. No.7326009B under the category 'Other Articles'. This change was accepted by the applicant and thereafter Drawback, as eligible after the amendment in the DBK Serial Number, amounting to Rs.91,699/-, was sanctioned to them.

3. Thereafter, vide notification no.5/2014-CUS (NT) dated 21.01.2014 the item 'Steel Cop' was included under the Drawback Schedule at Entry Sr.No.732644. The Board vide Circular No.03/2014 -Customs dated 30.01.2014 had clarified that the then existing entry under Tariff item no.731902, i.e. 'Steel Cops/pins/bobbins' had been replicated under the Heading 7326 with the same rate and cap. The applicant, thereafter filed

supplementary claims for differential drawback with respect to the abovementioned four Shipping Bills, totally amounting to Rs.1,47,307.18, relying on the above mentioned amendment in the Drawback schedule carried out by notification no.5/2014-CUS (NT) dated 21.01.2014 and claiming that the condition of alignment of the first four digits of the CTH with the DBK Schedule was not a condition mandated by notification no.68/2011-CUS (NT) dated 22.09.2011.

4. The Original Adjudicating vide Order-in-Original dated 22.11.2014 rejected the supplementary claims on the grounds that as per the conditions laid down by notification no.68/2011-CUS(NT), dated 22.09.2011, the applicant, in this case, was eligible to Drawback as provided for under the DBK Sr. No.7326009B and not under DBK Sr.No.731902B as claimed by them. The Adjudicating Authority found that the amendment carried out by the notification no.5/2014-CUS (NT), dated 21.01.2014 was not retrospective in nature and would hence not be applicable to the supplementary claims filed by the applicant.

5. Aggrieved, the applicant preferred an appeal against the said Order-in-Original dated 22.11.2014 before the Commissioner of Customs (Appeals), Ahmedabad. The Commissioner (Appeals) found that notification no.05/2014-CUS(NT), dated 21.01.2014 could not be applied to this case as the same was issued much after the exports were made and the claims sanctioned. Further, the Commissioner (Appeals) observed that the said notification itself clearly mentioned that the same would come into force on the 25th day of January, 2014. Based on the above observations, the Commissioner (Appeals), vide Order-in-Appeal dated 11.06.2015, rejected the appeal and upheld the order of the original Adjudicating Authority.

6. Aggrieved, the applicant has filed the present Revision Application against the Order-in-Appeal dated 11.06.2015 on the following grounds:-

- (a) The conditions laid down in the notification no.68/2011-CUS(NT) dated 22.09.2011 regards alignment of the tariff item with the Drawback schedule was not binding on them and that the same was not absolute and sacrosanct;
- (b) That the Adjudicating Authority and Appellate Authority had erred in interpreting that Drawback was available only if the Customs Tariff heading matched with the Drawback Tariff at the four digit level;
- (c) That the Adjudicating Authority had erred in not following the guidelines laid down at para 3 of the Circular no.42/2011-CUS dated 22.09.2011 which required that all such errors/omissions and inadvertences were to be ignored and disputes if any were to be resolved in favor of the claimant and that the same had a binding effect on the Adjudicating Authority and the Appellate Authority;
- (d) That notwithstanding the replication w.e.f. 25.01.2014, with or without the said replication, para 3 of the said Circular no.42/2011-CUS dated 22.09.2011 clearly mandated grant of drawback at the rate against the tariff entry and description of the goods, even if there were doubts about the correct classification; that the prospective date of replication does not diminish the mandate under the said para 3 of the Circular referred above;
- (e) That while incorporating the erstwhile DEPB entries in the Drawback Schedule, error/omissions and inadvertencies on the part of the Government was not ruled out and it was for that reason the said para 3 provided a beneficial remedy.

7. The Applicant also filed an application for condonation of the delay in filing of the present Revision Application. They submitted that present application had been filed 25 days after the expiry of the prescribed initial three months time limit and that the same being well within the further

three months delay, which was condonable by the Revision Authority, prayed that the delay may be condoned.

8. Personal hearing in the matter was granted to the applicant on 05.03.2021 and 12.03.2021. In response, the applicant vide letter dated 02.03.2021 waived the opportunity for personal hearing and requested that the case be disposed of on the basis of their written submissions.

9. Government has carefully gone through the relevant case records available in the case file, the written submissions and also perused the impugned Order-in-Original dated 22.11.2014 and the Order-in-Appeal dated 11.06.2015.

10. Government takes note of the application for condonation of delay and finds that the delay is within the condonable limits. Though the applicant has not provided any specific reasons for such delay, the same is condoned in the larger interest of justice.

11. Government finds that the issue involved pertains to the supplementary Drawback claims filed by the applicant with respect to goods exported vide Shipping Bills dated 29.06.2012, 28.07.2012, 27.08.2012 and 11.10.2012. Government notes that the applicant had earlier claimed Drawback in respect of the same consignments. Drawback amounting to Rs.91,699/- was sanctioned subsequent to the applicant accepting the amendments, as detailed at para 2 supra, in order to comply with the conditions laid down by notification no.68/2011-CUS(NT), dated 22.09.2011, which governed the sanction of drawback at the material time.

12. Government notes that the supplementary claims were filed by the applicant on 15.07.2015 on the grounds that the amendments which were carried out in their earlier claim was not mandated by notification no.68/2011-CUS(NT), dated 22.09.2011 and hence they were eligible to the differential drawback amounting to Rs.1,47,307.18. Government notes that the applicant had relied on notification no.05/2014-CUS(NT), dated 21.01.2014 vide which a new entry was inserted in the Drawback Schedule for 'Steel Cops/Pins/Bobbins' against the Heading '732644' and the subsequent Circular dated 30.01.2014 issued in this regard. Government notes that the original Adjudicating Authority, while rejecting the supplementary claims, found that the original claim was sanctioned only after the applicant had accepted the changes in the Drawback Serial Number from 731902B to 7326009B for the same to be in compliance with the conditions laid down by notification no.68/2011-CUS(NT), dated 22.09.2011. Government notes that the original Adjudicating Authority found that the applicant, in the supplementary claims filed, had claimed Drawback Serial No.731902B in respect of the goods exported and had thus failed to fulfill the conditions of the said notification. This view was upheld by the Commissioner (Appeals).

13. Government has examined Circular No.42/2011-CUS dated 22.09.2011 cited by the applicant and has found that there is nothing mentioned therein which supports the arguments of the applicant that the classification of the product as per the CTH need not match with that of the DBK Schedule. Government finds that the issue of classification had been clarified by the CBEC vide Circular 48/2011-CUS dated 31.10.2011 at para (8), which reads as under:-

"8. Certain doubts have been expressed about classification of few erstwhile DEPB items in the drawback schedule wherein it has been pointed out that the classification under drawback schedule does not match with the classification as provided in the Customs Tariff. In this regard attention is invited to the para (1) of the notes and conditions of the notification no.68/2011-CUS (NT) dated 22.09.2011. It is hereby reiterated that the tariff items and

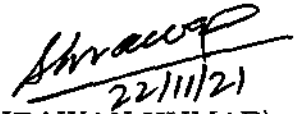
descriptions of goods in the drawback schedule are aligned with the tariff items and descriptions of goods in the Customs Tariff only upto four digit level. Hence so long as the alignment is there at the four digit level, there should not be any difficulty for exporters to claim drawback as per the rate specified in the Drawback Schedule, notwithstanding the fact that there may be difference in the classification of the said item at six or more digit level."

The above clarification makes it clear that the classification, of the product in question, as per the Customs Tariff and the Drawback Schedule needs to match at the first four digit level as laid down by notification no.68/2011-CUS(NT) dated 22.09.2021. Therefore, the argument of the applicant that the notification no.68/2011-CUS (NT) did not mandate the same is not correct and deserves to be rejected.

14. Government notes that in this case the applicant had accepted the change in the Drawback Serial Number when they filed for Drawback initially in respect of the consignments covered by Shipping Bills dated 29.06.2012, 28.07.2012, 27.08.2012 and 11.10.2012 and that they were accordingly sanctioned the Drawback amount which they were eligible for. Government holds that the applicant, not having agitated the change sought at any appellate forum thereafter, the issue of drawback on the said consignment attains finality. The finding of the Commissioner (Appeals) that at the material time the provisions of notification no.68/2011-CUS(NT) dated 22.09.2021 were in force and hence the decision of the original Adjudicating Authority to reject the supplementary claims filed by the applicant is legal and proper. The findings of the Commissioner (Appeal) that the subsequent changes in the DBK schedule were prospective in nature and that the same would not affect the earlier claims, is proper. Government finds that the applicant will not find shelter in any change in the law brought about by a notification issued subsequent to the period for which the claim pertained to, unless the same has been made effective retrospectively, which is not true in this case. Thus, Government finds that the grounds of the Revision Application are devoid of merits.

15. In view of the findings recorded above, Government finds no reason to annul or modify the Order-in-Appeal No. AHM –CUSTM-000-APP-047-15-16 dated 11.06.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad.

16. The Revision Application is dismissed.


22/11/21

(SHRAWAN KUMAR)

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

ORDER No 295/2021-CUS (WZ) /ASRA/Mumbai dated 22.11.2021

To,

M/s Samruddhi Engineering,
Siddhi House, 6, Virkung Society,
Near Vidyanagar School, Usmanpura,
Ahmedabad, Gujarat – 380 014.

Copy to:

1. The Commissioner of Customs, ICD – Khodiyar, Jamiyatpura Road, Nr. S.G. Highway, Gandhinagar – 382 423.
2. The Commissioner (Appeals), Ahmedabad, 7th floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad – 380 009.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.