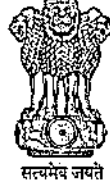


SPEED POST  
REGISTERED POST



**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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. NO. 373/126 & 41/DBK/15-RA

1051

Date of Issue: 03.12.2021

ORDER NO. <sup>301-302</sup> /2021-CUS (SZ) /ASRA/MUMBAI DATED 03.12.2021  
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 Kadri Wovens,  
(A Unit of the Kadri Mills (Cbe) Ltd.,)  
Plot No.NN-1, Sipcot Industrial Growth Centre,  
P.V. Palayam Post, Perundurai – 638 052.

Respondent : Commissioner of Customs,  
Custom House,  
Tuticorin – 628 004.

Subject : Revision Applications filed under Section 129DD of the  
Customs Act, 1962 against the Orders-in-Appeal  
No.142/2014-TTN (CUS) dated 18.11.2014 and  
No.153/2014-TTN (CUS) dated 30.12.2014 passed by the  
Commissioner of Customs & Central Excise (Appeals -2),  
Trichirappalli – 620 001.

**ORDER**

The subject Revision Applications have been filed by M/s Kadri Wovens (here-in-after referred to as 'the applicant') against the Orders-in-Appeal dated 18.11.2014 and 30.12.2014 passed by the Commissioner of Customs & Central Excise (Appeals -2) Trichirappalli which decided appeals against Orders-in-Original dated 08.07.2014 and 27.06.2014, respectively, both passed by the Assistant Commissioner, St. Johns ICD, Tuticorin. The issues involved in the cases being the same, the subject Revision Applications are being taken up for decision together.

2. Brief facts of the case are that the applicants had claimed drawback on the product '100 % Cotton Woven Blankets' exported by them. They had submitted documents, viz., ARE-1s, Packing Lists, SDF declarations, etc. in support of the claims made by them. In the ARE-1s so submitted, the applicant had certified that the goods had been manufactured :-

- (a) without availing facility of Cenvat Credit Rules, 2001;
- (b) without availing facility under notification no.21/2004-CE (NT), dated 26.01.2001 issued under Rule 18 of the Central Excise Rules, 2002, and
- (c) without availing facility under notification no.43/2001-CE(NT) dated 26.06.2001 issued under Rule 19 of the Central Excise Rules, 2002.

The applicant had also declared that the exports were under claim of duty Drawback under the Customs & Central Excise Duties Drawback Rules, 1995. In addition to the above, they had, in the said ARE-1s and the related Shipping Bills, declared that that the particulars given therein were true and correct.

3. The Drawback claims filed by the applicant were verified on the basis of the above mentioned documents filed by them and the Drawback claimed by them, under DBK Schedule Sl. No.630102A as per the Shipping Bill, was sanctioned to them. Thereafter, it was noticed that the declaration made by the applicant in the ARE -1 that they had not availed Cenvat credit was not correct as they had availed Cenvat credit of the inputs and input services

used in the manufacture of the products that were exported, and that having availed Cenvat credit, the goods exported would merit classification under DBK Schedule Sl. No.630102B.

4. Show Cause Notices dated 18.12.2013 and 20.01.2014 were issued to the applicant under Section 75A of the Customs Act, 1962 seeking to recover the excess Drawback, amounting to Rs.7,465/- and Rs.45,465/-, respectively, sanctioned to them on account of the above said mis-declaration. The said Show Cause Notices dated 18.12.2013 and 20.01.2014 were decided by Orders-in-Original dated 27.06.2014 and 08.07.2014, respectively. The original Adjudicating Authority, in both cases, held that there was mis-declaration on the part of the applicant and that the goods exported by them would be appropriately classifiable under DBK Schedule Sl. No.630102B. In view of such finding, the original Adjudicating Authority, in the Orders-in-Original dated 27.06.2014 and 08.07.2014, ordered the applicant to repay the amounts demanded along with appropriate interest and imposed penalties of Rs.7,500/- and Rs.45,500/-, respectively, under Section 114(iii) of the Customs Act, 1962.

4. Aggrieved, the applicant preferred appeals against the said Orders-in-Original before the Commissioner of Customs & Central Excise (Appeals -2), Trichirappalli, resulting in Orders-in-Appeal dated 18.11.2014 and 30.12.2014. The Commissioner (Appeals), in both cases, found that the applicants had wrongly classified and mis-declared their goods with the intention to avail higher rate of Drawback and the demand raised was thus sustainable. The Commissioner (Appeals) further held that as the applicants had already exported their goods by mis-declaring the same under DBK Sl. No.630102A, they were liable for penalty under Section 114(iii) of Customs Act, 1962. In view of the above, the Commissioner (Appeals) vide Orders-in-Appeal dated 18.11.2014 and 30.12.2014 upheld the Orders-in-Original dated 08.07.2014 and 27.06.2014, respectively.

5. Aggrieved, the applicant has filed the subject Revision Applications against the said Orders-in-Appeal. The grounds on which the said Revision Applications have been preferred are identical and are as follows:-

(a) The applicant, as per the advice of the Range officers, had already paid an amount of Rs.78,277/- in cash and had reversed Cenvat Credit of Rs.1,32,780/- along with interest of Rs.18,095/-. They submitted that payment details were submitted to the Adjudicating Authority but he had passed the Orders-in-Original without considering the facts. The challan dated 06.10.2012 for payment of Rs.96,372/- (Rs.78,277/- and interest of Rs.18,095/-) and ER-1 return filed for the month of September, 2012 showing reversal of credit of Rs.1,32,780/- was submitted as evidence of payment.

(b) They further submitted that the Cenvat credit availed was relating to input services used during the non-drawback period (EOU) and that they had not utilized any Cenvat credit for the Drawback exports.

In light of the above submissions, they prayed that the impugned Orders-in-Appeal be set aside.

6. Personal hearing in the matter was held on 12.03.2021. Ms Naveena Durairaj, Advocate appeared online and reiterated the submissions made in the Revision Application. She submitted that since the entire Cenvat credit had been reversed along with interest for the said period, they were eligible for the Drawback at the rate at which it was sanctioned to them.

7. Government has carefully gone through the relevant case records available in the case file, the written and oral submissions and also perused the impugned Orders-in-Original dated 27.06.2014 and 08.07.2014 and the Orders-in-Appeal dated 30.12.2014 and 18.11.2014.

8. Government finds that the issue involved is that of mis-declaration by the applicant to the effect that they had not availed Cenvat credit on the goods exported leading to them being sanctioned Drawback at a rate higher than what was permissible. Demands raised to recover such excess Drawback were confirmed by the original Adjudicating Authority and penalty equal to the amounts confirmed were imposed on the applicants under Section 114(iii) of the Customs Act, 1962. The Commissioner (Appeals) upheld decision of the Adjudicating Authority and rejected the appeals filed by the applicant in both the cases.


9. Government finds that the applicant had submitted that they have reversed the entire Cenvat credit availed by them on the consignments that were exported and have provided copy of the return/challan indicating reversal/payment of such credit and interest. Government finds that the applicant had made this submission before the original Adjudicating Authority and the Commissioner (Appeals) too. Government finds that both the Show Cause Notices issued for recovery of such excess Drawback also mention that *"It has also come to the notice that the exporter have paid the service tax credit amount, which they availed during period of September 2012 i.e. during the period of raising the invoice covered under the S.B."* Government further notes that neither the original Adjudicating Authority nor the Commissioner (Appeals) have discussed the submissions of the applicant regarding them having paid the entire Cenvat credit with interest thereon with respect to the consignments in question.

10. Government notes that the applicant has committed an error by declaring that they had not availed Cenvat credit when they had actually availed the same. It is also a fact that as a result of such mis-declaration, they were sanctioned Drawback in excess to the amount they were eligible for. However, the claim of the applicant that they had reversed the entire Cenvat credit availed by them, was required to be verified while deciding the demands raised for recovering the excess Drawback sanctioned to them. Government also notes that the Cenvat credit along with interest claimed to have been reversed, has been done before the issue of both the Show Cause

Notices. Government notes that, therefore, the Commissioner (Appeals) orders have resulted in them being denied both the Cenvat Credit involved and the Drawback, which is not proper or legal.

11. In view of the above findings, Government sets aside both the impugned Orders-in-Appeal dated 18.11.2014 and 30.12.2014 taking into consideration that the applicant had reversed/paid the entire Cenvat credit availed by them along with interest on the exported consignments before issue of Show Cause Notices.

12. The Revision Applications stand disposed of in the above terms.

  
01/12/21  
(SHRAWAN KUMAR)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

301-302  
ORDER No. /2021-CUS (S'Z) /ASRA/Mumbai dated 01.12.2021

To,

M/s Kadri Wovens,  
(A Unit of the Kadri Mills (Cbe) Ltd.,)  
Plot No.NN-1, Sipcot Industrial Growth Centre,  
P.V. Palayam Post, Perundurai – 638 052.

Copy to:

1. The Commissioner of Customs, Custom House, Tuticorin – 628 004.
2. The Commissioner of Customs & Central Excise (Appeals -2), Trichirappalli – 620 001.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.