

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**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. NO. 373/70/DBK/15-RA / 8041

Date of Issue: 03.12.2021

ORDER NO. 303 / 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 Virgo Polymer (India) Ltd.,
A-1-A, MMDA Industrial Complex,
Maraimalai Nagar – 603 209,
Tamil Nadu.

Respondent : Commissioner of Customs (Seaport-Imports),
Customs House, 60, Rajaji Salai,
Chennai – 600 001.

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal
No.C.Cus II No.1/2015 dated 07.01.2015 passed by
the Commissioner of Customs (Appeals - II), Chennai.

ORDER

This Revision Application has been filed by M/s Virgo Polymer (India) Limited (here-in-after referred to as 'the applicant') against the Order-in-Appeal No. C. Cus II No.1/2015 dated 07.01.2015 passed by the Commissioner of Customs (Appeals - II), Chennai. The said Order-in-Appeal dated 07.01.2015 decided an appeal against the letter F. No. S. Misc. 160/2010-DBK dated 07.12.2012 issued by the Assistant Commissioner of Customs (Drawback - Sea), Chennai.

2. Brief facts of the case are that the applicant had obtained Duty Free Import Authorization (DFIA) Licences and on fulfillment of the export obligation against the same, they transferred these Licences to M/s Damodar Tradelinks P. Limited and M/s Kamadhenu Polymers P. Limited (here-in-after referred to as importers/ transferees). The Licences were allowed to be transferred on the condition that the transferees will pay the Additional Duty of Customs at the time of import of goods. The transferees imported goods on the strength of the said Licences and paid Additional Customs duty on the same. Thereafter, the applicant filed a claim dated 07.10.2010 seeking Drawback of the CVD paid by importers/transferees.

3. The Assistant Commissioner of Customs (Drawback-Sea), Chennai vide letter dated 07.12.2012 informed the applicant that their claim for Drawback of CVD did not fall under Section 74 or Section 75 of the Customs Act, 1962 and that the transferred Licences did not state anything about the reimbursement of the Additional Customs duty paid. The Assistant Commissioner opined that once a Licence was transferred, the resultant benefits would accrue to the transferee and not the transferor. The Assistant Commissioner further stated that in the absence of any notification issued by the DGFT authorities to implement the policy stated under PARA 4.4.6 of the Foreign Trade Policy, 2004-2009, the Drawback claim could not be entertained.

4. Aggrieved, the applicant preferred an appeal against the said letter dated 07.12.2012 of the Assistant Commissioner of Customs (Drawback - Sea), Chennai before the Commissioner of Customs (Appeals - II), Chennai resulting in Order-in-Appeal dated 07.01.2015. The Commissioner (Appeals) found that Chapter X of the Customs Act, 1962 which dealt with Drawback had three Sections viz., Section 74, Section 75 and Section 76; and that Section 74 allowed Drawback on re-export of goods, Section 75 allowed Drawback on imported materials used in the manufacture of goods which are exported and Section 76 dealt with the prohibitions and regulations governing Drawback. The Commissioner (Appeals) further observed that for claiming Drawback a Shipping Bill was necessary and that in this case the applicant had not filed any Shipping Bill under claim of Drawback; and that the applicant was in fact claiming Drawback of the CVD paid by the transferees at the time of import and not on goods that were exported. The Commissioner (Appeals) found that the Drawback claim of the applicant did not fall under any of the provisions of the Customs Act, 1962 governing Drawback and held that provisions of Para 4.4.6 of the Foreign Trade Policy, 2004-2009 cannot be implemented in the absence of suitable provisions in the Customs Act, 1962. In light of these findings the Commissioner (Appeals) held that non-sanction of the claim for Drawback made by the applicant was proper and correct and rejected the appeal.

5. Aggrieved, the applicant has filed the present Revision Application against the Order-in-Appeal dated 07.01.2015 on the following grounds:-

(a) Violation of Principles of Natural Justice: The Commissioner (Appeals) had not recorded any findings on many of the arguments and case laws relied by them. They submitted that the impugned Order-in-Appeal had been passed without granting them sufficient opportunity inasmuch as a request made by them on 08.12.2014 was not acceded to though the Order was passed on 07.01.2015. They submitted that in view of the above, the findings recorded in the impugned order are not sustainable in law.

(b) Submissions on Merit:

(i) They submitted that in light of Circular No.24/2011-Cus., dated 31.05.2011 issued by the CBEC which prescribed the monetary limits for adjudication, the order passed by the Assistant Commissioner was without jurisdiction and not sustainable in law since the amount involved in the present case was Rs.1,16,41,716.33;

(ii) The Licences obtained by them were covered by the Foreign Trade Policy, 2004-2009 and that per the provisions of the same the transferee would be liable to pay CVD/Excise duty and that the exporter who transferred the DFIA would be eligible to claim the reimbursement as Drawback and that since there was no specific procedure for filing claim of such Drawback, they had filed the instant claim with all the relevant documents;

(iii) They had obtained various DFIA Licences for the import of Polypropylene Granules and on fulfillment of export obligations they had transferred the said DFIA Licences which had been duly endorsed for transferability by the Regional Authority; that the exported product was Flexible Intermediate Bulk Containers which found mention in the AIR Drawback schedule; that they had transferred the said DFIA Licences and had not imported any duty free inputs and were hence eligible for Drawback; that the transferees had paid Additional Customs duty; and that the duty free import by the transferees had no relevance to the sanction Drawback claimed by them;

(iv) The finding of the Assistant Commissioner that once a Licence is transferred then the benefits of the Licence would accrue only to the transferee is not acceptable as they had not claimed any Drawback in this case; and that when Drawback was available as per FTP, it was for the Customs to sanction the Drawback and no clarification or notification was required from DGFT;

(v) The Commissioner (Appeals) had failed to note that the provisions of the Foreign Trade Policy were also implemented by the Customs Department itself and hence the Customs Department could not claim that there was no provision in the Customs Act, 1962 in the case of Drawback. They relied on the decision of the Tribunal in the case of Namco Steels Pvt. Limited vs CC & CE [2013 (296) E.L.T. 68 (Tri.-Del.)] in support of the submissions.

In light of the above submissions, they prayed that the impugned Order-in-Appeal be set aside with consequential relief.

6. Personal hearing in the matter was granted to the applicant on 08.04.2021 and Shri S. Venkatachalam, Advocate, appeared online for the same. He reiterated their earlier submissions. He stated that their claim for Drawback was based on EXIM Policy and hence requested for it to be allowed. On being pointed out that EXIM Policy of the Government could not go beyond the laws framed by the Legislature, and that Customs Act did not provide for any Drawback in such cases, unless amended by Parliament and hence such provisions in policy may not stand scrutiny of law, he submitted that they had gone by the Policy.

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 Letter dated 07.12.2012 of the Assistant Commissioner of Customs (Drawback - Sea), Chennai and the Order-in-Appeal dated 07.01.2015.

8. On the issue of violation of principles of natural justice by the Commissioner (Appeals), Government finds that the applicant was granted Personal Hearings, the first one on 20.10.2014 and the second one on 05.11.2014, and, that the applicant had attended both of them. The Advocate representing the applicant made submissions on their behalf during the hearing on 05.11.2014. The Commissioner (Appeals) has

correctly recorded that the last hearing took place on 05.11.2014 and the Order-in-Appeal was issued on 07.01.2015; thus if the applicant actually desired to make further submissions they could have done it in the interim. The applicant, having been granted two opportunities to be heard in person, had sufficient opportunity to present their case and also submit documents in support thereof. Thus, Government finds the contention of the applicant, that principles of natural justice have been violated in this case is contrary to facts on record.

9. As regards the submission that the order of the Assistant Commissioner was without jurisdiction in view of the monetary limits prescribed by the Board, Government finds the same to be misplaced and incorrect. The CBEC vide Circular dated 31.05.2011 had prescribed the monetary limits for adjudication of cases where Show Cause Notices were issued under Section 28 of the Customs Act, 1962. Government observes that in the present case the Assistant Commissioner has not decided a Show Cause Notice issued under Section 28 of the Customs Act, 1962 and hence will not be covered by the monetary limits prescribed by the said Circular. As such, Government finds no substance in this argument of the applicant and rejects the same.

10. Government finds that the Commissioner (Appeals) has analyzed the legal provisions governing the grant of Drawback and has given very clear findings on the issue. The finding of the Commissioner (Appeals) that the claim of Drawback filed by the applicant did not fall under any of the Sections of the Customs Act, 1962 that governed Drawback, viz. Section 74, Section 75 and Section 76, is correct. Government finds that Section 74 and Section 75 allows for Drawback on re-export of goods and on imported materials used in the manufacture of goods which are exported, respectively. In the present case, the applicant has claimed Drawback of the CVD paid by the transferee at the time of import. As discussed earlier, the Customs Act, 1962 provides for Drawback only on goods that were exported. There is no provision in the Customs Act, 1962 for allowing Drawback in respect of Imports. The contention of the

applicant that despite there being no provision in the Customs Act, 1962, they would be eligible to the Drawback claimed by them in terms of Para 4.4.6 of the Foreign Trade Policy, is not proper. Government finds that the EXIM Policy declares intent of Government, however, laws are required to be framed and passed by legislature to implement the intent of the Government. Authorities created by the laws/statute cannot go beyond the laws framed by the legislature and since the Customs Act, 1962 did not provide for any Drawback in such cases, the Drawback claim of the applicant is without any legal basis and deserves to be rejected. The case law cited by the applicant in support of their case, viz., *Namco Steels Pvt. Limited vs Commissioner of Customs & Central Excise, Indore* [2013 (296) ELT 68 (Tri-Del.)] has been examined and Government finds that the same is not relevant to the issue on hand.

11. In view of the findings recorded above, Government finds no reason to annul or modify the Order-in-Appeal No. C. Cus II No.1/2015 dated 07.01.2015 passed by the Commissioner of Customs (Appeals - II), Chennai.

12. The Revision Application is dismissed.

Shrawan
01/12/21
(SHRAWAN KUMAR)

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

ORDER No. 303/2021-CUS(SZ) /ASRA/Mumbai dated 1.12.2021

To,

M/s Virgo Polymer (India) Ltd.,
A-1-A, MMDA Industrial Complex,
Maraimalai Nagar – 603 209,
Tamil Nadu.

Copy to:

1. The Commissioner of Customs (Seaport-Imports), Customs House, 60, Rajaji Salai.
2. The Commissioner (Appeals - II), 60, Rajaji Salai, Custom House, Chennai 600 001.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board