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SPEED POST



F.No. F.No.372/04/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. 32/2018 dated S-278 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.372/04/DBK/14-RA dated 15.04.2014 is filed by M/s. Eveready Industries India Ltd. (hereinafter referred to as the applicant) against the order No. 07/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 exported by the applicant on being found defective after inspecting/testing. On re-exportation, the applicant filed a drawback claim under the provision of Section 74 of the Customs Act, 1962. But it was rejected by the jurisdictional Assistant Commissioner on the ground that identity of the exported lanterns could not be established with the imported lanterns at the time of export. Being aggrieved, the applicant filed an appeal before the Commissioner (Appeals) who, vide his above mentioned order, has rejected the appeal of the applicant. Now 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 the provisions of Section 74 of the Customs Act, 1962 and the goods are easily identifiable.

3. Personal hearing in this case was held on 09.01.2018 and the same was attended by Sh. Raghav Khurana, advocate, for the applicant 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 under the provisions of Section 74 of the 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

5. While doubt has been expressed either by the Dy. Commissioner or by the Commissioner (Appeals) in their order regarding fulfilment of the above mentioned first two ingredients in this case, the Assistant Commissioner has denied duty drawback to the applicant only on the ground that the identity of the goods could not be established by the Assistant Commissioner of Customs at the time of export or at the time of the examination of the goods. On perusal of the Bill of Entry and examination report given at the time of export, it is noticed that the examination report clearly states that the model number mentioned in the Bill of entry was not on the goods or on the packages of exported goods. Accordingly, the Assistant Commissioner concluded that the identity of the goods could not be established. The sample of the exported goods were also produced before the drawback department and it was held by the Assistant Commissioner (drawback) that the ~~lantern did not bear any marks and number, model numbers or country of origin,~~ either printed or embossed on them. The applicant did not adduce any satisfactory reasons before the original authority to establish that the goods exported and the goods imported earlier were the same. Even now the applicant has not adduced any material evidence to establish that they have re exported the same lanterns which were imported earlier. Hence, it is not feasible for the Government at this juncture to accept the above claim of the applicant that the goods exported were the same as were earlier imported and, therefore, the government does not find any reason for interfering in the order of the Commissioner (Appeals).

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

R.P. Sharma
(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

N. Devi
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. 32 /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