

REGISTERED
SPEED POST



F.No. 375/33/DBK/2015-RA.Cx
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. 35/18 - Cus dated 5-2-2018 OF THE GOVERNMENT
OF INDIA, PASSED BY SHRI RAJPAL SHARMA, ADDITIONAL SECRETARY
TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE
CUSTOM ACT, 1962.

SUBJECT : Revision Application filed, under section 129DD
of the Custom Act, 1962 against the Order-in-
Appeal No. NOI/Excus/002/App/382/14-15 dated
25.02.2015 passed by the Commissioner of
Customs Central Excise & Service Tax Noida.

APPLICANT : M/s K.V. Aromatics Pvt. Ltd.
C/o Mr. Rajesh Chhibber, Advocate

RESPONDENT : Commissioner of Customs Central Excise &
Service Tax Noida

ORDER

A Revision Application No. 375/33/DBK/2015-RA.Cx dated 17.07.2015 has been filed by M/s K.V. Aromatics Pvt. Ltd., Gautam Budh Nagar (U.P.) (hereinafter referred to as the applicant) against Order in Appeal No. NOI/Excus/002/App/382/14-15 dated 25.02.2015, passed by the Commissioner (Appeals) Customs and Central Excise, Noida.

2. Brief facts of the case leading to the filing of the Revision Application are that the applicant filed a drawback claim for Rs. 18,08,645/- which was rejected by the original adjudicating authority for the reason that although the applicant exported their goods to M/s DHL- FTZ, who are a consolidator in FTWZ, yet the export proceed was not received from M/s DHL-FTZ. Whereas as per Rule 30(8) of SEZ Rules 2006 the payments for such exported goods should have been received from FTZ unit and not from Utexam Logistics Ltd., Ireland. Being aggrieved by the above order, the applicant filed an appeal with Commissioner (Appeals). But it was also rejected.

3. The above Revision Application has been filed mainly on the ground that the goods have been actually sold to M/s Utexam Logistics Ltd. and not to M/s DHL Logistics situated in SEZ; that M/s DHL was merely a consignee; that therefore, M/s DHL could not pay for the sale of goods and as per para 3 of CBEC Circular No. 43/2007-Cus dated 5.12.2007 the duty drawback is admissible to them.

4. Three personal hearings were offered on 24.11.2017, 14.12.2017 and 5.1.2018. While the jurisdictional Assistant Commissioner, Shri S.K. Srivastava availed hearing on 24.11.2017 itself, the advocates of the applicant sought adjournment of the hearing each time by citing different reason from which it is implied that the applicant is not interested in availing personal hearing in this case. Hence this case is taken up for decision on the basis of the Revision Application and other available case records.

5. On examination of the Revision Application, it is noticed at the outset that the application has been filed in form EA-8 with reference to Rule 9 of the Central Excise (Appeals) Rules, 2001 and section 35EE of the Central Excise Act which are relevant for the rebate of Central Excise duty etc. only. Whereas, the Revision Application filed by the applicant in this case is regarding drawback of custom duty admissible under chapter 10-A of the Customs Act, 1962 as clarified under Customs Circular No. 43/2007-Cus dated 05.12.2007. Hence, the Revision Application was required to be filed in this case in form CA-8 under Section 129DD of Customs Act 1962. Therefore, evidently the application is not filed in proper manner.

6. Further from the Revision Application and the orders of the lower authorities, it is evident that actually the goods have been finally exported to M/s Utexam Logistics Ltd., Ireland through M/s DHL, a SEZ unit in India. The applicant itself has strongly asserted in the Revision Application that M/s Utexam Logistics is the real buyer of the goods exported by the applicant and M/s DHL is merely a conduit for M/s Utexam Logistics. Considering this fact, the applicant's claim for drawback in this case is not covered under CBEC Circular No. 43/2007-Cus dated 05.12.2007. Besides, it is also not disputed by the applicant that the actual payment of export proceeds in foreign currency has been paid by M/s Utexam Logistics Ltd. and not by M/s DHL. The eligibility of drawback of duty against any export of goods by a DTA Unit to a SEZ unit is governed by section 26(d) of the SEZ Act, 2005, Rule 30(5) and Rule 30(8) of the SEZ Rules 2006 which are referred to in the CBEC's above mentioned circular. Rule 30(8) of the SEZ Rules specifically provides that the drawback against supply of goods by DTA supplier shall be admissible provided payment for the supply are made from the foreign currency account of the SEZ Unit. Thus, to be eligible for claiming drawback of duty, it is imperative that the payment in foreign currency should be received by the DTA Unit from the SEZ Unit only. In the above referred CBEC Circular also it is nowhere stated that drawback of duty can be granted even when the payment for the supply is not received from the foreign currency account of the SEZ unit. Undeniably this condition is not satisfied in the case and accordingly the order passed by the Commissioner (Appeals) cannot be faulted.

7. In view of the above discussion, the Government rejects the Revision Application filed by M/s K.V. Aromatics Pvt. Ltd.

(Signature)
5.2.18
(R. P. SHARMA)

-----ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA-----

M/s K.V. Aromatics Pvt. Ltd.
Plot No. D-212-215, EPIP, Site-IV
Surajpur Industrial Area, Kashna,
Greater Noida-201306, Distt. Gautam
Budh Nagar (UP)

ORDER NO. 357/18 - CUS dated 5-2-2018

Copy to:-

1. Commissioner of the Customs Central Excise & Service Tax, Noida, C-56/42, IV Floor, Sector-62, Noida (UP).
2. Office of the Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida, C-56/42, IV Floor, Sector-62, Noida (UP).
3. Office of the Commissioner Customs, Central Excise & Service Tax, Noida, C-56/42, IV Floor, Sector-62, Noida (UP).
4. Mr. Rajesh Chhibber, Advocate, FA-9, Kavi Nagar, Ghaziabad- 201-002.
5. PS to AS(RA)
6. Guard File.
7. Spare Copy.

ATTESTED *5.2.2018*

(Debjit Banerjee)
STO (REVISION APPLICATION)