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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. 371/361/DBK/18-RA

3414

Date of Issue :

01/05/2023

ORDER NO. HAG/2023-CUS /ASRA/MUMBAI DATED 28-4-2023
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 Louis Dreyfus Commodities India Pvt. Ltd.

Respondent : The Commissioner of Customs (Appeals), Mumbai-III.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order in Appeal No. MUM-
CUSTM-PREV-APP-156/18-19 dated 03-06-2018 passed by the
Commissioner of Customs (Appeals), Mumbai-III

ORDER

This Revision Applications has been filed by M/s Louis Dreyfus Commodities Pvt. Ltd (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. MUM-CUSTOM-PREV-App-156/18-19 dated 13-06-2018 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. The Brief facts of the case are that the applicant Exported Indian raw cotton against a Drawback Shipping Bill no. C-55/DBK/12-13 dated 24.01 2013 and submitted a duty drawback claim vide letter dated 19.02.2013 against the Shipping Bill No.C-55/DBK/12-13 dated 24.01.2013, However on scrutiny, it was found that the claims were incomplete and certain deficiencies were noticed. The department had given sufficient opportunities to the claimant to fulfil the requisites, but since the claimant failed to comply with, the original drawback claim was returned to the claimant vide letter dated 21.05.2014 being deficient. The claimant re-submitted the subject drawback claim vide letter dated 26.05.2014 alongwith the Bank Realization Certificates for the relevant shipping Bills. Deficiencies were noticed again and the appellant was provided personal hearing following principles of natural justice. The case was adjudicated by the Deputy Commissioner of Customs (Prev), M&P wing, Alibaug Dn, vide OIO No OIO/DBK/ABG/PK/01/2015-16 dated 30-04-2015 wherein the drawback claim of Rs. 11,72,177/- was rejected under Section 75 of the Customs Act, 1962.

3. Aggrieved by the aforesaid Order in Original, the Applicant filed appeal with the Commissioner of Customs (Appeals), Mumbai-III who vide his OIA No. MUM-CUSTOM-PREV-App-156/18-19 dated 13-06-2018 upheld the Order in Original and dismissed the appeal filed by the Applicant.

4. Aggrieved by the said Order-in-Appeal, the Applicant filed the present appeal on the following grounds.

4.1 The contract for the Export of 1300MT of Raw Cotton was registered with the Office of Additional Director General Foreign Trade New Delhi. The said certificate was duly debited indicating the Shipping Bill No. and the quantity as shown in the subject Shipping Bill. It therefore would not be proper to state that the EARC Certificate has not been verified or debited prior to the Export. This being the position it cannot be said that the Goods under the Export were prohibited for Export and that the same are liable to Confiscation under Section 113(d) of the Customs Act 1962.

4.2 The very entry 5201 in the Drawback Schedule clearly describes the item as Cotton, not carded or combed and the rates of drawback indicated as 1% when No Cenvat credit has been taken and 0.3% when the Cenvat credit has been availed. Thus in the case of this item while including the same in the Drawback Schedule the Government is fully aware that there would be no other process of Manufacture on which duty would have been suffered except for its baling and strapping. More over without the Baling and Strapping it would not be possible to properly Export the item. Even in Commercial Practice the item is sold baled in grey cloth and duly strapped. It is reiterated that the Drawback has been claimed taking into consideration the Value of the Raw Cotton alone and not on the value of the Grey cotton and the PVC Straps used for the packing.

4.3 The Public Notice 01/2001-CC(P) dated 03.10.2001 provided for the instructions in regards the working at the PNP Jetty taking into consideration the then existing infrastructure at the said Jetty and the Customs Staff Sanctioned for the working at the said Jetty. The very fact that not only the present Export Consignment but several other similar consignments were allowed for Export at the said Jetty by the Appropriate Officers of Customs in the manner as followed the Department cannot at this later stage refer to the PN 001/2001 CC(P) dated 03.10.2001 state that Exports/ Imports of only those items referred in the said PN were allowed.

4.4 The Circular as referred viz 64/98 Cus dated 01/09/1988 was for the Departmental officers. Had the Officers asked the Respondents to make such Declarations they would have declared the name of trader from whom the goods have been purchased and complied with the requirement of the said circular. In any case this was a mere Procedural requirement and in view of the facts that the Shipments have been exported and the proceeds realised through the Bank. Thus non filing of such declaration cannot be held to be a ground for the rejection of the drawback Claim.

4.5 The payment of the Drawback is in terms of the Provisions of the relevant sections of the Customs Act 1962, Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 and the Drawback Schedule issued by the Directorate of Drawback from time to time. There is no provision referred by the Authority which specifically requires the testing of the item under export. If it were so necessary it should have so ordered by the concerned Officer of Customs prior to allowing the Shipment to be exported. There does not appear any necessity of the testing of the item prior to the Exports under the Claim for Drawback.

4.6 Drawback claim was originally returned for non-submission of Bank Realisation Certificate duly certified by the concerned Bank authority. No Show cause was issued prior to the Rejection of the subject drawback Claim

4.7 The applicant relied on the following case laws, viz.

a) Semiconductor Complex as reported in 2012 (275) E.L.T. 285 (G.O.1.) has held that Substantial rights of the exporter not to be denied on procedural lapses by the Department. While holding this reliance is placed on the following decisions

b) Collector of Central Excise, Madras v. Redema reported in 1998 (97) E.L.T. 454 (Tribunal)

- c) Synthetic & Chemicals Ltd. v. Collector of Central Excise, Allahabad reported in 1997 (93) E.LT. 92 (Tribunal)
- d) Shantilal & Bhansali reported in 1991 (53) E.LT., 558 (GOI)
- e) Bhavin International reported in 1994 (73) E.L.T. 249 (Coll. Appeals)
- f) Commissioner of Customs, Mumbai v. Terai Overseas Ltd. reported in 2003 (156) E.LT., 841 (Calcutta)
- g) Mangalore Chemicals and Fertilizers Ltd. v. D.C. reported in 1991 (55) E.LT. 437 (S.C.)
- h) Gypsy Exports v. Commissioner of Customs, Amritsar reported in 2001 (128) E.LT. 97 (Tribunal-Delhi)
- i) M. R. Jewellers v. Collector of Customs reported in 1992 (57) E.L.T. 609 (Tribunal)
- j) Collector of Customs v. Madura Coats reported in 1993 (68) E.LT. 270(GOI)
- k) Lakshmi Mills Company Limited reported in 1994 (74) EL.T. 185 (Coll. Appeal).
- l) India Crafts reported in 1996 (84) E.LT. 387 (Commissioner Appeals)
- m) V.S.T. Industries Ltd. reported in 1992 (57) E.L.T. 525 (G.O.1.)
- n) Modi Revlon Ltd. v. Commissioner of Customs (Import), Mumbai reported in 2007 (209) E.LT. 252 (Tribunal - Mumbai)

In the view of the above, the applicant requested that the impugned Order in Appeal and Order in Original may be set aside.

5. A personal hearing in this case was scheduled on 18-11-2022, 29-11-2022, 18-01-2023 and 24-01-2023. Ms Neha Agrawal, Advocate, appeared online on 24-01-2023 and submitted an additional written submission on the matter. She submitted that all Industry Rate of Drawback should be available to raw cotton. She further submitted that once a Port has been notified under Section 7 of Customs Act, any Notification/Order/Public Notice under Section 8 of the Customs Act cannot restrict it. She requested to allow their application.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original, Orders-in-Appeal as well as oral, written submissions and the Revision Applications.

7. Government observes that the Applicant has filed the Revision Application against the Drawback claim rejected by the Adjudicating Authority and upheld by the Appellate Authority on the grounds of i) non-verification of EARC before export, (ii) not eligible for availment of drawback on raw cotton, (iii) legality of export of raw cotton from Dharamtar port, (iv) Non declaration of the name and address of the trader from whom the goods were procured for export as required under Circular No. 64/98-Cus dated 01.09.1998 for & (v) non-testing of the item under export. The issue to be decided in this case is whether the drawback can be availed on 'Raw Cotton not carded or combed' falling under the Tariff Item 5201 of the Drawback Schedule.

8. The relevant Section and Rules for claiming drawback are as follows:

"SECTION 75. Drawback on imported materials used in the manufacture of goods which are exported. -

*(1) Where it appears to the Central Government that in respect of goods of any class or description 1[manufactured, processed or on which any operation has been carried out in India] 2[, being goods which have been entered for export and in respect of which an order permitting the clearance and loading thereof for exportation has been made under section 51 by the proper officer], 3[or being goods entered for export by post under 4[clause (a) of section 84] and in respect of which an order permitting clearance for exportation has been made by the proper officer], **a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the 5[manufacture or processing of such goods or carrying out any operation on such goods]**, the Central Government may, by notification in the Official*

Gazette, direct that drawback shall be allowed in respect of such goods in accordance with, and subject to, the rules made under sub-section (2).....”

Rule 3. Of Customs, Central Excise & Drawback Rule stipulates. -

“(1) Subject to the provisions of-

(a) the Customs Act, 1962 (52 of 1962) and the rules made there under;

(b) the Central Excise Act, 1944 (1 of 1944) and the rules made thereunder; and

*(c) these rules, **a drawback may be allowed on the export of goods at such amount, or at such rates, as may be determined by the Central Government:***

***Provided** that where any goods are produced or manufactured from imported materials or excisable materials, on some of which only the duty chargeable thereon has been paid and not on the rest, or only a part of the duty chargeable has been paid; or the duty paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962 (52 of 1962) and the rules made thereunder, or of the Central Excise Act, 1944 (1 of 1944) and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty paid or the rebate, refund or credit obtained :*

Provided further that no drawback shall be allowed -

(i) if the said goods, except tea chests used as packing material for export of blended tea, have been taken into use after manufacture;

(ii) if the said goods are produced or manufactured, using imported materials or excisable materials in respect of which duties have not been paid;

(iii)

In view of the above it is very clear that drawback is allowed where any imported material or excisable material has been used in the manufacturing or processing of goods to be exported or carrying out operations in such goods and where duty has been paid. In this case the Applicant has

exported 'Indian Raw Cotton packed in Grey Cotton fabrics and PVC Straps' i.e the only process of manufacture in this case is baling in grey cotton fabrics and duly strapping and it is very clear that the goods did not suffer any duty at all. The input commodities listed in the Notfn 44/91-Cus dated 30.05.91 are deemed as imported material for the purpose of drawback. The impugned material ie Grey Cotton fabrics and PVC Straps, procured from the open market are not appearing in the list of the input commodities appearing in NotificationNo.44/91-Cus dated 30.05.91 to be considered as imported material and to avail the drawback benefit.

9. The applicant has contended that when the item is included in the Drawback Schedule, the Government is aware that there would be no other process of manufacture on which duty would have been suffered. The same is not correct as the Government's intention by fixing AIR is to provide exporters with a refund of customs duty paid on imported goods or goods that will be treated, processed or incorporated into other goods for export. In this case when there is no duty element the question of drawback does not rise. Government finds that the Commissioner Appeal's Order is legal and judicious. The issue has been discussed at Para 7 in detail which is as under:

"7. Now coming to issue of whether drawback can be availed on raw cotton as in the present case, I find that the goods in question were described as "Indian Raw Cotton Packed in Grey Cotton Fabrics & PVC Straps". The appellant had purchased raw cotton as well as grey cotton fabrics and PVC straps from market. The Adjudicating Authority has contended that the inputs for export item Grey Cotton Fabrics & PVC Straps are not appearing in Notification No. 44/91- Cus. Dated 30.5.91 and therefore the appellant is not entitled to drawback.

In this context, it is observed that the respondent has exported Indian Raw Cotton, not carded or combed and claimed drawback against the

tariff item 5201 of the Drawback Schedule. Further, as HSN Explanatory Notes of heading 52.01 is reproduced herein below:-

"The seeds contained in the boils (pods, fruit) of the cotton plant (Gossypium) are covered with cotton fibres. The essential constituent of these fibres is cellulose, and they are covered with a waxy substance. Their outer surface is smooth, and their natural colour white, yellowish or even brownish or reddish. They are harvested when the ripened boils are more or less widely opened the boils are not picked but the cotton fibres are normally pulled from them while on the plant itself, bringing with them the cotton seeds which must be removed subsequently by ginning

This heading covers uncarded and uncombed cotton fibres as harvested (seed cotton) or merely ginned (in ginned cotton a certain amount of pod waste, leaves or earthy matter still remains) It also includes cotton fibres (other than linters and waste) which have been cleaned, bleached, dyed or rendered absorbent

International trade in raw cotton is concerned almost wholly with ginned cotton which is usually in strongly compressed bales; cotton cleaned in opening or scutching machines is in the form of loose, wide, continuous sheets

Cotton linters are classified in heading 14.04. The fibres classified in this heading are generally between and 5 cm in length and so are easily distinguished from cotton linters which consist of fibres usually less than 5 mm in length

From the above, it may be seen that this heading covers both type of goods; first, cotton as harvested or merely ginned where no manufacturing process is involved and the other i.e. which have been

cleaned, bleached, dyed or rendered absorbent where appears to be some process which can be equated with the manufacturing process. It is admitted fact that the appellant had exported the "Raw Cotton" where no manufacturing was involved and from the very nature of the goods it can be seen that it did not suffer any of duty at all. Hon'ble Tribunal's decision in case of M/s Rubfila International Ltd. vs CC (2005(190) ELT 485 (Tri. Bang.)) in its impugned order had held that even though All Industry Rate was fixed for a particular export product, applicable to all exporters who export the products, when there is evidence that inputs had not suffered any duty, mischief of Rule 3(1)(ii) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 was attracted and no drawback can be claimed. This decision upon the appeal by M/s Rubfila International Ltd was maintained by the Hon'ble Supreme Court [2008 (224) E.L.T A133 (S.C.)]. Thus as evident from the very nature of description of goods exported as well as admitted by the appellant, this is a case where no duty at any stage had been paid. Therefore, in view of the of Rule 3(1)(ii) of Customs. Central Excise Duties and Service Tax Drawback Rules, 1995 and law settled by the Hon'ble Supreme Court, I find that no drawback is payable in the present case, as there has been no incidence of duty."

10. In view of the above Government observes that the drawback claim was rightly rejected in respect of the impugned goods. The applicant in their additional submissions has submitted that the All Industry Rate of Drawback is based on the concept of averages and that the actual incidence of duty is not necessary and in support has referred to the following decisions:

- i) Supreme Court in case of Chemical & Fibres of India Ltd. reported in 1991(54)ELT 3 (SC);

This case is not relevant here, as in the referred case the dispute is regarding whether the assessee is eligible for a drawback of the entire Customs and Excise duty paid by him

- ii) GOI's Order in case of Trident Limited reported at 2014(312)ELT 934(GOI);

This case is not relevant here as the exported product in the referred case is Cotton Yarn where duty is paid on packing material, etc. and the same could be considered for eligibility of drawback. In the applicant's case there is no other process involved except bailing and strapping which would have suffered duty and hence drawback is rightly rejected.

- iii) GOI's Order in case of Sarda Energy and Mineral Ltd reported at 2012(286)ELT 451 (GOI);

In this case the claimant had produced the documents in support of payment of duty against dutiable items.

- iv) Chennai Tribunal's Order in case of K.G.Denim Vs CC, Tuticorn reported in 2015(329)ELT 377 (Tri-Chennai);

In this case the assessee had manufactured goods using import duty free raw materials under the exemption notification, as well as using excise duty paid raw materials. In the applicant's case as the process of manufacture was only bailing and strapping, no duty paid inputs has been used in the exported goods and hence they are not eligible for drawback.

Government therefore finds and holds that the drawback claim was rightly rejected in respect of the impugned goods. In view of the same, Government does not find it necessary to discuss the legality of the other grounds of rejection.

In view of the above Government does not find it necessary to interfere in the OIA No. MUM-CUSTOM-PREV-App-156/18-19 dated 13-06-2018 passed by the Commissioner of Customs (Appeals), Mumbai-III and rejects the application.

13. Revision Application filed by the applicant is disposed off in the above terms.


(SHRAWAN KUMAR)

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

ORDER No. HHG/2023-CUS/ASRA/Mumbai DATED 28-4-2023

To,

1. M/s Louis Dreyfus Commodities India Pvt. Ltd. 8th Floor. Tower A Building No.5, Cyber City, DLF Phase-III, Gurgaon-122002
2. The Pr. Commissioner of Customs (P), M & P Wing, 11, Everest House, Marine Lines, Mumbai-400002

Copy to:

1. The Commissioner of Customs(Appeals), Mumbai Zone-III, Awas Corporate Point, 5th Floor, Makwana Lane, Behind S.M Centre, Andheri-Kurla Road, Marol, Mumbai-400059
2. The AC/DC Customs(P), M & P Wing, Custom House, Alibaug Division, Alibaug, Dist-Raigad, Maharashtra-402201
3. Ms Neha Agarwal, Adv, Lakshmikumaran & Sridharan Attorneys, B & C wing, 2nd Floor, CENERGY, Appa sahib Marathe Marg, Prabhadevi, Mumbai 400025
4. Sr. P.S. to AS (RA), Mumbai
5. Notice Board.