

REGISTERED  
SPEED POST



F.No. 375/60/DBK/2018-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue..1.13/21..

Order No. 48/21-Cus dated 26-2-2021 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India under section 129DD of the Custom Act, 1962.

Subject : Revision Applications filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No.NOI/EXCUS-002-APP-1723-1725/2018 dated 21.02.2018, passed by the Commissioner of Central Tax & Customs (Appeals), Noida

Applicant : 1. M/s K.V. Aromatics Pvt. Ltd, Greater Noida

Respondent : Commissioner of Central Tax, CGST, Noida

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**ORDER**

A Revision Application No. 375/60/DBK/2018-RA, dated 11.06.2018 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-1723 to 1725, dated 21.02.2018, passed by the Commissioner of Central Tax & Customs (Appeals), Noida. Commissioner (Appeals) has upheld the orders of Assistant Commissioner, Central Tax, Division-III, Gautam Budh Nagar (erstwhile Central Excise Division-IV, Noida-II Commissionerate) bearing No. 03/DBK/AC/N-V/2014-15 dated 30.12.2016, 01/DBK/AC/DIV-III/GBN/2017-18 dated 31.08.2017 and 02/DBK/AC/DIV-III/GBN/2017-18 dated 31.08.2017, whereby the drawback claims of the applicant have been rejected on the ground that the foreign exchange has not been received in the foreign currency accounts.

2. Brief facts of the case are that the applicant filed various drawback claims, totally, amounting to Rs. 6,70,899/- which were rejected by the original authority on the ground that applicant exported their goods to M/s. DHL-FTZ, who are a consolidator in FTWZ, however, the export proceeds were not received from M/s. DHL-FTZ but from the ultimate buyer, i.e., Utexam Logistics Ltd., Ireland. 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. Apart from that the payments had not been received from the foreign currency account which is a

mandatory requirement under Rule 30(8) of SEZ Rules, 2006. Being aggrieved by the above mentioned Orders-in-Original, the applicant filed an appeal before the Commissioner (Appeals) which was rejected. Hence, the instant revision application.

3. The 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 C.B.E. & C. Circular No. 43/2007-Cus., dated 05.12.2007, as amended vide Circular No. 39/2010-Cus dated 15.10.2010, the duty drawback is admissible to them.

4. Personal hearing in virtual mode was held on 24.02.2021. Sh. R.M. Saxena, Advocate, attended the hearing on behalf of the applicant. Sh. Saxena reiterated the contents of revision application and the further submissions filed on 23.02.2021. He highlighted that in the facts of this case department has incorrectly applied Rule 30(8) of the SEZ Rules, whereas they were required to follow Rule 24 which they have followed. They have received the remittance and the BRCs have been issued by the Bank. Therefore, there are no grounds to reject drawback. Sh. B. G. Sharma, Superintendent attended the hearing on behalf of the respondent department. Sh. Sharma supported the orders of the lower authorities and stated that Rule 30(8) is correctly applied in the case.

5. Government has examined the matter. At the outset, 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 have themselves stated in the Revision Application that M/s. Utexam Logistics is the ultimate buyer of the goods exported by the applicant and M/s. DHL is merely a consolidation agency for M/s. Utexam Logistics. Considering this fact, the applicant's claim for drawback in this case is not covered under C.B.E. & C. 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 made 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, read with Rule 30(8) of the SEZ Rules, 2006 which 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 was mandatory in this case, that the payment in foreign currency should be received by the DTA Unit from the foreign currency account of M/s DHL only.

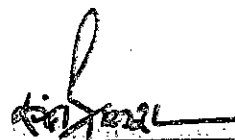
6. The applicant has contended that in their case Rule 24 of SEZ Rules, 2006 is applicable instead of Rule 30(8). Government observes that Rule 24 deals with the procedure for grant of Drawback claims and Duty Entitlement Pass Book credit whereas the Rule 30(8) prescribes an essential condition that the payment must be received from Foreign Currency Account of the SEZ unit. For granting drawback realization of export proceeds is an essential condition and the Rule 30(8) prescribes the account from which payment has to be received. So while considering the admissibility of

drawback by following the procedure prescribed in Rule 24, it becomes imperative for the sanctioning authority to verify that all the conditions prescribed under various Rules and Regulations have been fulfilled by the claimant. Therefore, the contention of the applicant that Rule 30(8) is not applicable in their case is not tenable as the realization of export proceeds from foreign currency account is an essential condition for obtaining drawback.

7. The applicant has pointed out that sub-rule (8) of Rule 30 has since been omitted vide notification dated 14.09.2018. It is their contention that amendment in procedural law has retrospective effect and therefore the said sub-rule (8) shall be deemed to be not there on the date of passing of impugned OIA, i.e. 21.02.2018. It is settled law that all statutes are prima-facie prospective and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature. In the present case, the sub-rule (8) was omitted w.e.f. 19.09.2018 and there is nothing in the notification dated 19.09.2018 to indicate that such omission was to be given retrospective effect. Further, the transactions upto the date of omission have to be governed by the sub-rule (8) as it existed on the relevant dates. Any other view would mean that the orders passed and the transactions finalized, shall be liable to be reopened every time there is an amendment of this nature, which will lead to unpredictability of tax regime and administrative uncertainty. Such a situation would not be in the interest of justice and fairness..

8. It is also observed that, in the applicant's own case involving identical issue, the Government has decided the matter against them vide Order No. 35/2018-Cus dated 05.02.2018.

9. In view of the above, the impugned OIA does not merit interference. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

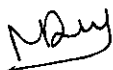
M/s K. V. Aromatics Pvt. Ltd  
Plot No. 212-217,  
EPIP Site-V, Surajpur Industrial Area,  
Kasna Greater Noida – 201306,  
District Gautam Budh Nagar, Uttar Pradesh.

Order No. 48 /21-Cus dated 26-2-2021

Copy to:

1. Commissioner of Central Tax & GST, C-56/42, 4<sup>th</sup> floor, Sector – 62, Noida, Uttar Pradesh.
2. Commissioner of Central Tax & Customs (Appeals), C-56/42, Sector – 62, Noida, Uttar Pradesh.
3. PA to AS(RA)
4. Guard File.
5. Spare Copy

ATTESTED



(Nirmala Devi)

Section Officer (Revision Application)

Received a copy of order file no. 375/60/DBK/18

Jai Bhagwan Singh

mob. No. 9958898992

Date - 25/05/2021