

REGISTERED
SPEED POST



F.No. 380/14/DBK/2017-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. 21/12/19

Order No. 70/19-Cus dated 2012-2019 of the Government of India passed by Mrs. Mallika Arya, 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. KOL/Cus(PORT)/AA/87/2017 dated 16.02.2017, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Commissioner of Customs (Port), Kolkata

Respondent : M/s Narendra Tea Company Pvt. Ltd.

ORDER

A Revision Application No.380/14/DBK/17-RA dated 22.01.2018 has been filed by Commissioner of Customs (Port) Kolkata, (hereinafter referred to as the applicant) against the Order in Appeal No.KOL/Cus(Port)/AA/87/2017 dated 16.02.2017, issued by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals) vide the above mentioned Order-in-Appeal has allowed the appeal of the respondent and set aside the Order-in-Original bearing no. 12/04 dated 06.09.2004 passed by the Dy. Commissioner of Customs, Drawback, Customs House, Kolkata. The demand of Rs. 10,23,000/- was confirmed under aforesaid Order-in-Original in terms of Rule 16 of Customs, Central Excise and service tax duties drawback Rules, 1995 since the drawback amount was paid erroneously to the respondent i.e. M/s Narender Tea Company (100% Export oriented unit).

2. Brief facts of the case are that the respondent filed a drawback claim in respect of 22 Shipping Bills with the jurisdictional Customs authorities. The said claim amounting to Rs. 10,23,000/- was allowed by the jurisdictional Dy. Commissioner of Drawback, Drawback, Kolkata. However, on scrutiny, it was found that the applicant was not eligible for drawback and, therefore, a Show cause Notice was issued to the applicant for the demand and recovery of drawback amount to the tune of Rs. 10,23,000/- in terms of Rule 16 of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995 read with Section 75A(2) of the Customs Act, 1962 along with applicable rate of interest. Jurisdictional adjudicating authority vide the above mentioned Order-in-Original confirmed the demand of Rs.10,23,000/- along with applicable rate of interest. Aggrieved, the respondent filed an appeal before the Commissioner (Appeals) who allowed the appeal on the ground that the applicant had paid excise duty on "Bulk Tea" procured by them in terms of DGFT Notification No. 39(RE-1)/1997-2002 dated 22.11.2001 and hence they are eligible for drawback.

3. The instant revision application has been filed mainly on the ground that a 100% EOU unit is not eligible for drawback in terms of Central Board of Excise and Customs Notification No. 31/1999 (N.T) dated 20.05.1999. The said notification prescribes *that the rates of drawback specified in the drawback schedule shall not be applicable to export of any of the commodities/products if such commodity/product is manufactured and/or exported by a unit licensed as hundred percent export-oriented undertaking in terms of the relevant provisions of the Import and Export policy in force.* Further, the goods have been supplied by the DTA unit to a hundred percent export oriented and the incidence of duty has been suffered by the DTA unit.

4. Personal hearing was granted on 25.09.2019, 7.11.2019 and 06.12.2019. The applicant sought adjournment on all the above dates. Respondent appeared on 11.12.2019. The respondent has contended vide their letter dated 18.12.2019 that excise duty has been paid @ of 2 % on purchase of bulk tea by them.

5. Government has examined the matter. It is observed that the main issue to be decided in this case here is as to whether the drawback is admissible to a 100% Export oriented unit. DGFT vide Notification No. 39(RE-1)/1997-2002 dated 22.11.2001 prescribes that *"This rate shall be applicable only in cases where excise duty has been paid on procurement of bulk tea by 100% export oriented units and units in export processing zones, considered as deemed exports in terms of Chapter 10 of the Export and Import policy 1997-2002"*. As per the provision of Import-export policy the goods supplied by a DTA unit to 100% export oriented unit are termed as 'deemed export'.

The applicant has contended that duty has been paid on the bulk tea procured by them for export purpose. In the instant case excise duty has been paid by bulk tea manufacturer and supplied to 100% EOU treating the same as 'deemed export'. Therefore, Government is of view that the respondent by no stretch of imagination being a 100% EOU can claim drawback on export goods since drawback is not admissible to a 100% EOU unit in terms of General Notes 2 (c) of

CBEC Notification No. 31/1999- Cus (N.T.) dated 20.05.1999. Thus the drawback in the instant case should have been claimed by the bulk tea manufacturer who has paid the excise duty and supplied the impugned goods to the respondent who is a 100% EOU unit in terms of DGFT Notification No. 39(RE-1)/1997-2002 dated 22.11.2001.

Hence the Commissioner (Appeal)'s findings that 100% EOU unit is eligible for drawback in terms of DGFT Notification No. 39(RE-1)/1997-2002 dated 22.11.2001 is erroneous and is set aside.

6. Accordingly, the revision application filed by the applicant is allowed.

Mallika Arya
(Mallika Arya)

Additional Secretary to the Government of India

Order No. 70 /19-Cus dated 20/2 - 2019

1. The Commissioner of Customs (Port),
15/1 Strand Road, Custom House,
Kolkata - 700001.

Copy to:

1. M/s Narendera Tea Company P. Ltd., 2A, Ganesh Chandra Avenue, 5th floor, Kolkata-700013
2. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata- 700001.
3. Deputy Commissioner, (Drawback, Port), 15/1 Strand Road, Custom House, Kolkata - 700001.
4. PS to AS(RA)
5. Guard File.
6. Spare Copy

Attested

Nirma
20/12/19
(Nirmala Devi)

Section Officer (REVISION APPLICATION)