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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. 371/13-20/DBK/2022-RA/7129 Date of Issue: 05.09.2023

ORDER NO. 702-709 /2023-CUS (WZ) /ASRA/Mumbai DATED 28.09.2023 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 Syngenta India Limited, Amar Paradigm, S. No.110/11/3, Baner Road, Pune – 411 045.
Respondent	:	Commissioner of Customs, Customs House, Marmagoa, Goa.
Subject	:	Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No.GOA-CUSTM-000-APP-009-016-2021-22 dated 30.09.2021 passed by the Commissioner (Appeals), CGST & Customs, Goa.

ORDER

This Revision Application has been filed by M/s Syngenta India Limited, Goa (here-in-after referred to as 'the applicant') against the Order-in-Appeal No.GOA-CUSTM-000-APP-009-016-2021-22 dated 30.09.2021 passed by the Commissioner (Appeals), CGST & Customs, Goa. The said Order-in-Appeal decided appeals filed by the applicant against eight Orders-in-Original passed by the Addnl./Jt./Asst. Commissioner of Customs, Goa, which in turn disposed of applications for fixation of Brand Rate of Drawback filed by the applicant.

2. Brief facts of the case are that the applicant is a manufacturer and exporter of various types of crop protection products/insecticides. Amongst other products, they also manufactured and exported – 'VIRTAKO 40WG THIAMETHOXAM 20% + CHLORANTRANILIPROLE 20% WG & ACTARA 25WG Thiamethoxam 25%W/W'. During the course of manufacture of the said products the applicant used inputs which were imported by them on payment of Customs duty, as well as those procured indigenously from M/s Deccan Fine Chemicals India Pvt. Limited, Goa (M/s DFCL), a 100% Export Oriented Unit. The applicant procured the input 'Thiamethoxam Technical 60KG' from M/s DGCL. Being a 100% EOU, M/s DFCL paid Customs Duty, as applicable on the inputs used by them to manufacture 'Thiamethoxam Technical 60KG'. They also paid applicable GST on the value of such clearances of 'Thiamethoxam Technical 60KG' to the applicant in the DTA, of which the applicant availed Cenvat credit. The Tax Invoices on the basis of which the said product was cleared to the applicant indicated its value and the quantum of CGST & SGST paid/payable by M/s DFCL.

3. The applicant filed applications for fixation of Brand rate of Duty Drawback under Rule 7(1) of the Customs and Central Excise Duties Drawback Rules, 2017 (DBK Rules), after availing Drawback at the All Industry Rate, in respect of the goods exported by them as the AIR Drawback amount was less than 4/5th of the duties/tax actually paid on the inputs used in the manufacture of the exported products. The original authority found that M/s DGCL, being a 100% EOU, was under obligation to pay the Customs duty equivalent to the exemption availed by them at the time of import of inputs used in the manufacture of 'Thiamethoxam Technical 60KG' and had hence paid the same, however, such payment of duty by the said EOU did not qualify their customer, the applicant, to avail the Drawback of the same as it was not borne by them. The original

authority found that the invoices issued by M/s DFCL for 'Thiamethoxam Technical 60KG' only indicated payment of SGST & CGST and no other taxes and hence held that there was no documentary evidence to indicate that the applicant had borne the import duty on the inputs used for the manufacture of 'Thiamethoxam Technical 60KG' supplied to the applicant. The original authority hence held that the claims of the applicant, which included the Customs duty component on the inputs used for the manufacture of 'Thiamethoxam Technical 60KG', was incorrect and proceeded to reject the Drawback claims to that extent. Aggrieved, the applicant filed appeals before the Commissioner (Appeals), who vide the impugned Order-in-Appeal upheld the orders of the original authority and rejected the said appeal.

4.1 Aggrieved by the impugned Order-in-Appeal dated 30.09.2021, the applicant has filed the present Revision Application. The same has been preferred on the following grounds:-

(a) That the rejection of the appeal by the Commissioner (Appeals) was against the basic intention of Section 75 of the Customs Act, 1962 of granting refund of duties and taxes to exporters after the fulfilment of given conditions therein; that under Section 75(1) of the Customs Act, 1962, Drawback should be allowed of the duties on imported material used in manufacture of goods exported in accordance with, and subject to the rules made under sub-section (2); that the intention of the DBK Rules is to allow the Drawback as applicable to the exporter immediately after the exports are effected; that rejection of Drawback will amount to loss for them and the export product would not be viable in the international market;

(b) That they had procured the input 'Thiamethoxam Technical 60KG' from M/s DFCL which was used in the manufacture of the exported products and that the same was supplied by M/s DFCL under Tax Invoice wherein they charged CGST & SGST as per the provisions of the Central Tax Act, 2017; they provided the list of invoices, indicating its number and date, quantity supplied, Value and the CGST & SGST paid on the same;

(c) That they availed ITC credit of the CGST & SGST so paid; that M/s DFCL had clearly mentioned in their Invoices that they had availed Customs Duty exemption on the imported inputs required for manufacturing of 'Thiamethoxam Technical 60KG' as per notification no.52/2003-Cus dated 31.03.2003 as amended vide notification no.59/2017-Cus dated 30.06.2017 and that they had also declared on the Tax Invoice that they would pay

equal Customs duty on the imported inputs used in the manufacture of finished goods sold in the DTA;

(d) That M/s DFCL had given declaration that they had reversed the whole of the Customs duty specified under the 1st Schedule to the Customs Tariff Act, 1975 (BCD) in proportion to the quantity used in 'Thiamethoxam Technical 60KG' in terms of Trade Notice No.11/2018 of the DGFT, New Delhi and per para 6.08 of the FTP, 2015-20; that M/s DFCL have further declared that the said Customs Duty was included in the cost of 'Thiamethoxam Technical 60KG' which was sold in the DTA to them; that hence it was clear that the Customs Duty burden was passed on to them; they provided data in tabular form indicating Invoice-wise, Quantity, Basic Value of material, Customs duty paid (BCD+Cess), Challan no. & date vide which such duty was paid, Total value of goods, quantum of SGST & CGST paid and the final Total Invoice Value of the goods covered by such Invoice; the applicant vide another Table provided the details of the payments made by them to M/s DFCL in respect of such Invoices, which included the Bank Ref Nos. and Payment Advice No. & Date issued by the concerned Bank, in respect of the Invoices under which they procured 'Thiamethoxam Technical 60KG';

(e) They submitted that the details provided clearly indicated that the Customs duty paid by M/s DFCL on the imported material was finally borne by them as the supplier had included the Customs duty in the sale price; that hence they should be allowed Drawback of the said Customs Duty in terms of Section 75 of the Customs Act, 1962; that as per para no.VIII of Circular No.14/2003-Cus dated 06.03.2003, duty drawback was allowed on duty paid on the inputs used by Vendor; that they had procured goods from the Vendor EOU and had also obtained Declaration regarding the Customs duty payment along with duty payment challans and Disclaimer Certificate from them; they sought to place reliance on the Order No.115/14-Cus dated 06.05.2014 of the Revisionary Authority in the case M/s Honeywell Turbo (I) P. Ltd. in support of their argument; that they were the principal manufacturer and exporter of goods and that the EOU was the vendor/supporting manufacturer and hence they qualify to claim the drawback of the payment of import duty by the EOU as the same was finally borne by them;

(f) That the EOU had provided Customs duty paid challans along with the Declaration and hence there was documentary evidence available on record proving that import duty was paid by them;

(g) That due to the Customs duty on the said input not being considered several of their Drawback claims were rejected and they provided detailed calculations in respect of eight drawback claims;

(h) That it was the policy of the Government that only goods and services should be exported and not the duty and taxes and their application should be examined in that context, that prior to the GST regime, the duties payable were clearly required to be mentioned in the Invoices issued by the EOUs and hence there was no problem in getting drawback under Section 75 of the Customs Act, 1962 during that period; that however, in the GST era the EOUs were required to pay applicable Customs duties on the goods imported without payment of duty when cleared in the DTA and as per the new law they were only required to mention the CGST & SGST payable in their invoices;

(i) That as per the provisions of the CGST Act, the Customs duty paid was not required to be mentioned in the Invoice; that however, the burden of such duty paid was borne by them as the duty paid was added to the sale price of the goods sold by the EOU to them; hence they had actually borne the burden of the Custom duties paid and hence the Drawback claimed by them was admissible to them.

In light of the above submissions, they prayed that the impugned Order-in-Appeal be set aside and that Brand Rate of Drawback as claimed be allowed to them.

4.2 The applicant made further submissions dated 27.06.2023 wherein they, apart from reiterating the above, also submitted that: -

(a) That their EOU supplier had paid Customs duty on goods supplied to them in cash as required under GST regulations and had charged the said duty as part of the cost of the selling price charged to them; that the EOU had also provided documentary evidence of payment of such Customs duty and given Declaration confirming that the said duty was included in the selling price mentioned in the Invoices; that despite such clear documentation their claims were rejected on the grounds that there was insufficient documentary evidence that the duty paid was included in the selling price; that they had subsequently made changes in the format of the supply invoice and it is indicating the Customs duty paid separately and they have now getting proper drawback; they explained the details of the two

Invoices pointed out by the Commissioner (Appeals) in the Order-in-Appeal indicating that the duty paid was contained in the sale price;

(b) That they had paid the total invoice value of the goods to the EOU and that the same was inclusive of the Customs duty paid;

In view of the above, they once requested that the impugned Order-in-Appeal be set aside and their claims for Drawback be allowed.

5. Personal hearing in the matter was granted on 27.06.2023 and 11.07.2023. Shri Vikas Dalvi, Officer (Trade & Customer Services) of the applicant firm and Shri Dastagir Sayyad, Consultant, appeared on behalf of the applicant. They submitted that their supplier EOU had submitted a Declaration along with details of duty calculation and payment of Customs duty. They further submitted that subsequently the same supplier had corrected the Invoice format and the same has been accepted by the Department and their Drawback was being sanctioned. They made further submissions, the details of which have been recorded above. No one appeared on behalf of the Respondent.

6. Government has carefully gone through the relevant case records, the written and oral submissions and also perused the Orders-in-Original and the impugned Order-in-Appeal dated 30.09.2021.

7. Government notes that the issue for decision here is whether the Customs duty claimed to have been paid subsequently by M/s DFCL, an EOU, on the inputs used by them for the manufacture of 'Thiamethoxam Technical 60KG' supplied to the applicant, can be taken into account while fixing the Brand Rate of Drawback claimed by the applicant in the given circumstances. Government finds that the lower authorities found that the Tax Invoices under which M/s DFCL cleared the goods to the applicant did not indicate the Customs duty component and hence inferred that the burden of Customs duty was not passed on to the applicant, which in turn rendered them ineligible to claim the benefit of such Customs duty while seeking Brand Rate fixation of Drawback. Government finds that the applicant has submitted that the value indicated in the said Tax Invoices by M/s DFCL was inclusive of the Customs duty paid on the inputs used to manufacture 'Thiamethoxam Technical 60KG' and that M/s DFCL had discharged CGST & SGST on such value.

8. Government finds that the applicant had made the same submissions before the Commissioner (Appeals) and the Commissioner (Appeals) in all fairness had allowed the documents presented by the applicant before him in support of their contentions, to be verified by the respondent Department and had sought a report of such verification. Government notes that the Commissioner (Appeals) has recorded that the respondent Department vide their report dated 23.09.2021 had informed that the applicant had failed to justify that they had paid the Customs duty on the raw material as claimed by them and hence such Customs duty could not be considered for fixation of Brand Rate as claimed by the applicant. Thus, Government finds that the submissions of the applicant on this count during these proceedings were subjected to necessary verification by the Commissioner (Appeals) and it was only thereafter he held that the applicant would not be eligible to claim the benefit of the Customs duty paid by their supplier, for fixation of Brand Rate of Drawback. Further, Government notes that the Commissioner (Appeals) has examined a few invoices and compared the Assessable value indicated therein vis-à-vis the Assessable Value shown for the same consignment in the DBK-II statement submitted by the applicant. The Commissioner (Appeals) has clearly recorded that in both the cases, the Assessable Value indicated in the Invoice and the DBK-II was the same and that the DBK-II statement had indicated the BCD and SWS separately, which proved that the Customs Duty involved was not included in the cost of the input item, which in turn indicated that the applicant had not borne the element of Customs Duty involved on the said input. In light of the above, the Commissioner (Appeals) found that the applicant had failed to produce any documentary evidence to justify that the Assessable Value, on which GST was discharged by the supplier, was inclusive of the Customs duty paid by them on the inputs. Government finds that the Commissioner (Appeals) has examined all the submissions and the supporting documents/ put forth by the applicant and it was only thereafter he had arrived at the finding that there was no conclusive evidence that the applicant had borne the Customs duty, the benefit of which they have sought to be included for fixing of the Brand Rates of Drawback.

9. Government has examined the submissions made by the applicant in the subject Revision Application and find that the contentions therein are similar to the ones made by them before the Commissioner (Appeals). The principal contention of the applicant that the Customs duty paid by their supplier was contained in the Assessable Value on which they discharged GST was examined by the Commissioner (Appeals) and found to be

incorrect. Government does not find any flaw in the findings of the Commissioner (Appeals) on this count. Government notes that the applicant would be eligible to claim the benefit of Customs duty paid by their supplier only when the same is specifically indicated in the Invoice under which the material was supplied and evidence indicating that such Customs duty was borne by them is provided. Government finds that in the cases covered by the subject Revision Application, the applicant has failed to do so. Government finds that the applicant, on being pointed out that they had not borne the Customs duty paid on the inputs, have in hindsight provided reverse working of the Assessable Value to indicate that the Customs duty paid was included in the same, which as rightly found by the Commissioner (Appeals) is incorrect.

10. In view of the above, Government finds that the applicant having failed to provide any evidence to prove that they have borne the Customs duty on the inputs contained in the goods received from their supplier, will not be eligible to claim the benefit of such Customs duty while seeking to fix the Brand Rate of Drawback.

11. Government finds the impugned Order-in-Appeal to be well reasoned order and does not find any need to interfere with the same. The subject Revision Application is rejected.

Shrawan 28/9/23

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 702-709 /2023-CUS (WZ) /ASRA/Mumbai dated 28.09.2023

To,

M/s Syngenta India Limited,
Amar Paradigm, S.No.110/113,
Baner Road, Pune – 411 045.

Copy to:

1. The Commissioner of Customs, Customs House, Marmagoa, Goa – 403 803.
2. The Commissioner (Appeals), CGST & Customs, Goa, 4th floor, GST Bhavan, EDC Complex, Plot No.6, Patto Panaji, Goa – 403 001.
3. Shri Dastagir Sayyad, D-2/401, Sunrise Co-op. Hsg. Scoiety, ECP Vastu Campus, Handewadi Road, Hadapsar, Pune – 411 028.
4. Sr. P.S. to AS (RA), Mumbai.
5. Notice Board