

REGISTERED  
SPEED POST



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

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F.No. 371/382(I-II)/DBK/2022-RA / 7493 Date of issue: 18.10.2023

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ORDER NO. 711-772/2023-CUS (WZ)/ASRA/MUMBAI DATED 18.10.2023  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE  
OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

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Applicants : M/s. Hindustan Zinc Limited India

Respondent: Pr. Commissioner of Customs , New Kandla.

Subject : Revision Applications filed, under Section 129DD of the Customs Act,  
1962, against the Order-in-Appeal No. KDL-CUSTM-000-App-123&124-18-19  
dated 27.03.2019 passed by Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This Revision Application has been filed by M/s. Hindustan Zinc India Limited (hereinafter referred as 'applicant') against the Order-in-Appeal No. KDL-CUSTM-000-App-123&124-18-19 dated 27.03.2019 passed by Commissioner of Customs (Appeals), Ahmedabad.

2. Briefly stated, applicant had exported goods "Sulphuric Acid" under RITC code 28070010 and DBK Sr.No.2801A vide Shipping bill No. 1113572 dated 29.2.2008; 1113656 dated 3.3.2008 and filed drawback of Rs.254450/-. The applicant was sanctioned the drawback amount. Later on the applicant was issued with a show cause notice dated 22.11.2013 demanding Rs.254450/- for wrongly claimed drawback under the said shipping bills, which was erroneously sanctioned and paid to the applicant. After due process of law, the adjudicating authority decided the issue vide Order-in- original No. KDL/DC/11/DBK/2017 dated 8.5.2018, wherein the lower authority confirmed the demand of drawback amount of Rs.2,54,450/- along with interest under Rule 16A of the Customs, Central Excise duties and Drawback Rules, 1995 on account of the mismatch in the RITC code and drawback Sr. No. in shipping bills. Being Aggrieved, both the Applicant and department preferred Appeal before the Commissioner of Customs (Appeals), Ahmedabad, who vide the impugned OIA modified the OIO to the extent of invoking Rule 16 instead of Rule 16 A for confirming the demand.

3. Hence, the Applicant has filed the Revision Application mainly on the following grounds:

- i. that mismatch is only a technical deficiency whereas it is not in dispute that the product exported was 'Sulphuric Acid falling under RITC 2807001. Basically, Duty Drawback applicable to Sulphuric Acid is allowable and same is available under Duty Drawback Serial no. 2807 and therefore mere mention of Duty Drawback Sr. no. 2801A in the shipping bill instead of serial no. 2807 cannot disentitle the substantial benefit of Duty Drawback on export of Sulphuric Acid.
- ii. It is settled law that substantial benefit given in law cannot be taken back merely because of some technical or procedural deficiency. In this



case the substantial compliance has been made because there is no dispute either on the fact that Sulphuric acid under heading 2807 was exported nor any dispute on the quantity exported or its value.

iii. Therefore, it is a case of only typographical error in shipping bill in mentioning drawback serial no. 2801A instead of the correct serial no. 2807. Since both the serial nos. are available in drawback schedule therefore the benefit of duty draw back cannot be denied only for the reason of wrong Duty drawback serial no, was mentioned in the shipping bill.

iv. In view of above Applicant has requested to set aside the impugned Order-in-Appeal.

4. A Personal hearing was fixed in this case on 12.07.2023. Mr. Keshav Maloo, Authorised Representative of the Applicant, appeared online for hearing and reiterated earlier points. He submitted that their drawback has been denied merely for a clerical error. He further submitted that there is no dispute on export of Sulphuric Acid. He requested to allow the substantive benefit and condone the minor procedural error.

5. Government has carefully gone through the relevant case records, written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government observes that the applicant has all been sanctioned drawback in respect of exports made by them. However, due to mismatch in the RITC code and Drawback Sr. No. in their shipping bills, the applicant had been issued show cause cum demand notice for recovery of the drawback sanctioned to them along with interest and penalty. Both the lower authorities have confirmed the demand. Being Aggrieved Applicant has filed this revision application against the impugned OIA.

7. The Government notes that the impugned order in appeal was received by the applicant on 27.03.2019 and the instant Revision Application was filed on 01.07.2022. As the initial period of 90 days for filling of revision application had already expired on 25.06.2019 therefore they requested to condone the delay in filing this revision application on the following ground:

*“ It is submitted that the though appeal has been filed against Order-In-Appeal No. KDL-CUSTOM-000-APP-123 & 124-18-19 dated 27.03.2019 on time but due to bonafide understanding that application against OIA dated 27.03.2019 is to be filed before honble CESTAT, the appeal was filed before CESTAT instead of before Addl. /Joint Secretary Government of India. In these circumstances, though application was filed within the prescribed time but since it was filed before wrong forum due to bonafilde mistakes, therefore, the present application before your honour got delayed. As soon as the fact of non filing of application came to the notice of appellants, the present application along with petition for condonation of delay has been drafted and filed.”*

8. The chronological history of events is as under:

(a)	Date of receipt of impugned Order-in-Appeal dated 27.03.2019 by the applicant	27.03.2019
(b)	Date of receipt of CESTAT order dated 05.01.2022 by the applicant	05.01.2022
(c)	Date of filing of revision application by the applicant	12.07.2022

From the above position, it is clear that applicant has filed this revision application nearly after 1107 days from the receipt of impugned OIA. As per provisions of Section 35EE of Central Excise Act,1944 the revision application can be filed within 3 months of the communication of Order-in-Appeal and the delay up to another 3 months can be condoned provided there are justified reasons for such delay. In this case, it has been observed that the Applicant filed an appeal against the impugned Order-in-Appeal (OIA) before CESTAT inadvertently. Subsequently, following the CESTAT order, they filed this revision application with a delay of 180 days from the date of the CESTAT order. In this regard, the Government notes that while disposing of Miscellaneous Application No. 21 of 2022, the Hon'ble Supreme Court, in paragraph 5(I), has directed to exclude the period from 15.03.2020 until 28.02.2022 for the purpose of limitation, as may be prescribed under any general or special laws, in respect of all judicial or quasi-judicial proceedings. In light of the Supreme Court order,



after excluding the period until 28.02.2022, the delay in filing this application is less than 180 days from the CESTAT order, falling within the condonation limit of the Revisionary Authority. Considering the circumstances, Government has accepted the Applicant's request for the condonation of the delay. Consequently, Government proceeds to decide this matter on its merits.

9. The Applicant has argued that the product they exported was "Sulphuric Acid" classified under RITC 2807001. They claim that Duty Drawback is applicable to Sulphuric Acid, falling under Duty Drawback Serial number 2807. Therefore, they assert that the mere mention of Duty Drawback Serial number 2801A in the shipping bill, instead of Serial number 2807, should not disentitle them from receiving the substantial benefit of Duty Drawback. However, the Adjudicating Authority has upheld the demand and emphasized that, according to Drawback Rules, the RITC code provided in the Shipping Bills should match with the Drawback Serial Number mentioned in shipping bills. In this regard, Government notes that the misdeclaration of these facts in the shipping bills has not been denied by the Applicant. Nevertheless, it is important to note that there is no dispute regarding the product exported. Additionally, according to the All Industry Rates of Duty Drawback for the year 2007-08, it is observed that the drawback rate for both S.No. 2807 and S.No. 2801 is the same. Furthermore, neither of the lower authorities discussed or identified any fraudulent activities or adverse findings related to the Applicant that might have led to a loss of revenue. Therefore, it appears that this misdeclaration of facts can be attributed to a clerical mistake. Consequently, Government concludes that the substantive benefit of drawback cannot be denied to the Applicant merely due to a clerical error or mistake.

10. In view of above, Government sets aside the impugned OIA No. KDL-CUSTOM-000-App-123&124-18-19 dated 27.03.2019 passed by Commissioner of Customs (Appeals), Ahmedabad and allows the instant revision application.

*Shrawan Kumar*  
18/10/23  
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

ORDER No. <sup>771-</sup>~~772~~ /2023-CUS (WZ)/ASRA/Mumbai dated 18.10.23

To,

1. M/s. Hindustan Zinc Limited, Yashad Bhawan, Udaipur.
2. The Pr. Commissioner of Customs, New Custom House, New Kandla, Kutch-370210.

Copy to:-

1. The Commissioner of Customs (Appeals), Ahmedabad, 7<sup>th</sup> Floor, Mrdul tower, B/H times of India, Ashram Road, Ahmedabad- 380009.
2. Sr. P.S. to AS(RA), Mumbai.
3. ~~Guard file.~~