

F.No. 380/13/DBK/2018-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... 9/4/21

Order No. 79/21-Cus dated 8-4-2021 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 Application filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/Cus(CCP)/AA/277/2018 dated 31.01.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Commissioner of Customs (Preventive), Kolkata

Respondent : M/s Trishan Export Pvt. Ltd., Kolkata

ORDER

A Revision Application No.380/13/DBK/18-RA dated 11.06.2018 has been filed by Commissioner of Customs (Preventive) Kolkata, (hereinafter referred to as the applicant) against the Order No.KOL/Cus(CCP)/AA/277/2018 dated 31.01.2018, passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has allowed the appeal of the M/s Trishan Export Pvt. Ltd., Kolkata (herein after referred to as the respondent) against the Order-in-Original No. 20/DC(DBK)/2016-17 dated 09.06.2016 passed by the Dy. Commissioner of Customs, Drawback Cell, CC(P), Kolkata wherein it was held by the adjudicating authority that the drawback in respect of excise portion is not admissible to the respondent in view of the Board's Circular No. 16/2009 dated 25.05.2009.

2. Brief facts of the case are that the respondent filed drawback claim in respect of 03 Shipping Bills, filed on different dates between 29.03.2009 to 30.04.2009, with the Dy. Commissioner of Customs, Drawback (Preventive), Kolkata. These claims were sanctioned by the jurisdictional Dy. Commissioner of Drawback, Custom House, Kolkata. However, on scrutiny, it was observed by the applicant that the drawback, in respect of excise portion, was not admissible in view of the Board's Circular No. 16/2009 wherein it is stated that the merchant exporters are eligible for excise portion of drawback only 'henceforth', i.e. from the date of issue of Circular. Thus, the applicant had taken a stand that the merchant exporters were not eligible for excise portion of drawback prior to the date of issuance of Circular dated

25.05.2009. Aggrieved, the respondent filed an appeal before the Commissioner (Appeals) who passed the Order as above.

3. The instant revision application has been filed mainly on the ground that the Circular dated 25.05.2009 has only prospective effect in view of the term 'henceforth' used in the said Circular.

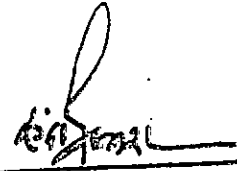
4. Personal hearing held on 07.04.2021 was attended by Sh. Nirmal Kumar Choudhary, Advocate, on behalf of the respondent. He reiterated the contents of the revision application and the written submissions dated 07.04.2021. Sh. Choudhary highlighted that the case is squarely covered by the judgements in the case of Kultar Exports {2013(288)ELT187(Del)} and Malvika Impex {2014(310)ELT868 (Delhi)}. None appeared for the applicant nor any request for any adjournment has been received. Therefore, the case is being taken up for decision on the basis of records.

5. The instant RA has been filed with a delay of 38 days. Administrative exigency has been pleaded for condonation. Delay is condoned

6. The Government has examined the matter. The revision application has been filed, only, on the ground that Circular dated 25.05.2009 has prospective effect and, therefore, the goods exported before 25.05.2009 were not eligible for drawback in respect of excise portion. Government finds that the CESTAT in the case of Commissioner of Customs (Exports) Vs Kultar Exports {2013(298)ELT461 (Tri-Del)} held that Circular dated

25.05.2009 gives the correct interpretation of Rule 3 of the Drawback Rules and that " the argument that this interpretation is applicable from the date of issue of Circular No. 16/2009-Cus is repugnant to logic because the Rule has remained the same----." The Hon'ble Delhi High Court in the case of Commissioner of Customs (Exports) Vs Kultar Exports (Supra) has upheld the above said judgment of the CESTAT. Thereafter, the Hon'ble Delhi High Court has followed its judgment in Kultar Export in the case of Malvika Impex (supra). Commissioner (Appeals) has passed the impugned order by correctly relying upon the aforesaid judgments of Hon'ble Delhi High Court. As such, the Government do not find any infirmity in the impugned order of commissioner (Appeals).

7. The revision application is rejected .



(Sandeep Prakash)

Additional Secretary to the Government of India

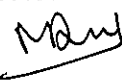
The Commissioner of Customs (Preventive),
15/1 Strand Road, Custom House,
Kolkata - 700001.

Order No. 79 /21-Cus dated 8-4-2021

Copy to:

1. M/s Trishan Export Pvt. Ltd., Suite-507, Diamond Prestige, 41 A, A.J.C. Bose road, Kolkata -700017.
2. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata- 700001.
3. Deputy Commissioner, (Drawback, Preventive), 15/1 Strand Road, Custom House, Kolkata - 700001.
4. PS to AS(RA)
5. Guard File.
6. Spare Copy

Attested



(Nirmala Devi)

Section Officer (REVISION APPLICATION)