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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. 371/126/DBK/2020-RA | 7670 Date of Issue: 27/10/23

ORDER NO. 797 /2023-CUS (WZ) /ASRA/Mumbai DATED 27.10.23 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 Navin Fluorine International Limited, 2nd Floor, Suntec Centre, 37/40, Subhas Road, Vile Parle East, Mumbai-400057.
Respondent	:	Pr. Commissioner of Customs, Ahmedabad.
Subject	:	Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. AHD-CUSTM-000-APP-621-19-20 dated 13.02.2020 passed by the Commissioner of Customs (Appeals), Ahmedabad.

ORDER

The subject Revision Application has been filed by M/s. Navin Fluorine International Limited, 2nd Floor, Suntec Centre, 37/40, Subhas Road, Vile Parle East, Mumbai-400057(here-in-after referred to as 'the applicant') against the Order-in-Appeal No. AHD-CUSTM-000-APP-621-19-20 dated 13.02.2020 passed by the Commissioner of Customs (Appeals), Ahmedabad which decided an appeal filed by the applicant against the Order-in-original No. 01/DC/CHH/DBK/2019-20 dated 31.05.2019 passed by the Deputy Commissioner of Customs, Customs House, Hazira, which in turn had rejected the duty Drawback claim of the applicant.

2. Brief facts of the case are that the applicant had filed a Drawback claim of Rs.43,09,626/- under Rule 5 of Re-export of Imported Goods (Drawback of Duties) Rules, 1995 read with Section 74 of the Customs Act, 1962 for the goods namely 2-bromo 4-fluoroacetanilide, that was imported due to rejection by the party for quality problem and the said goods were re-exported. After due process the claim was rejected by Adjudicating Authority vide Order-in-original No. 01/DC/CHH/DBK/2019-20 dated 31.05.2019.

3. *Aggrieved, the applicant filed an appeal before the Commissioner* (Appeals). Commissioner (Appeals) vide his Order-in-Appeal No. AHD-CUSTM-000-APP-621-19-20 dated 13.02.2020 rejected the appeal as the applicant failed to comply with one of the conditions for claiming drawback under section 74 of the Customs Act, 1962, that the goods must be new and not have been used. The appellant in this case failed to dispute the finding in the order dated 31.05.2019, which states that they did not submit the required declaration under Rule 4 of the Re-export of imported goods (Drawback of Customs duties) Rules, 1995. This declaration would have shown that the imported goods were either not used after importation or were used with the necessary permission for exemption.

4. Aggrieved, the applicant has filed the subject Revision Application against the impugned Order-in-Appeal on the following grounds:-

4.1 That observation of the Commissioner (Appeals) that appellant has not refuted the finding in the impugned order that they have not filed the declaration under Rule 4 of the re-export of imported goods (drawback of Customs duties) Rules, 1995 is factually incorrect. That declaration under Rule 4 of the Re-Export of Imported Goods (Drawback of Custom Duty) Rules, 1995 has been made on the face of the shipping bill itself and copy of the shipping bill was also submitted.

4.2 The declaration under rule 4 of the re-export of imported goods (Draw Back of Custom duties) Rules, 1995 was already made. That the appellant had made that declaration that it is claiming the duty drawback under section 74 of the Customs Act, 1962 of the duty paid at the time of re-importation of the impugned goods. This was also made clear in page 2 of the Show Cause Notice where it is mentioned that the goods are re- exported which were exported under the Bill of Entry No. 2077850 dated 13/06/2017. Therefore, the proper declaration was made at the time of exportation. That at the time of re-export, certificate from the chartered engineer as well as documents relating to the import of goods were produced by the appellant before the department for identity of the goods and department has satisfied and then allowed the re-export of goods. The same must be on record of the department in terms of examination order. Thus, it cannot be said that appellant has not made declaration regarding the goods imported which has been re-exported were new or not used.

4.3 That the Drawback /rebate is a beneficial scheme and thus the non-filing of declaration regarding the goods imported were not taken into use after importation is only a procedural lapse. That non-declaration that whether the goods imported were not taken into use after importation or that the goods were taken in use with permission for exemption is only a

procedural lapse. That the declaration was also been made on the face of shipping bill that the export is being made under a claim for drawback under section 74 of the Customs Act and further at the time of re-export, certificate from the chartered engineer as well as documents relating to the import of goods were produced by the appellant before the department for identity of the goods and department has satisfied and then allowed the re-export of goods. The same must be on record of the department in terms of examination order. Thus, the appellant has disclosed in the shipping bill that they have re- exported the goods under drawback claim and all the information was on the record of the Customs Department, as is evident from the facts on record. Thus, drawback cannot be denied on the ground that declaration under Rule 4 of the Re-Export of Imported Goods (Drawback of Custom Duty) Rules, 1995 has not need made. They relied on decision of M/s. Mita India Pvt. Ltd. Vs. CC (Export), New Delhi 2019 (3) TMI 714 CESTAT New Delhi.

4.4 That the benefit of duty draw-back should not be denied on technical grounds. They relied on the following decisions –

- Formica India 1995 (77) E.L.T. 511.
- Modern Process Printers 2005 (11) TMI 21 G.O.I.

4.5 That the order passed by the Commissioner (A) is non-speaking as all the submissions made and case laws relied upon by the appellant have not at all been discussed in the order. Thus, the order is not sustainable and should be set aside.

They relied on the following decisions -

- Jay Pee Bela Cement 2000 (118) ELT 193 (Tribunal)
- S. G. Engineers 2015 (322) E.L.T. 204 (Del.),
- Icycold Commercial Enterprise 1994 (69) E.L.T. 337 (Tribunal)
- Yaswant Electricals Ltd. 2000 (115) E.L.T. 865 (Commr. Appl.)

- Endolabs Ltd. 2015 (325) E.L.T. 543 (M.P.)
- Premier Plastics 2010 (253) E.L.T. 117 (Tri. Del.)

5. The applicant has filed an application for condonation of delay. This delay has been attributed by the applicant was due to Covid condition.

6. A Personal hearing was fixed on 10.05.2023, 17.05.2023, 08.06.2023 & 22.06.2023. Neither the applicant Department nor the respondent appeared for personal hearing or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

7. On the issue of condonation of delay, Government notes that the OIA dated 13.02.2020 was issued on 13.02.2020. The applicant has claimed that the OIA was received by him on 17.02.2020. The application has been filed on 29.06.2020. Government notes that during the appealable period, due to the prevalent Covid conditions, the Apex Court had granted a moratorium for filing appeals etc. from 15.03.2020 to 28.02.2022 [Misc. Appln. No. 21/2022]. The applicant has filed the Revision Application on 29.06.2020. Considering the said moratorium period granted by the Apex Court, it is seen that the applicant had filed the revision application within time and therefore, Government hereby, condones the delay and proceeds to decide the case.

8. Government has carefully gone through the relevant case records available in case files, the written and oral submissions and also perused the impugned Order-in-Original and the Order-in-Appeal.

9. Government notes that the Commissioner (Appeals) vide the impugned Order-in-Appeal has rejected the appeal as the applicant failed to comply

with a key requirement from Rule 4 of the Re-export of imported goods (Drawback of Customs duties) Rules, 1995. It states that when goods are exported other than by post, the exporter must specify on the shipping bill or bill of export the necessary details, including the description, quantity, and other particulars to determine their eligibility for drawback under section 74 of the Customs Act. The exporter must also make a declaration on the relevant shipping bill or export, indicating three key points: (i) the export is being made with a claim for drawback under section 74 of the Customs Act, (ii) that customs duties were paid on the imported goods, and (iii) that the imported goods were either not used after importation or were used under the exemption granted by the Commissioner of Customs. One of the grounds for rejecting the drawback claim is that the appellant did not make this required declaration at the time of re-exporting the imported goods. While the appellant has argued that they made the declaration related to the claim of drawback, they did not dispute the fact that they failed to make the specific declaration indicating whether the goods were taken to use on the basis of being exempted by the Commissioner of Customs. The importance of this criteria, which involves the condition that the goods must be new and should not have been used, has been underscored in the revision order issued by the Government of India in the case of Eveready Industries India Ltd. in 2018 (364) E.L.T. 1123 (G.O.I.).

10. The applicant has contented that they have met the declaration requirement regarding the imported goods being new or not used based on the production of a certificate from a chartered engineer and import-related documents. The contention that the appellant has fulfilled the declaration requirement regarding the goods imported, specifically whether they were new or used, by producing a certificate from a chartered engineer and related import documents is not sufficient. While the appellant may have provided these documents for the purpose of identifying the goods and facilitating the re-export process, it's important to understand the specific requirements of the declaration mentioned in the rules. The declaration under Rule 4 of the

Re-export of imported goods (Drawback of Customs duties) Rules, 1995, is not just about identifying the goods but also explicitly stating that the goods have not been used after importation, or if they were used, this was done under the permission or exemption granted by the Commissioner of Customs. It is a legal requirement to make these declarations at the time of export for the purpose of claiming drawback under section 74 of the Customs Act, 1962. Applicant's claim does not fulfill the specific declaration requirements outlined in the rules. Therefore, the argument that the appellant has adequately made the required declaration regarding the usage status of the imported goods is contradicted by the fact that these specific declarations were not made at the time of export, as stipulated by the rules.

11. One of the prerequisites for claiming drawback under section 74 of the Customs Act, 1962 is that the goods being exported must be new and should not have been previously used. In this case, the appellant has not contested the finding in the impugned order, which stated that they did not provide the required declaration as per Rule 4 of the Re-export of imported goods (Drawback of Customs duties) Rules, 1995. This declaration should have confirmed that the imported goods were not put to use after their importation, or if they were used, it was with proper permission or exemption. Even in the current Revision Application, the appellant has not presented any evidence to demonstrate that they met the condition that the goods imported were not used after importation or were used with the necessary permission for exemption. Therefore, the appellant failed to make the requisite declaration or furnish evidence to establish compliance with this criterion. Consequently, their claim for drawback under section 74 of the Customs Act, 1962 has been rightfully rejected and should be upheld.

12. Government notes that the Adjudicating Authority has observed that as per Notification No. 94/96-Cus dated 16.12.1996, goods exported under the Duty Exemption Scheme (DEEC) should be re-imported within one year of exportation, with a possible extension of one more year granted by the

Commissioner of Customs on sufficient cause being shown. In the instant case, the goods were exported under the DEEC in May 2015, June 2015, and April 2016, but they were re-imported on 13.06.2017, which is after one year from the date of exportation. Therefore, the claimant is not eligible for duty drawback, as the re-importation did not meet the required timeline of one year as specified in the proviso of the notification. Therefore, the conclusions arrived at in the impugned Order-in-Original and Order-in-Appeal in this regard were just and proper.

13. In view of the above discussion and findings, Government, upholds Order-in-Appeal No. AHD-CUSTM-000-APP-621-19-20 dated 13.02.2020 passed by the Commissioner (Appeals) and rejects Revision Application as devoid of merits.

Shrawan 27/10/23

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

ORDER No. 797 /2023-CUS (WZ) /ASRA/Mumbai dated 27.10.23

To,

M/s Navin Fluorine International Limited,
2nd Floor, Suntec Centre,
37/40, Subhas Road,
Vile Parle East, Mumbai-400057.

Copy to:

1. Pr. Commissioner of Customs, Ahmedabad.
2. Commissioner of Customs (Appeals), Ahmedabad.
3. Sr. P.S. to AS (RA), Mumbai.
4. Spare Copy.