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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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F.No. 371/214/DBK/14-RA/3151

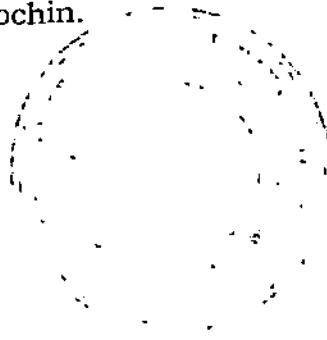
Date of Issue 29.10.2018

ORDER NO. 847/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 25.10.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : M/S.Kanakasree Exports.

Respondent: Commissioner of Customs, Air Cargo Complex,
Trivandrum.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in- Appeal No.18-41/2014-CUS-TVM-EXCUS-APP-105-128-13-14 dated 26.02.2014 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.

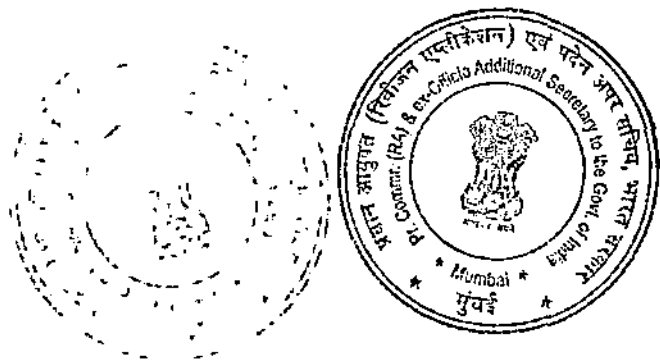


ORDER

The instant Revision Application is filed by M/S. Kanakasree Exports, Kanakasree Nadakkal, Vilavoorkonam, Kollam, Kerala-691578 against the Order in Appeal No.18-41/2014-CUS-TVM-EXCUS-APP-105-128-13-14 dated 26.02.2014 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin in respect of Order-In-Original No.02/2013 Cus dated 07.03.2013 passed by the Assistant Commissioner of Customs, Air Cargo Complex,Thituvananthapuram.

2. Brief facts of the case are that M/s. M/S. Kanakasree Exports(herein after referred to as the applicant) had availed drawback under Customs and Central Excise Duties and Service Tax Drawback Rules, 1995 on export of fruits and vegetables. As per the Rule 8 of the said Rules, no amount of drawback shall be allowed, if the amount or rate of drawback is less than one per cent of the FOB value thereof, except where the amount of drawback per shipment exceeds five hundred rupees. It appeared that the amount drawback sanctioned was less than 1 % of the FOB value of the entire Shipping Bill. Hence, the sanctioned drawback was demanded from the applicant under Rule 16 of the Customs,Central,Excise and Service Tax Drawback Rules,1995 read with Section 75 A(2) of the Customs Act,1962. The said demand was dropped by the Original Adjudicating Authority holding the sanction of drawback amount as correct and in conformity with the relevant rules. The order in original was reviewed and appealed before the Commissioner (Appeals) and who allowed the appeal on grounds that the Order of the original Authority is in contravention of the Rule 8 of the Drawback Rules. Aggrieved by the Order-in-Appeal, the applicant has filed the instant Revision Application.

3. Personal Hearing was held on 23.10.2018.Mr.J.P.Mishra Manager appeared on behalf of the applicant and reiterated the submissions made in



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Revision Application pleading for allowing the Revision Application. No one appeared from the Department.

4. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the applicant's submissions.

5. The applicant's main submissions are that:

i) The dispute belatedly raised by the department was that the drawback sanctioned to the applicant was less than one per cent of the FOB value of the and hence inconsistent with Rule 8 Drawback Rules. However the original authority has rightly held that as per Section 76 (c) of the Customs Act, 1962 drawback cannot be claimed only in such cases where the drawback amount is less than Rs.50. Therefore provisions of the Customs Act, 1962 prevail over the Rules.

ii) Drawback being equivalent to refund, proceedings ought to have initiated by the department under Section 28 of the Customs Act, 1962 and therefore, the initiation of belated proceedings towards erroneous sanction of drawback is totally against law and merits no consideration

6. The Government finds that Customs and Central Excise duties and Service Tax Drawback Rules, made in terms of Section 75 (2) of the Customs Act, 1962, lays down procedure for claiming drawback, date of determination of rate, when drawback is non-allowed, procedure for recovery of drawback etc.,. Rule 8 of the said Rules deals with cases where no amount or rate of drawback is determined and the said Rule is reproduces as below:

“(1) No amount or rate of drawback shall be determined in respect of any goods under rule 3, rule 6 or, as the case may be, rule 7, the amount or rate of drawback of which would be less than one per cent of the F.O.B. value thereof, except where the amount of drawback per shipment exceeds five hundred rupees. Provided that this sub-rule shall not apply in the case of -



(a) drawback on exports made in discharge of export obligation against an Advance Licence issued under the Export and Import Policy notified by the Central Government under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), or
(b) export made by post”.

7. The minimum amount of drawback admissible is in proportion to the F.O.B value of exports and the same shall not be less than 1% of the F.O.B value of the exported goods except in respect of shipment where the drawback amount is more than Five Hundred Rupees. In other words, when the amount of drawback is less than Rs.500, it should not be less than 1% of F.O.B value of exports.

8. The Government observes that all the exports made by the applicant under purview of the current Revision Application are less than Rs.500 and therefore, the drawback amount claimed shall not be less than 1 % of F.O.B Value of exports and since the claim amount is less than the 1 % FOB value of the shipment, the claim, therefore, is not admissible under Rule 8 of the Drawback Rules.

9. The Government notes that Section 76 deals with 'Prohibition of Duty Drawback in certain cases'. It lays down that no drawback shall be allowed in respect of any goods the market price of the goods is less than the amount of drawback; or where the amount of drawback is due in respect of any goods is less than fifty rupees. Section 76 prohibits sanctioning of drawback in cases where drawback is admissible but the amount is less than fifty rupees. Under Rule 8 of the Drawback Rules, in respect of exports by post and exports made under advance authorisation scheme, no minimum amount of drawback is prescribed. However, Section 76 prohibits sanctioning of drawback in such cases if the due amount is less than fifty rupees. Therefore, the applicants' understanding that Section 76 prescribes the minimum eligible amount of drawback amount is erroneous and nothing but misunderstanding of the Statute.



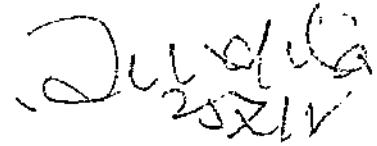
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10. The Government further finds that recovery proceedings in the instant case towards recovery of drawback, which the applicant is not entitled, are in conformity with the Rule 16 of Drawback Rules.

11. In view of the above discussion and findings, the Government do not find any infirmity with the Order of the Commissioner (Appeals). Hence Order-In-Appeal No.18-41/2014-CUS-TVM-EXCUS-APP-105-128-13-14 dated 26.02.2014 is upheld and Revision Application is dismissed.

12. So ordered.



(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 843/2018-CUS (SZ) /ASRA/

DATED 25.10.2018

To,

M/S.Kanakasree Exports,
Kanakasaree Nadakkal,
Vilavoorkonam P.O,
Kalluvathukkal, Kollam-691578.

Copy to:

1. The Commissioner of Central Goods & Service Tax, GST Bhavan, Press Club Road, Thiruvananthapuram-695001.
2. The Commissioner of Customs (Appeals), C.R.Building.I.S.Press Road, Cochin-18.
3. Assistant Commissioner of Customs, Drawback, Air Cargo Complex, Thiruvananthapuram-695001.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard File.
6. Spare Copy.

