

F.No. 375/87-95/DBK/2018-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue...07/05/2021

Order No. 86-94/21-Cus dated 07-05-2021 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. JNK-EXCUS-APP/70-78/2018 dated 28.05.2018, passed by the Commissioner (Appeals), CGST, Customs and Central Excise, Jammu.

Applicant : M/s Sinochem Impex, Amritsar

Respondent : Commissioner of Customs (Preventive), Amritsar

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**ORDER**

Revision Application Nos. 375/87-95/DBK/2018-RA, all dated 17.08.2018, have been filed by M/s Sinochem Impex, Amritsar, (hereinafter referred to as the Applicant) against the Orders-in-Appeal Nos. JNK-EXCUS-APP/70-78/2018 dated 28.05.2018, passed by the Commissioner (Appeals), CGST, Customs & Central Excise, Jammu. Commissioner (Appeals), vide the above-mentioned Orders-in-Appeal, has allowed the appeals of the respondent department on the ground that the applicant had not filed the drawback claims within prescribed time period of three months, in terms of Rule 5 (1) of Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995.

2. Brief facts of the case are that the applicant filed 09 drawback claims, under Section 74 of the Customs Act, 1962, read with the provisions of Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995, with the Deputy/Assistant Commissioner of Customs, Land Customs Station, Rail Cargo, Amritsar, for a total amount of Rs.16,00,530/-. The said claims were sanctioned by the jurisdictional Deputy/Assistant Commissioner of Customs. However, on review, it was observed by the office of respondent that the applicant had not filed the drawback claims within the prescribed time period of 3 months from the date on which an order permitting clearance and loading of goods for exportation under Section 51 of the Customs Act, 1962, is made by the proper

officer of Customs, in terms of Rule 5 (1) *ibid*. Thus, aggrieved, the respondent filed appeals before the Commissioner (Appeals), which have been allowed.

3. The revision application has been filed by Applicant, mainly, on the ground that the subject Bills of Export had been provisionally assessed for chemical testing and that they had filed the drawback claims within seven days from the date of finalization thereof and hence there was no delay on their part in filing the drawback claims.

4. Personal hearing, in virtual mode, was fixed on 24.03.2021 and 19.04.2021. Sh. Sudhir Malhotra, Advocate, appeared on 19.04.2021 for the applicant. He stated that the export consignments were provisionally assessed, which were finally assessed after chemical testing. The triplicate copy of the Bills of Export bear the department's stamp indicating date of finalization of assessment where after the triplicate copies were handed over to them. As per sub-rule (2) of Rule 5, triplicate copy has to be necessarily filed with the claim. Therefore, they could file the claim only after the triplicate copies were handed over to them. In the circumstances, the limitation has to be counted only from the date finalization of provisional assessment. None appeared on behalf of the respondent on both the dates. Further, no request for adjournment has been

made by the respondent. Therefore, the case is being taken up for final decision, on the basis of facts available on record.

5.1 Government has examined the matter. The subject drawback claims were filed under Section 74 of the Customs Act 1962, read with Rule 5(1) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 in respect of the duty paid on the goods which were earlier imported. The basic ingredient for claiming drawback under Section 74 is that the identity of the goods is established to the satisfaction of Assistant/Deputy Commissioner of Customs. As per sub-rule (1) of Rule 5 of the Drawback Rules, 1995, the drawback claim has to be filed within three months from the date on which an order permitting clearance and loading of goods for exportation under Section 51 of the Customs Act, 1962, is made by the proper officer of Customs. Further, as per sub-rule (2) of the Rule 5, the exporter is inter-alia required to file the triplicate copy of the Shipping Bill (i.e. the Drawback copy) alongwith the claim of drawback.

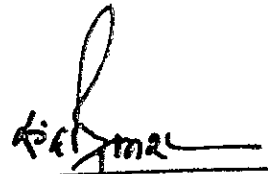
5.2 In the present case, samples were drawn from the export goods and the Bills of Export were provisionally assessed subject to chemical testing. Pending finalization of assessment, the goods were allowed to be exported. Apparently after the receipt of the chemical test reports, the assessment was finalized and the drawback copies of the relevant Bills of Export were handed over to the

exporter who thereafter filed the subject claims of drawback. As already brought out, establishing the identity of the goods is a basic ingredient to be satisfied for claim of drawback under section 74. Thus, in the present case, the goods being chemical in nature, the exporter could not have claimed the drawback till the assessment had been finalized after identity of the goods had been conclusively established by chemical testing and the department could not have sanctioned the claim without this requirement being fulfilled. Further, drawback copy of the shipping bill was available to the applicant only after the assessment had been finalized. Thus, in case, the applicant was to file the claim within three months of the date of Let Export Order, the identity of the goods could not have been conclusively established nor the claim could have been accompanied by the drawback copy of the bill of export. In such a situation, the claim would have been liable for rejection for non-compliance with the requirements of Section 74 read with Rule 5 (2) for no fault of the applicant. On the other hand, as the applicant waited for the assessment to be finalized and thereafter filed the claim alongwith the drawback copies of the bills of export, the claims have been rejected under Rule 5 (1) on the grounds of delay.

5.3 The Government observes that, in the interests of justice, the requirements of sub-rule (1) and sub-rule (2) of Rule 5 need to be reconciled in a manner so that the basic requirement of the parent statute i.e. section 74 is fulfilled. In the present case, as already observed above, the basic

requirement of section 74, i.e., the establishment of the identity of the goods, could not have been met till the assessment was finalized after it was conclusively established by chemical testing that the description and composition of the goods re-exported was same as the goods originally imported. In this view of the matter, the Government holds that, in the present case, the time taken by the department in finalization of assessment be excluded from the total time taken by the applicant in filing of the drawback claims and the limitation period of three months, prescribed under Rule 5 (1), may be counted accordingly. Thus, the matter is remanded to the original authority to, after due verification with records, calculate the limitation period in accordance with the findings above and thereafter, if the period so determined is three months or less, the drawback shall be sanctioned.

6. In view of the above, the orders of the authorities below are set aside and the revision application is allowed by way of remand to the original authority with directions, as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Sinochem Impex,  
Chem House, Champion Street,  
Opposite Kidzee School Batala Road,  
Amritsar – 143001.

Order No. 86-94/21-Cus dated 07-05-2021

Copy to:

1. The Commissioner of Customs, Preventive, Customs House, Central Revenue Building, The Mall, Amritsar – 143001.
2. The Commissioner of CGST, Central Excise and Customs (Appeals), OB-32, Rail Head complex, Jammu.
3. Sh. Sudhir Malhotra, Advocate, Chamber No.103, C.K. Daphtary Lawyer's Chambers, Supreme Court of India, New Delhi.
4. PA to AS(RA)
5. Guard File.
6. *Spare Copy,*

Attested

*ATM*  
*7/5/21*

Section Officer (Revision Application)

**ASHOK TOMER (RA)**

Superintendent

Customs & Central Excise Delhi-I  
C. R. Building, ITO, New Delhi