

REGISTERED
SPEED POST



F.No. 375/38/DBK/2016-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...31.8.18...

Order No. 87/18-Cus dated 01-8-2018 of the Government of India passed by Shri R.P.Sharma, Principal Commissioner & 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. 36-45 Cus/Apl/Lko/2016 dated 14.01.2016, passed by the Commissioner of Customs, Central Excise, and Service Tax (Appeals), Lucknow

Applicant : M/s Emco Exports

Respondent: Commissioner of Central Excise, Customs & Service Tax, Agra

ORDER

M/s Emco Exports (hereinafter referred to as the applicant) has filed a revision application No. 375/38/DBK/2016-RA dated 04.05.2016 against the Commissioner (Appeals)'s Order No. 36-45 Cus/App/Lko/2016 dated 14.01.2016 whereby their appeal against OIO dated 06.11.2013, passed by the Assistant Commissioner of Customs, Inland Container Depot, Agra, was partially allowed. The Assistant Commissioner had, vide his above-mentioned order, confirmed the recovery of total Duty Drawback, which was sanctioned earlier to the applicant as per all Industry rate, under Rule 16 of the Customs, Central Excise and Service Tax Drawback Rules, 1995 on the ground that the applicant had procured the packaging materials, used in the exported products, duty free against 'H' form. However, the Commissioner (Appeals), vide his above-mentioned Order in Appeal, restricted the recovery of Drawback relating to the packaging materials only and allowed drawback on other inputs.

2. The revision application has been filed by the applicant mainly on the ground that the All Industry Rates are average rates and the department cannot check duty paid character of inputs; that the inputs were not procured under Rule 19(2) of Central Excise Rules, 2002; that the inputs were procured from unregistered SSI units against 'H' form; that no method/authority is prescribed for reduction of all industry rates of drawback under the Drawback Rules, 1995 and the recovery of drawback can be effected within a reasonable period only.

3. Personal hearing in this case was fixed on 19.06.2018. However, it was not availed by the applicant. Instead, the applicant furnished

submissions dated 18.06.2018 and requested that their case may be decided on the basis of their revision application and the additional submissions. In their additional submissions, it is also pleaded that Assistant Commissioner, ICD, Agra vide his RTI reply dated 31.05.2018 has admitted that All Industry rate of Drawback has neither been denied not reduced from the amount of AIR Drawback payable to exporters of footwear exporting through ICD, Agra after issuance of Modus Operandi Circular No. 01/2013 dated 09.05.2013. However, no one from department appeared for personal hearing and no request for any other date of hearing was received from which it is implicit that they are not interested in availing the personal hearing.

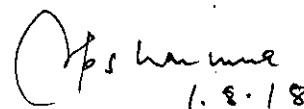
4. The Government has examined the matter and found force in the argument of the applicant that the All Industry Rates of Drawback are fixed by the Government after considering the average incidence of duty and taxes on the inputs and services used in the exported products. Thus these are general rates and drawback at All Industry Rates is payable in respect of the export goods to the exporter without examining the duty paid character of each input. The applicability of these rates to different commodities is certainly subject to Drawback rules, 1995 and Notifications No. 68/2007-Cus (NT) dated 16.07.2007, 103/2008-Cus (NT) dated 29.08.2008, 84/2010-Cus (NT) dated 17.09.2010 and 68/2011-Cus(NT) dated 22.09.2011. One of such conditions stipulated in all the above said notifications as per which the All Industry Rate shall not be applicable to a commodity was that the exported goods should not have been manufactured or exported by availing the rebate of duty on material used in the manufacture of such commodity or manufactured or exported in terms of sub rule (2) of Rule 19 of Central Excise Rules, 2002. But no

such case has been made out in the Order-in-Original and Order-in-Appeal that the applicant had manufactured and exported the goods by availing the rebate of duty on inputs or by availing the facility provided under sub Rule (2) of Rule 19 of Central Excise Rules, 2002. Therefore, there is no basis for denying the Drawback of duty at All Industries Rate in this case or restricting it to few inputs only for the reason that the packaging materials were procured without payment of duty from unregistered units. Commissioner (Appeals) has considered the procurement of inputs from unregistered units without payment of duty at par with procurement of inputs under Rule 19(2) of Central Excise Rules, 2002 and accordingly upheld the denial of drawback in respect of packaging material in the light of above discussed condition prescribed in the above said Notifications No. 68/2007-Cus (NT) dated 16.07.2007, 103/2008-Cus (NT) dated 29.08.2008, 84/2010-Cus (NT) dated 17.09.2010 and 68/2011-Cus(NT) dated 22.09.2011. But, such equation is not supported by the said condition as it only talks about the manufacture or export of goods in terms of Rule 19(2) of Central Excise Rules, 2002 and procurement of inputs duty free against the form 'H' etc. is not made a disqualification anywhere under the Drawback Rules or Notifications No. 68/2007-Cus (NT) dated 16.07.2007, 103/2008-Cus (NT) dated 29.08.2008, 84/2010-Cus (NT) dated 17.09.2010 and 68/2011-Cus(NT) dated 22.09.2011. Conflating procurement of inputs against form 'H' with procurement of inputs under Rule 19(2) of Central Excise Rules, 2002 clearly amounts to re-writing of above said condition of Notifications No. 68/2007-Cus (NT) dated 16.07.2007, 103/2008-Cus (NT) dated 29.08.2008, 84/2010-Cus (NT) dated 17.09.2010 and 68/2011-Cus(NT) dated 22.09.2011 for which Commissioner (Appeals) is not a competent authority. Accordingly, the

Commissioner (Appeals) has also erroneously placed reliance on Government of India's order in the case of Sterling Agro Industries Ltd 2011(269) ELT0113 (G.O.I.) wherein the inputs were procured duty free under Rule 19(2) of Central Excise Rules, 2002 and not against form 'H'. As regards the issue whether the field officers are empowered to examine the duty paid character of each input before sanctioning the Drawback of duty at All Industries Rate, the Government does not have any hesitation in saying that no such power is conferred upon any field officer under the Drawback Rules, 1995, or Notifications No. 68/2007-Cus (NT) dated 16.07.2007, 103/2008-Cus (NT) dated 29.08.2008, 84/2010-Cus (NT) dated 17.09.2010 and 68/2011-Cus(NT) dated 22.09.2011. The first proviso to Rule 3 of Drawback Rules, 1995 does not designate any field officer as proper officer to reduce the rates of drawback by considering the unpaid character of one or few inputs apparently because such examination at the field officer level will lead to utter chaos and will defeat the very purpose of fixing All Industry Rates on the basis of which drawback is granted even on the exported goods procured from open market in respect of which duty paid character of inputs is not known and cannot be verified. Even the Central Board of Excise and Custom has clarified, vide Circular No. 24/2001-Cus dated 20.04.2001 and Circular No. 19/2005-Cus dated 21.03.2005, that it is not open for the field formation to question as to how the rate has been determined in the case of individual export goods and to probe whether certain exempted inputs have been used in the manufacture of the same. Considering the above discussed analysis of Drawback Rules, 1995 and Notifications No. 68/2007-Cus (NT) dated 16.07.2007, 103/2008-Cus (NT) dated 29.08.2008, 84/2010-Cus (NT) dated 17.09.2010 and 68/2011-Cus(NT)

dated 22.09.2011, the Government agrees with the contention of the applicant that the Commissioner (Appeals) has passed the Order-in-Appeal erroneously by denying the drawback of duty on packaging materials on the ground that these were procured without payment of Central Excise duty from unregistered unit against form 'H' issued by the state VAT. The error of denying the drawback in the above situation seems to have been realised by the respondent itself subsequently in as much as no such action was initiated against any of such exporter after show cause notice was issued in this case as per the RTI reply of the Deputy Commissioner, ICD, Agra itself.

6. Accordingly, the Order-in-Appeal No. 36-45/Cus/App/LkO/2016 dated 14.01.2016 is set aside and revision application of the applicant is allowed.


1.8.18

(R.P.Sharma)

Additional Secretary to the Government of India

M/s Emco Exports,
617-618, Opp. Sherjung Durgah,
Artoni, Agra.

ATTESTED


01/08/18

(Ravi Prakash)

OSD (REVISION APPLICATION)

Order No. 87/18-Cus dated 01-8-2018

Copy to:

1. Commissioner of Central Excise, Customs and Service tax, Agra, 113/4, Sanjay place, Agra 282002
2. The Commissioner of Customs, Central Excise & Service Tax (Appeals), Hall No. 2, 8th floor, Kendriya Bhawan, Aliganj, Lucknow - 226024
3. Deputy/Assistant Commissioner of Customs, Inland Container Depot, East Bank, Rear Taj View, Moti Mahal, Agra.
4. Sh. Anil Singh Sisodia, Advocate, B-35, Pratap Nagar, Agra - 282010
5. PS to AS(RA)
6. Guard File.
7. Spare Copy