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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No.373/145/DBK/13-RA

Date of Issue 29.07.2020

ORDER NO. 93/2020-CUS (SZ) / ASRA / MUMBAI/ DATED 02.07.2020
OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA ,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY
TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE
CUSTOMS ACT, 1962.

Applicant: M/s Shamlom Garments Pvt. Ltd.,
216, Main Road, Vallioor,
Tirunelveli Dt.- 627 117.

Respondent :The Commissioner of Customs, Cochin.

Subject : Revision Application filed, under Section 129DD of
the Customs Act, 1962 against the Order-in-
Appeal No.55/2013 dated 20.09.2013 passed by the
Commissioner of Customs (Appeals), Cochin.



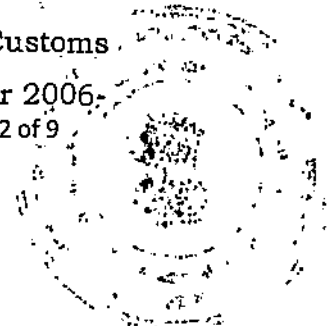
ORDER

The Revision Application is filed by M/s Shalom Garments Pvt. Ltd., 216, Main Road, Vallioor, Tirunelveli Dt.- 627 117(herein after referred to as 'the applicant') against the Order in Appeal No.55/2013 dated 20.09.2013 passed by Commissioner of Customs(Appeals), Cochin-682 009, in respect of Order in Original No.03/2011 dated 06.09.2011 passed by the Assistant Commissioner of Customs (DBK), Custom House, Cochin.

2. Brief facts of the case are that the applicant are exporters of garments through port of Cochin and Tuticorin. The applicant filed eight Shipping Bills as detailed below for export of readymade garments under duty drawback scheme.

Sr. No.	Shipping Bill No. / Date	Drawback Amount paid (Rs.)
1	1367433/07.04.2006	22,067/-
2.	1367432/07.04.2006	22,613/-
3.	1369465/20.04.2006	43,710/-
4.	1371537/28.04.2006	18,950/-
5.	1375343/19.05.2006	16,270/-
6.	1389538/29.07.2006	24,030/-
7.	1389541/29.07.2006	32,562/-
8.	1430796/12.02.2007	47,192/-
	TOTAL	2,27,394/-

In respect of all the above mentioned shipping bills, the Customs sanction of drawback was sanctioned and released during the year 2006.



2007. On 16.01.2009, the applicant addressed a letter to the department submitting the list of shipping bills where drawback amounts were pending and requested for release of the balance drawback amount in respect of the Central Excise portion. The applicant further submitted the BRC for the shipping bills vide letter dated 17.07.2009. However, the applicant did not file supplementary claims for the amount of drawback claimed to be paid less as required under the provisions of Rule 15 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The applicant submitted that as per All Industry Rate, they were entitled to a drawback amount of Rs. 8,55,760/- as against Rs. 2,27,394/- disbursed to them. The issue was taken up with department only in the year 2009 and they were not bound to file supplementary claim within time limit specified in Rule 15 of Drawback Rules. The adjudicating authority vide Order in Original No. 3/2011 dated 06.09.2011 rejected the Central Excise portion of duty drawback for non-submission of the supplementary claim as required under the Drawback Rules.

3. Aggrieved by the said order, the Applicant filed appeals before Commissioner (Appeal) on the following grounds :-

3.1 As per Rule 15, a supplementary claim in proper format is to be filed within a period of one year from the date of settlement of the original claim and the applicant averred that this claim does not come under the ambit of Rule 15 of Drawback Rules.

3.2 The applicant had opted to avail the All Industry Rate of Drawback and not the Brand Rate.

3.3 Since there was no revision of the said rate, the question of filing the supplementary claim did not arise.

3.4 The applicant had also declared that the Cenvat Credit was not availed by them.



4. The Appellate Authority vide impugned order in appeal upheld the Order in Original. The Appellate Authority observed that the Central Excise portion of the drawback claim was not sanctioned by the department since the applicant had not produced any evidence of not having availed Cenvat Credit. As such, a claim for the Central Excise portion of the drawback with adduced evidence of non-availment of Cenvat Credit became a supplementary claim and hence would be governed by the provisions of Rule 15 of the Drawback Rules.

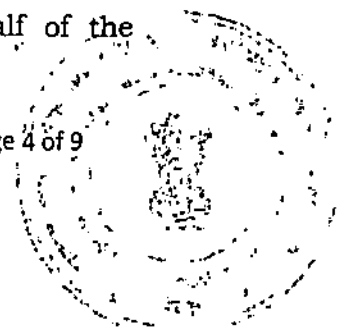
5. The applicant contested the impugned Order in Appeal passed by the Appellate Authority in the instant Revision Application on following grounds :-

5.1 The Appellate Authority has passed a non-speaking order without considering the pleas raised by the applicant.

5.2 The Revision Authority in the case of Tube Investments of India has held that Customs Officers are not authorised to make any reduction from the rate of amount of drawback fixed reported in 1997(91) ELT 474 (GOI).

5.3 The Appellate Authority has wrongly observed in Para 6 that Central Excise portion of drawback claimed was not sanctioned by the department since applicant had not produced any evidence for non availment of Cenvat Credit naturally becomes a supplementary claim and as such will be governed by provisions of Rule 15 of the Drawback Rules. This is a wrong interpretation.

5. Personal Hearing was held on 10.12.2019. Shri V. Vincent, Manager and Shri C. Poojary, Ex. Assistant attended the same on behalf of the applicant. They stated that they have submitted BRCs within 6 months and did not claim supplementary claim as they were not aware of the procedure. They also reiterated the grounds of Revision Application. No one attended the personal hearing on behalf of the department.



6. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the rival submissions.

7. In the instant case, the Government finds that the applicant had filed the drawback claim under Rule 3 of the Drawback Rules, 1995. Under Rule 3 of the Customs and Central Excise duties Drawback Rules, 1995, the Government of India fixes the rates of Drawback on various goods generally exported by different exporters. These rates are fixed taking into consideration the amount of Customs duty or the Central Excise duty or both paid on the inputs of the export product. These rates are normally reviewed once in a year or whenever there is a change in the duty structure on the inputs used in the export product. Any exporter can claim the All Industry Rate of Drawback as long as the export is in compliance with the various other provisions of Section 75 and 76 read with the Rules made there under. The Government finds that one of the documents required to be produced at the time of examination of the cargo is CENVAT Certificate/ Self declaration when the Central Excise portion of the drawback is claimed. The Government observes that the impugned drawback claim filed by the applicant was rejected for non-submission of such Cenvat Certificate to the Drawback Sanctioning authority. The applicant was also denied the drawback claim as they had not filed the supplementary claim under Rule 15 of the Drawback Rules, 1995.

8. The Government notes that the procedure for processing the Drawback Claim under EDI system with minor variations is as under :-

8.1 Procedure for claiming Drawback under the EDI System:-

The exporter has to file a shipping bill in Electronic Data Interchange (EDI) for export of goods under a claim for drawback. The electronic shipping bill itself shall be treated as the claim for drawback and there is no need for filing separate drawback claims. The scheme of computerized processing of Drawback claims under the Indian Customs EDI System is applicable for all exports except in respect of DBK claims relating to cases



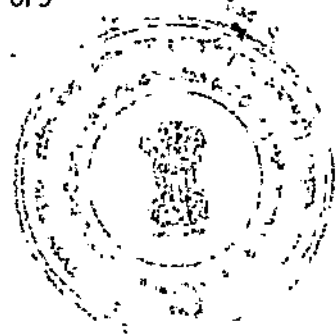
of re-export of imported goods under Section 74 of the Customs Act, 1962. The procedure for claiming drawback under the EDI system is explained below:-

- A. In the EDI system the exporter are required to open their accounts with the Bank nominated by the Custom House or a branch anywhere in India of any of banks having core banking facility of transferring the funds electronically through NEFT/ RTGS. This has to be done to enable direct credit of drawback amount to their accounts, obviating the need for issue of cheques. The exporters are required to indicate their Account No. in the declaration form called as Annex.-B along with the details of the bank through which the export proceeds are to be realised. S.D.F declaration is required in lieu of GR-1 FORM.
- B. For export of goods under claim for drawback, as per Rule 13 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 the exporters will file the claim for drawback accompanied by the following documents:-
 - a. copy of export contract or letter of credit, as the case may be,
 - b. copy of Packing list,
 - c. copy of ARE-1 wherever applicable,
 - d. insurance certificate, wherever necessary, and
 - e. copy of communication regarding rate of drawback where the drawback claim is for a rate determined by the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be under rule 6 or rule 7 of these rules.
- C. The following documents are required to be produced at the time of examination of the cargo.
 - a. **CENVAT Certificate/ Self declaration known as Annexure 1 when the Central Excise portion of the drawback is claimed.**
 - b. Duty-free finished Leather Declaration in case of leather and leather articles.
 - c. Chartered Engineer's certificate wherever applicable.
 - d. Invoice giving complete description of the goods under export. Invoice with the declaration of wool content in case of woollen carpets/floor covering.
 - e. Packing list giving weight/ quantity of individual items when the drawback is based on unit weight/ quantity.
 - f. Test-Reports/ Sample Drawn by Central Excise authorities in case of Factory Stuffed Containers in terms of P.N.03/2007 dtd. 09.02.2007 in case Drawback is based on the composition.
 - g. NOC from the respective agencies/ authorities like WLRO, ADC, APEDA, etc. wherever applicable.



- D. The steamer agents will transfer the EGM electronically to the system so that the physical Export of goods is confirmed. The system will process the claims only on receipt of the EGM.
- E. After filing of EGM and printing of EP Copy the shipping bills automatically move online to Drawback Queue in the EDI System for sanction. It may be noted that unless EGM is filed and EP Copy is printed, the shipping bills do not move online to Drawback Queue and such claims cannot be said pending with the department for drawback purpose.
- F. The drawback claims are processed through the system on first come first served basis. Superintendent is the competent authority for sanctioning drawback up to Rs. one lakh and Assistant Commissioner for above one lakh. Superintendent has to confirm whether the goods under drawback claim have been properly classified or not. He can change the classification of the goods and on changing classification; the system recalculates drawback amount.
- G. The status of Shipping Bills and sanction of drawback claim can be ascertained from the EDI Service Centre.
- H. On raising of a query the claim moves out of drawback queue to Exporter queue in the System. Such claims are not regarded pending with the Department and are deemed to have been returned to the exporter with query or deficiency memo as per Rule 13 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. As per this Rule where the exporter resubmits the claim for drawback after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed under sub-rule (1) of Rule 13 for the purpose of Section 75A of the Customs Act, 1962. The exporter or his authorised representative may obtain a printout of the query/deficiency from the Service Centre if he so desires. The claim will come in Queue of the system as soon the reply is entered.

9. The Government finds that the above procedure is being followed while processing the drawback claims under EDI System. In the instant case the drawback claim was rejected by the department for non-submission of the Cenvat Credit Certificate by the applicant. The Government opines that the department, as per the par H of the above procedure, had course open to issue deficiency memo as per Rule 13(3)(a) of the Drawback Rules, 1995 to the applicant. Though the procedure given above is not standard, the provisions of Rule 13(3)(a) of Drawback Rules, 1995 provides backing for the same. The Rule 13(3) of



Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 states that

"(3) (a) If the said claim for drawback is incomplete in any material particulars or is without the documents specified in sub-rule (2), shall be returned to the claimant with a deficiency memo in the form prescribed by the Commissioner of Customs within 10 days and shall be deemed not to have been filed for the purpose of section 75A. "

In the instant case, the Government observes that no deficiency memo was issued to the applicant as required under Rule 13(3)(a) of the Drawback Rules, 1995 before rejecting the Central Excise portion of the drawback claim filed by them. The Government observes that the impugned order does not take into consideration the requirement of issuance of deficiency memo under Rule 13(3)(a) of Drawback Rules, 1995. The Government observes that the impugned order does not take into consideration the requirement of issuance of deficiency memo under Rule 13(3)(a) of Drawback Rules, 1995. As such, the principles of natural justice were not adhered to by the drawback sanctioning authority while rejecting the impugned drawback claim. The Government therefore holds that the orders issued by the lower authorities are not just and proper.

9. The Government also observes that Rule 15 of Drawback Rules, 1995 is applicable when the exporter finds that the amount of drawback paid is less than what he is entitled to on the basis of the amount or rate of drawback determined by the Central Government or the Commissioner of Central Excise or the Commissioner of Customs as the case may be. In the instant case, All Industry Rate of Drawback was claimed by the applicant. The Government, therefore, holds that this is misinterpretation of Rule 15 of the Drawback Rules and rejection of the drawback claim on the basis of such misinterpretation is not sustainable.



10. The Government further notes that the applicant alongwith this Revision Application has submitted a declaration to the effect that Cenvat Credit has not been availed.

11. The Government based on the above discussion thus sets aside the impugned order and remands the matter to the Original Authority i.e. Assistant Commissioner (Drawback) to release the Central Excise portion of drawback subject to production of all relevant documents towards non availment of CENVAT credit by the applicant.

12. Revision Application is allowed on above terms.

13. So ordered.

(SEEMA ARORA)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

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ORDER No./2020-CUS (SZ) /ASRA/MUMBAI DATED 02.07.2020

To,

M/s Shalom Garments Pvt. Ltd.,
216, Main Road, Vallioor,
Tirunelveli Dt.- 627 117
Tamil Nadu.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

Copy to:

1. The Commissioner of Customs, Cochin, Custom House, Willingdon Island, Cochin, Kerala- 682009.
2. The Deputy Commissioner of Customs (DBK), Cochin, Custom House, Willingdon Island, Cochin, Kerala- 682009.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard File.
5. Spare Copy.

