

SPEED POST



F. No. 380/168//DBK/2016-R.A.
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.....03/01/23.....

Order No. 01 / 23-Cus dated 03-01-2023 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

SUBJECT : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 100/2016-17 dated 31.08.2016, passed by Commissioner of Customs (Appeals), Cochin.

APPLICANT : The Commissioner of Custom, Cochin.

RESPONDENT : M/s Ace Fine Pack Pvt. Ltd., Cochin.

ORDER

A Revision Application No. 380/168/SZ/DBK/2016-RA dated 22.11.2016 has been filed by the Commissioner of Customs, Cochin (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 100/2016-17 dated 31.08.2016, passed by the Commissioner of Customs (Appeals), Cochin. The Commissioner (Appeals) has, on an appeal filed by M/s Ace Fine Pack Pt. Ltd., Cochin (hereinafter referred to as the Respondent), set aside the Order-in-Original No. 08/2016 dated 22.01.2016 passed by the Deputy Commissioner of Customs (Drawback), Custom House, Cochin.

2. Briefly stated, the Respondent herein had filed a Shipping Bill No. 288 dated 17.11.2014 for re-export of inkjet coder, which was earlier imported vide Bill of Entry No. 696203 dated 06.10.2014. Subsequently, the Applicant filed drawback claim, on 08.01.2015, in terms of Section 74 of Customs Act, 1962 before the jurisdictional Customs authorities. On scrutiny of the drawback claim, the Applicant department issued a Deficiency Memo dated 22.01.2015 to the Respondent with the query that certain mandatory documents were not submitted with the drawback claim. Respondent complied with requirements specified in the Deficiency Memo only on 19.11.2015. Original authority, vide the above mentioned OIO dated 22.01.2016, rejected the drawback claim on the ground that the provisions of Rule 5 (4) (b) of Re-export of imported goods (Drawback of Customs Duties) Rules, 1995 were not complied. The appeal filed by the Applicants herein has been allowed by the Commissioner (Appeals), on the ground that the Respondent had cured all the deficiencies and submitted the requisite documents even though not within the prescribed period of 30 days.

3. The revision application has been filed, mainly, on the grounds that the Respondent had not complied with the provisions of Rule 5 (4)(b) of the Re-export of imported goods (Drawback of Customs Duties) Rules, 1995; and that as per Rule 7A the power to relax the provisions of the drawback rules vests with the Central Government and the Commissioner (Appeals) has no power to relax the provisions of Rule 5 (4). A written reply dated 18.06.2017 has been filed by the Respondent.

4. Personal hearing in the matter was held on 03.01.2023, in virtual mode. Sh. N.G. Jason, Superintendent appeared for the Applicant department and reiterated the contents of the revision application. Sh. Baby MA, Advocate appeared for the Respondent and supported the order of Commissioner (Appeals).

5.1 The Government has carefully examined the matter. It is observed that the drawback claim of the Respondent was rejected by the Applicant department for alleged non-compliance with the provisions of Rule 5(4)(b) *ibid*. Before proceeding further in the matter, it would be gainful to reproduce the said Rule 5 (4):

5. Manner and time of claiming drawback on goods exported other than by post.-

(4) (a) Any claim which is incomplete in any material particulars or is without the documents specified in sub-rule (2) shall not be accepted for the purpose of section 75A and such claim shall be returned to the claimant with the deficiency memo in the form prescribed by the [Commissioner of Customs] within fifteen days of submission and shall be deemed not to have been filed;

(b) Where exporter complies with requirements specified in deficiency memo within thirty days from the date of receipt of deficiency memo, the same will be treated as a claim filed under sub-rule (1).

5.2 On a plain reading of sub-rule 4(a) of Rule 5, it is clear that any incomplete claim shall not be accepted "for the purpose of Section 75A". Further, Section 75 A is relevant only for the purpose of interest on drawback claim. Therefore, it is apparent that if a drawback claim is incomplete, a Deficiency Memo can be issued in terms of Rule 5(4)(a), within 15 days, so as to dispense with the interest liability under Section 75A. Consequently, the time bar under clause (b) of sub-rule (4) can also be applied only for the purposes of interest under Section 75A.

5.3 Hon'ble Kerala High Court (i.e. the jurisdictional High Court) has, in the case of Travancore-Cochin Chemicals Ltd. vs. UOI {2017 (346) ELT 228 (Ker)}, held that:

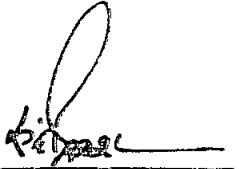
"8. The statutory mandate under R. 5(4)(a) and (b) of Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 is that any claim which is incomplete in any material particulars or is without the documents specified in sub-rule (2) shall not be accepted for the purpose of S. 75A and such claim shall be returned to the claimant with the deficiency memo in the form prescribed by the Commissioner of Customs, within 15 days of submission and shall be deemed not to have been filed. It is pertinent to note that the rule specifically mandates that the application shall be deemed not to have been filed for the purpose of S. 75A, if the application is returned to the claimant with the deficiency memo in the form prescribed by the Commissioner of Customs. When the rule specifically says that the rigor of the rule can be applied to a specific purpose, the rule can be applied for that purpose only, and not for any other purpose.

'9. Where the claimant has applied for drawback on re-export of duty paid goods only under S. 74 of the Customs Act, 1962, the time bar under R. 5(4)(a) and (b) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 cannot be applied; but it can be pressed into service, where the claim is for interest on drawback under S. 75(A) of the Customs Act, 1962. Where any claim for interest on drawback is

returned to the claimant as incomplete in any material particulars or is without the documents specified, unless the requirements specified in deficiency memo are complied within thirty days from the date of receipt of deficiency memo, the same will not be treated as claim filed under sub-rule (1) of Rule 5 of the aforesaid Rules."

5.4 In view of the above, the findings of original authority that the drawback claim, under Section 74, is barred by limitation, since the Respondent failed to comply with the Deficiency Memo issued under rule 5(4)(a), within a period of thirty days, cannot be sustained. As such, the Government does not find it to be a fit case to interfere with the relief granted by the Commissioner (Appeals).

6. In view of the above, the Revision Application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

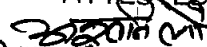
The Commissioner of Customs,
Custom House, Willingdon
Island, Cochin-682009.

Order No. 01/23-Cus dated 03-01-2023

Copy to:-

1. M/s Ace Finepack Ltd., Chittor Road Pullepady Junction, Ernakulam, Cochin-682035.
2. The Commissioner of Customs (Appeals), Custom House, Cochin-9.
3. P.S to A.S (RA)
4. Guard File
- ✓ 5. Spare Copy
6. Notice Board

ATTESTED


अश्वनी कुमार लो / Ashwani Kumar Lau
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இந்த ஆண்டு இடம் பெற்றுள்ள
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