SPEED POST

F. No. 373/249/DBK/SZ/2019-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 23/3/23

Order No. 111 / 23-Cus dated 22.3.2023 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. 45/2019-TRY(Cus) dated 26.04.2019, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli.

APPLICANT : M/s Dollar Industries Ltd., Tirupur.

RESPONDENT : The Commissioner of Customs (Preventive), Tiruchirapalli.

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ORDER

A Revision Application No. 373/249/DBK/SZ/2019-R.A. dated 26.07.2019 has been filed by M/s Dollar Industries Ltd., Tirupur (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 45/2019-TRY(Cus) dated 26.04.2019, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. TCP-CUS-PRV-JTC-019-18 dated 27.09.2018, passed by the Joint Commissioner of Customs, Tiruchirapalli.

2. Brief facts of the case are that the Applicants herein are manufactures of cotton knitted garments, falling under Chapter 61 of the Customs Tariff. The branded garments manufactured by them were partly exported under duty drawback scheme, at higher rate of drawback. Intelligence gathered by Customs Intelligence Unit, Coimbatore indicated that the Applicants had availed CENVAT credit on the inputs and input services, during the period of export, i.e., March 2011 to February 2013, and utilised the same for payment of central excise duty on domestic clearances. However, the Applicants had claimed higher rate of drawback by mis-declaring on the relevant shipping bills that they had not availed the CENVAT credit in respect of inputs and input services utilised in the manufacture of goods exported. After investigations, a show cause notice dated 13.03.2017 was issued to the Applicants herein requiring them to show cause notice as to why ineligible drawback amounting to Rs. 1,19,62,524/- may not be demanded and recovered from them under Rule 16 of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 along with applicable interest and as to why penalties, under Sections 114 & 114AA of the Customs Act, 1962, should not be imposed on them. The original authority, vide the aforesaid Order-in-Original dated 27.09.2018, confirmed the demand of the excess drawback of Rs. 1,19,62,524/- and imposed a penalty of Rs. 2,00,000/- on the Applicants herein. The appeal filed by the Applicants herein has been rejected by the Commissioner (Appeals), vide the impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that, during the relevant period, drawback @ of 7.5%/7.1%/7.9% of FOB value was available when CENVAT facility had not been availed whereas it was available at the reduced rate of 4%/2.2% of the FOB value when CENVAT facility had been availed; that they had been maintaining separate inventory for materials used for manufacture of final products which were exported and no CENVAT of excise duty paid had been availed in respect of inputs; that they had been maintaining separate accounts for domestic and export clearances in respect of GTA and Courier services and credit had not been availed in respect of these services; that credit had been availed inadvertently in respect of insurance services which was reversed along with interest; that as they had reversed the credit availed on common input services they were eligible for drawback at higher rate since reversal of credit

amounts to non-availment of credit; that penalty under Section 114 is not imposable as the goods were not available for confiscation; and that penalty under Section 114AA was also not imposable as they had not made any mis-declaratoin knowingly or intentionally.

4. Personal hearing, in virtual mode, was held on 22.03.2023. Sh. M. Karthikeyan, Advocate appeared for the Applicants and reiterated the contents of the RA with the help of compilation emailed on 22.03.2023. No one appeared for the Respondent department nor any request for adjournment has been received. Hence, it is presumed that the department has nothing to add in the matter.

5. The Government has carefully examined the matter. It is observed from the order of the original authority and the show cause notice dated 13.02.2013 that the Applicants herein had allegedly availed CENVAT credit on inputs services, namely, GTA, courier and insurance. It was the contention of the Applicants that they had maintained separate accounts in respect of GTA and courier services and the credit had been availed only in respect of insurance services, which had been reversed and intimated to the department, vide letter dated 08.03.2013. However, in the impugned order of the Commissioner (Appeals) following is recorded:

> *"2.3 Shri A.P. Ravi, Advocate attended the PH on 27.02.2019 and reiterated the written pleadings and further stated that*
> *(i) advertisement cannot be considered as common as it is used only for domestic.*
> *(ii) for remaining three services they have reversed the credit with interest.*
> *(iii) separate ledger for GTA inward and outward for export and domestic based on which reversal made.*
> *(iv) courier utilised only for domestic.*
> *(v) Insurance reversed totally.*
> *(vi) submitting certain documents and claimed the same as an evidence vouching that separate account maintained for the export and domestic accounts.*
>
> *3.1 I have carefully gone through the case details, LAA order, written and oral submission of the appellant. The main issue is availing CENVAT credits on the inputs used in the manufacture of exported goods and declaration of the appellant that he has not availed CENVAT credit on inputs. During the PH appellant stated that for common inputs services viz. GTA, Courier and Insurance which are used for both domestic and exports they have reversed the credit with interest, however no such evidence has been produced. With respect to advertisement services, they claimed it is only for domestic use. No evidence for this claim by the appellant has been produced. Further these*

documents are only accounts giving details of expenditure towards freight (inward and outward), courier expenses. This does not in any manner substantiate their claim that credit has not been taken on services used for the purpose of export. Investigation by the Dept. clearly established the misdeclaration of the availment of CENVAT credit on the exported goods and at the same time claiming drawback at the higher rate eligible for non cenvated goods. The case laws quoted by the appellant are not relevant to the present drawback issue since the basic issue pertaining to present case is the wrong declaration about the non availment of CENVAT credit for the exported product in order to avail higher rate of drawback."

From the above order of Commissioner (Appeals), it appears that in addition to GTA courier and insurance services, the issue of availment of CENVAT credit on advertisement services was also involved. Further, while the contention of the Applicants, before the original authority, was that credit was never availed in respect of GTA services and courier services, in so far as it related to goods cleared for export, the position before the Commissioner (Appeals) appears to have been that credit availed in respect of GTA was reversed whereas courier services were utilised only for domestic clearances. Therefore, there are factual contradictions in respect of (i) availment of CENVAT credit on GTA and courier services and (ii) as to whether the issue of availment of CENVAT credit on advertisement services was involved or otherwise. In this light, it would be in the interest of justice that the matter is remanded to the Commissioner (Appeals) for consideration afresh after due verification of factual position in light of contradictions brought out hereinabove and, thereafter, decide the case on merits. All issues are kept open for de-novo consideration.

6. The revision application is, accordingly, allowed by way of remand to the Commissioner (Appeals), with directions as above.

(Sandeep Prakash)
Additional Secretary to the Government of India

M/s. Dollar Industries Ltd., 8/624,
Avinashi Gounder Palayam,
Behind West Coast Industries,
Angeripalayam, Tirupur-641603.

Order No. 111 /23-Cus dated 22.3.2023

Copy to:-

1. The Commissioner of Customs (Preventive), Tiruchiraplli No. 1, Williams Road, Cantonment, Trichy-620001.
2. The Commissioner of Customs & Central Excise (Appeals), No. 1, William Road, Cantonment, Tiruchirapalli-620001.
3. M/s. Swamy Associates, 18, Rams flats, Ashoka Avenue, Directors Colony, Kodambakkam, Chennai-600024.
4. PPS to AS (RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED

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