

REGISTERED  
SPEED POST



F.No. 372/44/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..01/07/21

Order No. 120/21-Cus dated 01-07-2021 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.Kol/Cus(Port)AA/621/2018 dated 16.03.2018, passed by the Commissioner of Customs (Appeals), Kolkata

Applicant : M/s Pepsico India Holding Private Limited, Dist - Howrah

Respondent : The Commissioner of Customs, Kolkata (Port)

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**ORDER**

A revision application number 372/44/DBK/2018-RA dated 21.06.2018 has been filed by the M/s Pepsico India Holding Private Limited, Howrah (hereinafter referred to as the Applicant) against the Order-in-Appeal No. Kol/Cus(Port)/AA/621/2018 dated 16.03.2018, passed by the Commissioner of Customs (Appeals), Kolkata, whereby the appeal of the Applicant, filed against Order-in-Original No. KOL/Cus/AC/3800/DBK/2013 dated 13.03.2013, passed by the Assistant Commissioner of Customs, Drawback Department (Port), Custom House, Kolkata, has been rejected. The Assistant Commissioner had rejected the drawback claim of the Applicant under the provisions of Section 74 of the Customs Act, 1962, read with the Notification No. 23/2008-Cus dated 01.03.2008, by considering the re-exported goods as used, instead of unused goods as claimed by the Applicant.

2. The revision application has been filed, mainly, on the ground that Commissioner (Appeals) has erred in holding that the re-exported goods were 'used' as the goods were declared as unused on the face of the Shipping Bill. Further, the report of the examining officer of Customs at docks, on examination of the goods, had also confirmed that the goods were as per declaration; and that they had acted in conformity with Rule 4 and Rule 5 of the Drawback Rules.

3. Personal Hearing, in virtual mode, was held on 23.06.2021. Sh. Rohit Jain, Advocate, Sh. Ankit Singh, Sr Manager (Legal), Pepsico and Sh. Ashwini Bhatia, Advocate, attended the hearing. Sh. Rohit Jain, Advocate made the submissions on

behalf of the Applicant and reiterated the contents of the revision application. He also requested that a compilation emailed on 23.06.2021 may be taken on record. Sh. Jain highlighted that there is a specific declaration on the Shipping Bill and the Export Invoice that the goods were "unused". This declaration was verified and found correct in the Examination Report. Hence, the contention of the lower authorities that since AC (Docks) had not separately written that the goods were unused and hence drawback @98% is not admissible is incorrect; that all documents as per Rule 5(2) of the Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995, were submitted by them, as requested. The foreign remittance/BRC was neither asked for nor required to be produced as per Rule 5(2). Further no Show Cause Notice or Deficiency Memo was issued in the matter. Sh. Jain also requested for time up to Friday, 25.06.2021 to file a Synopsis, which was granted. Applicant, vide e mail dated 25.06.2021, submitted a Synopsis, which is taken on record. The respondent department has, vide letter F.No. S34M-245/2010 DBK dated 21.06.2021, stated that the department has no additional submissions to make and that the case may be decided.

5. On examination of the revision application, the Commissioner (Appeals)'s order and provisions of Section 74 of the Customs Act, 1962, it is observed by the Government that for admissibility of drawback @98%, the following ingredients need to be satisfied:-

- i) The imported goods should be capable of being easily identified;
- ii) Duty of customs should be paid on importation and the imported goods should be exported within 2 years from the date of payment of duty on imported goods or as extended by the proper officer of Customs;

- iii) The goods should be identified to the satisfaction of Assistant/Dy. Commissioner of Customs as the goods which were imported; and
- iv) The goods should be unused.

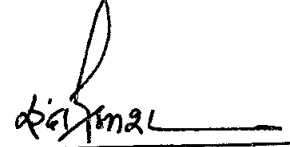
While no doubt has been expressed either by the Assistant Commissioner or by the Commissioner (Appeals), in their respective Orders, regarding fulfilment of the above mentioned first three ingredients in this case, the duty drawback has been denied on the grounds that the goods were not unused. Government observes that the Applicant has declared on the face of the Shipping Bill No. EF-150 dated 28.05.2010 that the "goods earlier imported vide B/E No. 347779 dated 14.06.2007 were kept unused in the original packing is being Re-Exported under Section 74 of the Customs Act, 1962". The caption on the Shipping Bill reads as "RE-EXPORT OF UN-USED GOOD U/S 74 OF C.A. 1962." Thus, a clear and unambiguous declaration was made on the face of the Shipping Bill to the effect that the good were unused. It would be relevant to notice here that such a declaration is required to be made in terms of Rule 4 (a) (iii) *ibid*. Identical declaration is made on the Export Invoice No. CNLN/01 dated 02.03.2010. Further, in the Examination Report dated 29.05.2010 appended on the reverse of the Shipping Bill, it is clearly stated by the examining officers and the Assistant Commissioner (Docks) that "Checked decl. w.r.t. invoice, P/L & S.B. & found in order." Thus, there is no ambiguity that the AC (Docks) has verified and found to be correct the declaration to the effect that the goods were being re-exported in unused condition in the original packing. As such, Government finds that the findings of the Assistant Commissioner of Customs (Drawback), as upheld by the Commissioner (Appeals), that the re-exported goods had been used after importation thereof as the Assistant Commissioner of Customs (Docks) had not

specifically mentioned in his report that the goods were not used by the Applicant prior to their re-export, cannot be sustained.

6. Original authority has also concluded in his OIO dated 13.03.2013 that the Drawback claim was not filed by the Applicant in accordance with the Rule 5(2) of the Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995, as the copies of inward and outward Foreign Exchange remittances/BRC had not been submitted. The Government observes that as per Rule 5(2), the documents mentioned in clauses (a) to (g) thereof have to be submitted alongwith the drawback claim. There is nothing in the OIO dated 13.03.2013 to indicate that any of these documents had not been submitted. The Government further observes that there is no specific requirement of submission of inward and outward Foreign Exchange remittances/BRC, under Rule 5 (2). However, it appears from the OIO that these documents were asked for, presumably in terms of clause (h) of Rule 5(2), but were not submitted by the Applicant herein. On the other hand, it is the contention of the Applicant that the aforesaid documents were not asked for. Irrespective of the rival contentions, it would appear that no legally sustainable reasons for asking for these documents have been brought out. It is observed that the original authority has stated that *"These documents were necessary to establish the fair depreciated value of the goods and, whether the goods were in fact, unused as claimed."* There is no indication in the OIO regarding the relevance of establishing fair depreciated value of the export goods, while considering a claim for drawback under Section 74. Further, as already held hereinabove, the fact that the goods were unused is established from the examination report of the AC (Docks). Thus, the findings of the

original authority, in the OIO dated 13.03.2013, as regards to compliance with the provisions of Rule 5(2) can also not be sustained.

6. Accordingly, the Orders of the lower authorities are set aside and the revision application is allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India

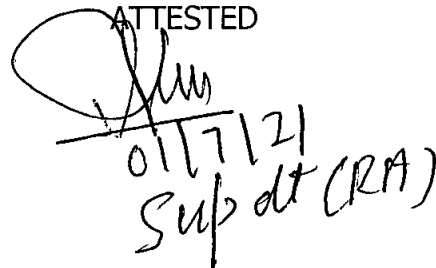
Pepsico India Holdings Pvt. Ltd,  
JL NO. 2 &4, Kendua Panchayat,  
Mouja- Jaidhulagiri, PS Sankrail,  
Howrah - 711302

Order No. 120/21-Cus dated 01-07-2021

Copy to:

1. The Commissioner of Customs (Port), 15/1 Strand Road, Customs House, Kolkata - 700 001.
2. The Commissioner of Customs (Appeals), 15/1 strand Road, Customs House, Kolkata - 700001
3. The Assistant Commissioner of Customs (Drawback) (Port), 15/1 strand Road, Customs House, Kolkata - 700001
4. PS to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED



01/07/21  
Sup dt (RA)