

REGISTERED
SPEED POST



F.No.372/45/2018-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...9/7/21...

Order No. 125/21-Cus dated 8-7-2021 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. 34/CUS/CCP-GST/2018 dated 23.03.2018, passed by the Commissioner (Appeals) CGST, Central Excise & Customs, Bhubaneswar.

Applicant : M/s Tata International Limited, Mumbai

Respondent : Commissioner of Customs (Preventive), Bhubaneswar

ORDER

Revision Application No.372/45/DBK/2018-RA dated 03.07.2018 has been filed by M/s Tata International Ltd, Mumbai, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 34/CUS/CCP/GST/2018 dated 23.03.2018, passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Bhubaneswar. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has allowed the appeal filed by the Commissioner of Customs (Preventive), Bhubaneswar (hereinafter referred to as the Respondent), against the Order-in-Original No. DC/CUS/PDP/B-Cus (Prev.)/115/2016 (R) (DBK-Re-export) dated 29.04.2016, passed by the Deputy Commissioner of Customs, Paradeep Customs Division, Custom Huse, Paradeep.

2. Brief facts of the case are that the Applicant had filed two drawback claims in respect of Shipping Bill No. 7019852 dated 03.01.2015 and 7194308 dated 13.01.2015, with the Deputy Commissioner of Customs, Paradeep Customs Division, for a total amount of Rs. 78,25,864/-, under Section 74 of the Customs Act, 1962, which were sanctioned. However, on review of the OIO dated 29.4.2016, it was observed by the office of Respondent that the goods were not examined by the Deputy/Assistant Commissioner of Customs and, hence, identity of the goods was not established to the satisfaction of Assistant/Deputy Commissioner of Custom, which is a necessary condition for claim of drawback under Section 74(1)(a) of the Customs Act, 1962. Aggrieved the Respondent filed an appeal before the Commissioner (Appeals), which was allowed.

3. The revision application has been filed on the grounds that as per Section 74, if the Assistant or Deputy Commissioner of Customs is satisfied that goods which are imported are re-exported, the drawback is admissible; that there is no condition that such satisfaction will be on physical verification by him only; that the imported goods were not removed from the Paradeep Port Prohibited area nor were they put to use for any other purpose; that the Commissioner (Appeals) has in his earlier capacity as Commissioner of Customs (Preventive), Bhubaneswar reviewed the order of the original authority and then as Commissioner (Appeals) decided the appeal against them with a biased mind; and that the OIA is not a speaking order.

4. Personal hearing, in virtual mode, was held on 07.07.2021. Sh. Narendra Dash, Advocate, made the submissions on behalf of the Applicant and reiterated the contents of the revision application. He highlighted that the Commissioner who reviewed the OIO and the Commissioner (Appeals) who decided the appeal are one and the same person. Hence, the OIA is against the principles of natural justice; that the OIA is a non speaking order where the contentions put forth by them have not been addressed; that the original authority i.e. the Deputy Commissioner who sanctioned the drawback has clearly recorded his satisfaction that the identity of goods is established. Hence, the requirement of Section 74 is fulfilled. Sh. Shridhar Das, Deputy Commissioner, appeared on behalf of the respondent and reiterated the findings of Commissioner (Appeals).

5.1 The Government has carefully examined the matter. At the outset, the Government observes that there has been a gross violation of principles of natural justice in the case in as much as the Commissioner who reviewed the order of the

original authority, himself decided the appeal in his new capacity as Commissioner (Appeals). Hence, the impugned OIA cannot be sustained on this ground alone.

5.2.1 On merits, it is observed by the Government that for admissibility of drawback under the provisions of Section 74 (1) of the Customs Act, 1962, the following ingredients are 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;
- iii) The goods are unused; and
- iv) The re-exported goods should be identified to the satisfaction of Assistant/Dy. Commissioner of Customs as the goods which were imported.

5.2.2 While no doubt has been expressed either by the Dy. Commissioner or by the Commissioner (Appeals) in their orders regarding fulfillment of the above mentioned first three ingredients in this case, the Commissioner (Appeals) denied duty drawback to the Applicant on the ground that the identity of the goods was not established to the satisfaction of the Dy. Commissioner of Customs since the goods were never examined by the Dy./Assistant Commissioner of Customs at the time of export. Government observes that Deputy Commissioner of Customs, in his OIO dated 29.04.2016, has clearly held that "it is evidently clear that the same imported goods only have been re-exported". Thus, the Deputy Commissioner was satisfied that the identity of the goods is established. In arriving at this conclusion, the Deputy Commissioner has relied upon the examination report recorded by the

Inspector & Superintendent as well as the certificate dated 26.02.2015 of the Paradeep Port Trust wherein it is certified that the goods were stored in the Port premises itself from where they were discharged for re-export. While it is true that as per departmental practice, the Assistant/Deputy Commissioner of Customs himself examines the goods to satisfy himself that the identity of the goods is established, but this practice is not codified in law. Further, in the present case, the material on record relied upon by the original authority, i.e., the Deputy Commissioner of Custom to record his satisfaction, while sanctioning the drawback, is incontrovertible. Thus, even though the departmental practice of examination by the Assistant/Deputy Commissioner of Customs himself has not been followed in this case, the satisfaction recorded by the Deputy Commissioner, while sanctioning the drawback, cannot be faulted.

5.2.3 In these facts and circumstances, the Government holds that the essential condition for granting drawback i.e. the identity of the goods had been established to the satisfaction of Dy./Assistant Commissioner has been fulfilled. Hence, the Applicant is entitled for drawback under Section 74 of the Customs Act, 1962.

6. In view of the above, the impugned Order-in-Appeal is set aside and the Revision Application is allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Tata International Limited,
Trent House, G Block, Plot No. C-60,
Bandra Kurla Complex, Bandra East,
Mumbai 40051

ORDER NO.125/21-Cus dated 8-7-2021

Copy to:-

1. The Commissioner of Goods & Service Tax, Central Excise House, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751007.
2. The Commissioner of CGST, Central Excise and Customs (Appeals), , C.R. Building, Rajaswa Vihar,, Bhubaneswar – 751007.
3. The Deputy Commissioner of Customs, Paradeep Customs Division, Paradeep Custom House, District Jagatsinghpur, Odisha - 754142.
4. Sh. Narendra Kumar Dash, Advocate & Tax Consultant, Plot No. 610, (4th Floor), Euro Gym Campus, Cuttack Road, Bhubaneswar-751 006 (Odisha).
5. P.S. to A.S.
6. Guard File
7. Spare Copy

ATTESTED


9/7/24