

SPEED POST



F.No. 375/108-110/DBK/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...22/7/21

Order No. 132-134/21-Cus dated 22-7-2021 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 Applications under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 54-56(AK)CE/JPR/2017 dated 28.02.2018 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur.
- Applicant : M/s Ratan Textiles Pvt. Ltd., Jaipur
- Respondent : Commissioner of Customs & CGST, Jaipur
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ORDER

Three Revision Applications, bearing nos. 375/108-110/DBK/2018-RA all dated 11.10.2018, have been filed by M/s Ratan Textiles Pvt. Ltd., Jaipur (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 54-56(AK)CE/JPR/2017 dated 28.02.2018 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur whereby the Commissioner (Appeals) has rejected the appeal filed by the Applicant against Orders-in-Original Nos. 304/Reb/2016 dated 23.09.2016, 382/DBK/2016 dated 02.12.2016 & 362/DBK/2016 dated 29.11.2016, passed by the Assistant Commissioner, Central Excise, Division-I, Jaipur.

2. Brief facts of the case are that the Applicant was engaged in the manufacture of Power loom Woven Made-ups Wearing apparels/Home Furnishing items. The Applicant filed claims for drawback amounting to Rs. 5,35,465/-, Rs. 4,55,801/- & Rs. 4,60,141/-, on 27.06.2016, 18.11.2016 & 01.09.2016, respectively, in respect of goods cleared for export from their SEZ unit. On scrutiny, it was observed that the Applicant had not filed the relevant shipping bills under claim of drawback, as required under Rule 12 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, as amended by the Amendment Rules of 2006, and instead the shipping bills had been filed for export of duty free goods. The claims were rejected by the original authority as the Applicant had not fulfilled the condition prescribed under Rule 12 ibid. In appeal filed before the Commissioner (Appeals), the Applicant contended that the drawback claim had been rejected on a singular ground that the SEZ unit had not filed any documents along with the Triplicate Copy

of Shipping Bill with the admissible rate and the amount of drawback. However, in the case of Third Party Export, SEZ Unit had only option in Online System to choose duty free shipping bill whereas the items exported are admissible for drawback/incentive. Since there was no provision to choose Shipping Bill with export benefit, SEZ had made the shipment on duty free goods shipping bill and had given the declaration that no benefit under duty drawback had been availed by them. The DTA exporter filed the drawback along with necessary documents and a certificate from the Commissioner stating that no benefit under duty drawback etc. had been availed. The Commissioner (Appeals), however, rejected the appeals filed by the Applicant.

3. The revision applications have been filed, mainly, on the grounds that in case of Third Party Export, SEZ Unit has only one option in Online System to choose duty free shipping bill whereas the items exported are admissible for drawback/incentive; that the DTA exporter has filed the drawback claim along with necessary documents; that a request for conversion of duty free shipping bill into the drawback shipping bill had been made to the Commissioner of Customs on 18.12.2017 which was returned as the matter was subjudice; that appealable since the export had been made and a disclaimer certificate had been produced, drawback is admissible to them.

4. Personal hearing in the matter was held, in virtual mode, on 19.07.2021. Sh. Pankaj Malik, CA appeared for the Applicant and reiterated the contents of the RAs and the written synopsis dated 16.07.2021. He stated that as per Rule 12(1)(a) of the Drawback Rules, 1995, the Commissioner has the powers to relax the provisions

of said Rule and therefore he may be directed to exercise these powers. Sh. Sandeep Payal, DC appeared for the department and submitted that the Applicant approached the Commissioner to allow conversion of free SB into drawback SB after the drawback had already been rejected and the matter was pending before Commissioner (Appeals). Therefore, the Applicant was seeking two remedies simultaneously, which is not admissible in law.

5. The revision application has been filed with a delay as the Applicant had earlier approached CESTAT in the matter which refused to entertain the appeal due to lack of jurisdiction. Delay is condoned.

6. The Government has carefully examined the matter. As per Rule 12 (1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, in the case of export other than by post, the exporters shall at the time of export of the goods -

"(a) State on the shipping bill or bill of export, the description quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback, and if so, at what rate or rates and make a declaration on the relevant shipping bill or bill of export that-

(i) a claim for drawback under these rules is being made;

(ii) In respect of duties of Customs and Central Excise paid on the containers, packing materials and materials and that service tax paid on the input services used in the manufacture of the export goods on which drawback is being claimed, no separate claim for rebate of duty or service tax under the

Central Excise rules, 2002 or any other law has been or will be made to the Central Excise authorities:

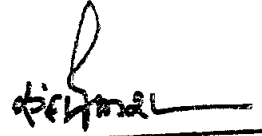
Provided that if the Commissioner of Customs is satisfied that the exporter or his authorised agent has, for reasons beyond his control, failed to comply with the provisions of this clause, he may, after considering the representation, if any, made by such exporter or his authorised agent, and for reasons to be recorded, exempt such exporter or his authorised agent from the provisions of this clause;

- (b) furnish to the proper officer of Customs, a copy of shipment invoice or any other document giving particulars of the description, quantity and value of the goods to be exported."*

In the present case, it is not disputed that the duty free shipping bill was filed instead of a shipping bill with a claim for drawback. The details as required under Rule 12 were also not declared. Therefore, it is apparent that the claim of the Applicant is not in accordance with the Rule 12 *ibid*. It is the contention of the exporter that as per proviso to Clause (a) of Rule 12, the Commissioner of Customs may exempt the exporter from the provisions of said clause. However, in the present case, such request was made only after the drawback claim had been rejected by the original authority and when the Applicant had already challenged the rejection by way of an appeal before the Commissioner (Appeals). Therefore, the Commissioner taking note of the proceedings pending before the Commissioner (Appeals), returned the papers to the Applicant without accepting the request for conversion of duty free shipping bill into the drawback shipping bill. It is also on record that this decision of Commissioner has not been challenged by the Applicant.

Therefore, the decision has become final. The plea made, at this stage, that the Government may direct the Commissioner to exercise these powers is without any authority in law as the Government does not exercise revisionary jurisdiction over the orders passed by the Commissioner. As such, it is clear that the subject claims were filed in contravention of Rule 12 and the Commissioner has not allowed any relaxation in this regard, which decision has become final. In the circumstances, the Government finds no infirmity in the decision taken by the lower authorities.

7. The revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

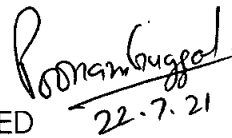
M/s Ratan Textiles Pvt. Ltd.,
F-200-201, EPIP, Sitapur Industrial Area,
Jaipur-302022.

Order No. 132-134/21-Cus dated 22-7-2021

Copy to:

1. The Commissioner of Central Excise & CGST, New Central Revenue Building, Jaipur- 302005.
2. The Commissioner (Appeals), Central Excise & CGST, NCRB, Statue Circle, Jaipur-302 005.
3. Sh. Pankaj Malik & Co., Chartered Accountant, 207-208, Shri Gopal Tower Krishna Marg, C-Scheme, Jaipur- 302001.
4. PA to AS(RA)
5. Guard File
6. Spare Copy

ATTESTED


22.7.21

(Pooam Buggal)
Subdt.