

F.No. 380/26/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...10/8/21.

Order No. 148 /21-Cus dated 10-8-2021 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 under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/Cus(PORT)/AA/1787/2018 dated 12.09.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Commissioner of Customs (Port), Kolkata

Respondent : Shri Ajay Khemka, Proprietor of M/s Ajay Apparels, Kolkata.

ORDER

A Revision Application No.380/26/DBK/18-RA dated 12.12.2018 has been filed by Commissioner of Customs (Port) Kolkata, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/Cus(Port)/AA/1787/2018 dated 12.09.2018, passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has allowed the appeal of Sh. Ajay Khemka, Proprietor of M/s Ajay Apparels, Kolkata, (herein after referred to as the Respondent) by setting aside Order-in-Original No. KOL/CUS/AC/96/DBK(PORT)/2018 dated 10.01.2018 on the ground that the drawback claims filed by the Respondent were to be treated as original claim instead of supplementary claim as being claimed by the Applicant department.

2. Brief facts of the case are that Directorate of Revenue intelligence, based on an information that the Respondent is illegally claiming and receiving huge amount of drawback incentive by inflating value of the goods exported, initiated investigations against the Respondent herein. A Show Cause Notice dated 25.09.2003 was issued to the Applicant on the basis of investigation by DRI. Commissioner of Customs (Port), Kolkata, vide Order-in-Original No. Kol/Cus/Port/09/06 dated 18.01.2006, confirmed the demand of duty drawback amounting to Rs. 55,97,463/-. Aggrieved, the Respondent preferred an appeal before the CESTAT, which vide its Order No. S-1005/A-607 dated 10.07.2006, set aside the Commissioner's OIO dated 18.01.2006. In the meanwhile, Applicant, vide letter dated 30.07.2015, instructed the disbursal bank not to release duty drawback

payment to the Respondent as their name had been included in the defaulter list. Against the letter dated 30.07.2015, the Respondent filed a petition before the Hon'ble High Court at Kolkata. Hon'ble High Court, vide Order dated 26.10.2017, directed the Applicant to decide the duty drawback claims of the respondent in respect of 15 Shipping Bills in accordance with law. Applicant, vide OIO dated 10.01.2018, rejected the drawback claims as time barred on the ground that the supplementary claims of drawback were not filed within the stipulated time period as prescribed under Rule 15(1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Aggrieved, the Respondent filed an appeal before the Commissioner (Appeals) who vide impugned OIA allowed the appeal on the ground that the drawback claims filed by the Respondent were not supplementary claims but were original claims only under the Drawback Rules. The Commissioner (Appeals) further held that the claims were not time barred, even if these were to be considered as supplementary claims. The instant revision application has been filed by the Applicant department, mainly, on the ground that the Commissioner (Appeals) has wrongly held that the drawback claims filed by the respondent were original claims and not the supplementary claims.

3. Personal hearing, in virtual mode, was held on 09.08.2021. Sh. Sudhir Mehta, Advocate and Sh. Ajay Khemka, Proprietor appeared for personal hearing. Sh. Sudhir mehta, Advocate made submissions for the Applicant and reiterated the contents of Revision Application and reply dated 28.03.2019. Sh. Mehta emphasized

that the subject claims were not supplementary claims. In the alternate, even if these were to be treated as supplementary claims, limitation would not apply as held by the Commissioner (Appeals). None appeared on behalf of the Applicant. Further, no request for adjournment has also been received. Therefore, the case is being taken up for final decision, on the basis of facts available on record.

4. The Government has carefully examined the matter. At the outset, it clear that the only issue to be decided here is whether the drawback claims filed by the respondent were supplementary claims or not. The Applicant department has contended that the drawback claims filed by the respondent were supplementary claims. Government observes that in the instant case the original drawback claims of the Respondent were never decided by the Applicant department whereas the question of supplementary claims arises as and when there are some changes in the drawback rates and the revised drawback rates are higher than the rates on which the original claims were decided earlier. In the instant case there was no revision of the drawback rates by the Government. The Commissioner (Appeals) has also pointed out that none of the conditions as prescribed under Rule 15 (1) *ibid*, are applicable in the instant case for a supplementary claim to be filed. In such a situation the question of filing supplementary drawback claims does not arise. Further, it is evident from the proceedings before the Hon'ble High Court that the drawback claims in respect of these 15 Shipping Bills were rejected for the first time, vide letter dated 06.07.2016, which was set aside by the Hon'ble High Court vide Order dated 26.10.2017, with a direction to decide the case after affording a

reasonable opportunity of hearing to the Respondent herein. The OIO dated 10.01.2018 has been passed in compliance of this Order dated 26.10.2017 of the Hon'ble High Court. Therefore, there is absolutely no ground to consider these claims as supplementary claims. As such, the Government holds that there is no infirmity in the order of Commissioner (Appeals).

5. In view of the above, the impugned OIA is upheld and the revision application is rejected .



(Sandeep Prakash)

Additional Secretary to the Government of India


Commissioner of Customs (Port), Kolkata,
15/1 Strand Road, Custom
House, Kolkata- 700001.

Order No. 148/21-Cus dated 10-8-2021

Copy to:

1. Sh. Ajay Khemka, Proprietor of M/s Ajay Apparels, 643C, Block-O, New Alipore, Kolkata – 700 053.
2. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata- 700001.
3. Assistant Commissioner of Customs (Port), Drawback Department, Custom House, 15/1, Strand Road, Kolkata – 700 001.
4. Sh. Sudhir Kumar Mehta, Advocate, 3, Woodburn Park, Kolkata – 700 020.
5. PS to AS(RA).
6. Guard File.
7. Spare Copy.

Attested


(LAKSHMI RAGHAVAN)
अनुभाग अधिकारी / Section Officer (RA)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi
10.08.2021