

SPEED POST



F. No. 373/524/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...01/05/23..

Order No. 169 / 23-Cus dated 01-05-2023 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. CAL-EXCUS-000-APP-447/2019 dated 29.03.2019, passed by the Commissioner (Appeal), Central Tax, Central Excise & Customs, Cochin.

APPLICANT : M/s Patspin India Ltd., Palakkad, Kerala.

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

ORDER

A Revision Application No. 373/524/DBK/SZ/2019-R.A. dated 31.10.2019 has been filed by M/s Patspin India Ltd., Palakkad, Kerala (hereinafter referred to as the Applicant), against the Order-in-Appeal No. CAL-EXCUS-000-APP-447/2019 dated 29.03.2019 (issued on 27.08.2019), passed by the Commissioner (Appeals), Central Tax, Central Excise & Customs, Cochin. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, set aside the Order-in-Original No. 18/2016 Cus(DBK) (R) dated 16.03.2016, passed by the Assistant Commissioner of Central Excise, Palakkad-I Division.

2. Briefly stated, the Applicants herein are manufacturers of cotton yarn and supplied the said goods to a SEZ Unit, namely, M/s Ocean India Pvt. Ltd., Visakhapatnam, during the period November 2014 to March 2015, under Rule 19 of the Central Excise Rules, 2002. They filed a drawback claim, amounting to Rs. 4,66,697/-, in respect of 08 bills of export under Section 75 of the Customs Act, 1962 read with Rule (3) of the Customs Central Excise Duties & Service Tax Drawback Rules, 1995, in respect of supplies so made. The drawback claim was sanctioned by the original authority, vide the aforesaid Order-in-Original dated 16.03.2016. However, on an appeal filed by the department, the Commissioner (Appeals) set aside the order of the original authority, on the grounds that the Applicants herein had failed to produce a Disclaimer Certificate from the SEZ Unit and had only submitted a certificate from the Specified Officer of the SEZ Unit regarding non-availing of drawback by the SEZ Unit.

3. The revision application has been filed, mainly, on the grounds that the Applicant had filed a drawback claim along with a certificate of the Specified Officer of the SEZ Unit affirming that the SEZ unit had not availed any drawback; that based on the said documents the original authority had sanctioned the drawback claim vide order dated 16.03.2016; that, subsequently, they had obtained the original Disclaimer Certificate from the SEZ Unit and submitted the same to the original authority, vide letter dated 20.03.2016; that, therefore, in their cross-objections, filed against the appeal filed by the department before the Commissioner (Appeals), they had brought out that it is factually incorrect to state that the drawback had been sanctioned without a Disclaimer Certificate from the SEZ Unit.

4. Personal hearing in the matter was fixed on 22.03.2023, which was adjourned to 17.04.2023 at the request of the Applicants. However, no one appeared for either side on 17.04.2023, though written submissions were filed by the Applicants vide e-mail dated 12.04.2023. In the last and final opportunity granted to 28.04.2023, the PH could not proceed due to a technical difficulty at the end of the learned Consultant of the Applicants, namely, Sh. P Sreedharan. Sh. A.M. Nandakumar, AC appeared for the Respondent department and supported the order of the Commissioner (Appeals).

Subsequently, vide e-mail dated 28.04.2023, the learned Consultant for the Applicants stated that the matter may be decided on the basis of records, including written notes submitted on 12.04.2023, without any further personal hearing. The matter is, accordingly, taken up for disposal based on written submissions.

5.1 The Government has carefully examined the matter. This case relates to a claim of drawback made by the DTA Unit in respect of goods supplied by them to a SEZ Unit. It would appear from the records that all documents, except the Disclaimer Certificate from the SEZ Unit, in terms of Board's Circular No. 43/2007-CUS dated 05.12.2007, were submitted by the Applicants herein before the original authority in support of their claim. This included a certificate from the Specified Officer of the SEZ to the effect that the drawback had not been claimed by the SEZ Unit to whom the goods had been supplied by the DTA Unit, i.e., Applicants herein. The original authority accepted the documents submitted and sanctioned the claim. However, the department filed an appeal before the Commissioner (Appeals) bringing about that, in terms of the said Board's Circular dated 05.12.2007, a claim for drawback has to be supported by a Disclaimer Certificate from the SEZ Unit as well as a certificate from the Specified Officer of the SEZ to the effect that drawback had not been claimed by the SEZ Unit. It was the department's contention that as in this case the Disclaimer Certificate was not submitted and only certificate from the Specified Officer was submitted, hence, the claim for drawback could not have been sanctioned. This contention of the department has been accepted by the Commissioner (Appeals), vide the impugned Order-in-Appeal.

5.2 The Government observes that the Circular dated 05.12.2007 was issued by the Board after the SEZ Rules, 2006 came into operation. As per Rule 30 (5) of the SEZ Rules, 2006, in case of procurement of goods from DTA, where a bill of export has been filed under the claim of drawback, SEZ Unit shall claim the drawback from the Specified Officer and in case the Unit does not intend to claim entitlement of drawback, a disclaimer to this effect shall be given to the DTA supplier for claiming such benefit. In light of this provision in the SEZ Rules, the Board has clarified that *"The Specified Officer posted in an SEZ is the appropriate authority for granting drawback in respect of goods supplied from DTA units to Developers and units in SEZ except where the unit or Developer issues a disclaimer to the DTA unit in which case the Commissionerate of Central Excise/ Customs & Central Excise having jurisdiction over the DTA Unit would sanction the drawback"*. It was further clarified that *"6. Since drawback in respect of goods supplied by DTA units to Developers or units in SEZ can be claimed by either the SEZ unit or the Developer, as the case may be, or by the DTA Supplier on the basis of the disclaimer issued by the SEZ unit or the Developer, necessary safeguard may be taken to ensure that drawback is not availed of twice on the same goods. It may be ensured that the disclaimer certificate issued by the SEZ unit or the Developer to the DTA supplier is supported by a certificate from the Specified Officer in the SEZ to the effect that drawback has not been*

claimed/availed of on the goods by the SEZ unit or the Developers, as the case may be". Therefore, there is no doubt that, as per Board's Circular, both the Disclaimer Certificate from the SEZ Unit and a certificate from the Specified Officer are required to be produced by the DTA unit to support its claim of drawback. However, it is clear from the Board's Circular that the purpose of both the Disclaimer Certificate and the certificate from the Specified Officer is to ensure that the drawback is not availed twice on the same goods. In this case, the certificate from the Specified Officer, certifying that the SEZ Unit had not claimed /availed the drawback, is on record. As such, it cannot be doubted that the drawback had not been claimed/availed twice. The Government is of the view that it is a very narrow and pedantic approach to insist upon Disclaimer Certificate from the private party and, in absence thereof, ignore the certificate of the Specified Officer to reject the drawback claim, even though with reference to the certificate of Specified Officer it can be established that the drawback has not been claimed/availed twice. Further, it is also on records that the original Disclaimer Certificate from the SEZ Unit was submitted by the Applicants herein, on 20.03.2016, after the passing of the order by the original authority on 16.03.2016. This position is said to have been brought to the notice of Commissioner (Appeals) and has not been contradicted in the Order-in-Appeal.

5.3 In these peculiar facts and circumstances of the case, the Government finds that the order of Commissioner (Appeals) cannot be sustained.

6. In view of the above, the revision application is allowed and the Order-in-Appeal impugned herein is set aside.



(Sandeep Prakash)

Additional Secretary to the Government of India

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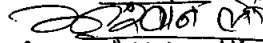
Order No. 169 /23-Cus dated 01-05-2023

Copy to:-

1. The Commissioner of Customs (Preventive), Cochin, 5th Floor, Catholic Centre, Broadway, Cochin-682031.

2. The Commissioner (Appeals), Central Tax, Central Excise & Customs, Central Revenues, Building, I.S. Press Road, Cochin-682018.
3. Sh. P. Sreedharan, Consultant, Trade Track, Karikode Warriam, Cochin-682016.
4. PPS to AS (RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED



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