

**SPEED POST**



F.No. 373/522/DBK/2019-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...01/05/23.

Order No. 170/23-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. COC-EXCUS-000-APP-375-2019 dated 29.03.2019, passed by Commissioner of CGST & Customs (Appeals), Cochin.

APPLICANT : M/s Universal Oleoresins, Alapuzha.

RESPONDENT : The Commissioner of Customs, Cochin.

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**ORDER**

A Revision Application No. 373/522/DBK/2019-RA dated 23.10.2019 has been filed by M/s Universal Oleoresins, Alapuzha (hereinafter referred to as the Applicant) against the Order-in-Appeal No. COC-EXCUS-000-APP-375-2019 dated 29.03.2019 (issued on 02.08.2019), passed by the Commissioner of CGST & Customs (Appeals), Cochin. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 10/2016 (INCOCKI-02/2017) dated 31.01.2017, passed by the Assistant Commissioner (Tech.), Central Excise, Customs & Service Tax, Cochin.

2. Briefly stated, the Applicant herein filed a claim of Special Brand Rate of drawback under Rule 7 of the Drawback Rules, 1995 in respect of Paprika Oleoresin exported by them against the shipping bill No. 8562644 dated 29.06.2016. As the All Industry Rate of Drawback (AIR Drawback) had already been availed, the original authority, vide the aforesaid Order dated 31.01.2017, rejected the claim for Special Brand Rate of Drawback as the same was not permissible in terms of Rule 7 of the Customs, Central Excise Duties and Service Tax Rules, 1995 (DBK Rules, 1995). The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals).

3. The revision application has been filed, mainly, on the grounds that it was the first time that the Applicant was supplying goods under C.T-1 certificate for export and therefore they were not familiar with the procedures; that Rule 7 of the Drawback Rules, does not bar the exporter from claiming the Brand Rate of Drawback of differential amount if the exporter has already claimed AIR Drawback under Rule 7 in respect of the same export; that the declaration of identifier Code '9807' is only for the purpose of facilitating issue of provisional drawback; and that the department cannot deny the substantial benefit on the basis of procedural lapses.

4. Personal hearing was fixed on 22.03.2023, 17.04.2023 & 28.04.2023. In the hearing held on 28.04.2023, in virtual mode, Sh. Nishesh Shah, Partner appeared for the Applicant and reiterated the contents of the RA. Sh. Anurag Sethia, Supdt. appeared for the department and requested for adjournment as PH intimation was received late. The

request for adjournment was denied as this was the last and final opportunity. The matter is, accordingly, taken up for disposal.

5.1 The Government has examined the matter carefully. It is observed that the issue involved in the present proceedings is whether the drawback as per brand rate can be sanctioned even when drawback had already been availed, as per AIR, on a final basis. The Government finds that sub-rule (1) of Rule 7 prescribes that an application for fixation of brand rate can be made with the Central Excise Commissionerate even if AIR is already fixed for the exported goods under Rule 3 or Rule 4, as the case may be, in case the drawback as per AIR is less than four-fifth of duties or taxes actually paid on inputs etc. used in the manufacturing of exported goods. However, the said sub-rule (1) of Rule 7 has been amended by virtue of Notification No. 109/2014-Customs (NT) dated 17.11.2014, to the effect that the provisions thereof are applicable "except where a claim for drawback under rule 3 of rule 4 has been made." Therefore, it is clear that w.e.f. 22.11.2014 (i.e. the date of effect of the Notification dated 17.11.2014), an application for fixation of brand rate cannot be entertained, in case a claim for the AIR drawback has been made. In the present case, the application for fixation of brand rate has been filed (after 22.11.2014) when AIR drawback had already been claimed on the Shipping Bill, which also pertains to a period after 22.11.2014. Hence, it is clear that, in terms of the amended provisions of the said sub-rule (1), the Applicant could not have filed the subject application for fixation of brand rate.

5.2 Further, in terms sub-rule (3) of said Rule 7, where a manufacturer or exporter desires that he may be granted drawback provisionally, he may while making an application under sub-rule (1), apply to the Commissioner in this behalf. There is nothing on record that such application for provisional drawback was made to the Commissioner concerned. This being a EDI shipping bill, only other way in which the claim could have been identified as provisional was by way of using the identifier code '9807' on the shipping bill which had also not been done. The claim that this is only a procedural error cannot be accepted as the provisions of said sub-rule (3) get attracted only if AIR drawback was claimed and sanctioned on a provisional basis. As such, the application for

fixation of brand rate could not have been entertained, even in terms of the exception carved out by virtue of the said sub-rule (3).

5.3 It is also on record that the Applicant had not requested customs authorities for any amendment of the Shipping Bill nor had they filed any appeal before the appellate authority for the review of the drawback sanctioned. Therefore, the AIR drawback sanctioned has attained finality.

5.4 As such, the Order-in-Appeal impugned herein does not merit revision.

6. In view of the above, the Revision Application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

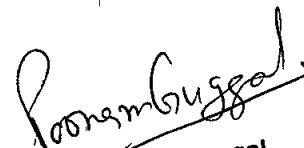
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Order No. 170/23-Cus dated 01-05-2023

**Copy to:-**

1. The Commissioner (Appeals) CGST & Customs, 4<sup>th</sup> Floor, Central Revenue Building, I.S. Press Road, Cochin-682018.
2. The Commissioner of Customs, Customs House, Willingdon Island, Cochin-682009.
3. PPS to AS (RA)
4. Guard File
- ✓ 5. Spare Copy
6. Notice Board

ATTESTED

  
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