

SPEED POST



F. No. 373/303/DBK/SZ/2019-R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHICAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 04/05/23:

Order No. 172 / 23-Cus dated 04-05-2023 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 Orders-in-Appeal Nos. 53-56/2019-TTN (Cus) dated 01.07.2019, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli.

APPLICANT : M/s Mohan Mutha Exports Pvt. Ltd., Chennai.

RESPONDENT : The Commissioner of Customs, Tuticorin.

ORDER

A Revision Application No. 373/303/DBK/SZ/2019-R.A. dated 29.07.2019 has been filed by M/s Mohan Mutha Exports Pvt. Ltd., Chennai (hereinafter referred to as the Applicant), against the Orders-in-Appeal Nos. 53-56/2019-TTN (Cus) dated 01.07.2019, passed by the Commissioner of GST & Central Excise (Appeals), Tiruchirapalli. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 02/2019 dated 24.01.2019, passed by the Additional Commissioner of Customs, Tuticorin.

2. Brief facts of the case are that the Applicants herein are a regular exporter construction material, including cement, TMT bars, GI pipes, GI fitting etc., to Maldives, inter-alia, from Tuticorin Port. The Applicants claimed drawback against such exports. Based on a specific intelligence that the Applicants had availed ineligible higher rate of drawback on export of certain goods that were manufactured by availing CENVAT credit on the inputs used and which were exported directly from the manufacturers' premises under ARE-1s, the officers of Directorate of Revenue Intelligence (DRI), Tuticorin initiated investigations on 23.05.2016. During the investigations, it was found that the Applicants had availed higher rate of drawback in respect of export of same material while in some cases they had availed lower rate of drawback in respect of goods for which CENVAT credit had been availed by the manufacturer. It was further noticed that since the Applicants were exporting good in bulk quantity, they had sourced the goods directly from the manufacturers, who had manufactured the goods by availing CENVAT credit on the inputs used, and the Applicants herein had claimed higher rate of drawback in violation of first proviso to Rule 3(1) of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Drawback Rules, 1995), and other provisions of the relevant notifications. During the investigations, the statements of Sh. G. Jayanthilal, Authorized Signatory of the Applicant and Customs Brokers, who had filed the shipping bills for the Applicants, were recorded. The Applicants also deposited an amount of Rs. 26,41,107/- in respect of ineligible drawback claimed against the 126 shipping bills filed during 2004 to 2016. They also paid an amount of Rs. 19,97,111/- towards interest on the ineligible drawback. Upon completion of investigations, a show cause notice dated 11.05.2018 was issued demanding ineligible drawback amount, under Rule 16 of the Drawback Rules, 1995 along with applicable interest. The Applicants were also put to a notice for imposition of penalty under Section 114 as the goods were proposed to be held liable to confiscation, under Section 113 of the Customs Act, 1962. The original authority, vide the aforesaid Order-in-Original dated 24.01.2019, confirmed the demand along with applicable interest and imposed a penalty of Rs. 5,00,000/- on the Applicants herein under Section 114 ibid. Besides, penalties of Rs. 5,00,000/- each were also imposed on the three Customs Brokers involved in the matter. The appeal filed by the Applicant herein and the Customs Brokers have been rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that the demand under Rule 16 of the Drawback Rules, 1995 is not sustainable as the said Rules had already been superseded on the date of issue of the show cause notice, vide new Drawback Rules of 2017 with no specific saving clause; that the provisions of Section 159A of the Customs Act, 1962 and Section 38A of the Central Excise Act, 1944 invoked by the Commissioner (Appeals), to reject their contention, are not absolute in view of specific saving clause in the new Rules; that the demand pertained to the period from 2004 to 2016 whereas the show cause notice had been issued only on 11.05.2018; that, therefore, the show cause notice had been issued beyond reasonable period of time and, hence, the demand was time barred; that the Commissioner (Appeals) had overlooked that fact that the allegations made in the notice that the manufacturers from whom export goods had been procured had availed CENVAT credit of the duty paid on inputs was unsubstantiated and uncorroborated; that this allegation was based merely on a statement of their representative who had also not admitted to any wrongdoing either knowingly or unintentionally and not a single documentary evidence had been placed on record to establish otherwise; that the Commissioner (Appeals) has also failed to take into account that the fact that in the relevant ARE-1s submitted to the Customs, as required under Rule 13(2) of the Drawback Rules, 1995, there was no declaration made about CENVAT availment by the manufacturers of the goods and, therefore, officers of Customs should have undertaken verification of relevant documents before sanctioning the drawback; that the liability of interest under Section 75A of the Customs Act, 1962 is adjunct to Section 75 which deals with the only Customs duty suffered on the inputs materials and, hence, interest could not have been demanded in respect of the excise portion of the drawback; that there was no requirement of certificate regarding non-availment of CENVAT credit to be produced and, hence, the ground taken by the original authority for holding the goods liable to be confiscation is even otherwise not legal and fair.

4. Personal hearings in the matter were granted on 22.03.2023, 17.04.2023 and 03.05.2023. No one appeared for either side for hearing on 22.03.2023 and 17.04.2023. However, a written submission was filed by the Applicants, by e-mail, on 13.04.2023. In the hearing held, in virtual mode, on 03.05.2023, Sh. Ravi Kumar, Advocate appeared for the Applicant and requested that Written Submissions emailed on 13.04.2023 may be taken on record. He reiterated the contents of the RA and the Written Submissions filed on 13.04.2023. No one joined the PH from the department's side. Hence, it is presumed that the department has nothing to add in the matter.

5.1 The Government has carefully examined the matter. The allegation against Applicants herein is that they exported goods against 126 ARE-1s as merchant exporters, where the manufacturers of the goods had availed CENVAT credit but the Applicants mis-declared non-availment to claim higher rate of drawback. It is not denied that the higher rate of drawback i.e., the drawback inclusive of Customs as well as Central Excise portion,

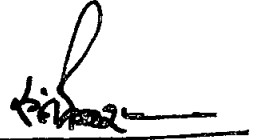
is not available where CENVAT credit of the duties paid in respect of input materials had been availed by the manufacturers. It is the contention of the Applicants that the allegation of availment of CENVAT credit, in respect of the goods exported against these 126 ARE-1s, is unsubstantiated and no documentary evidence is on record to corroborate the same.

5.2 The Government has carefully perused the show cause notice and finds that there is no indication therein of any enquiries/verifications being caused with the manufacturers regarding availment of the CENVAT credit. Since the demand is raised against the identified export consignments covered by 126 ARE-1s, it was the duty of the Investigating Agency to verify whether the CENVAT credit had been availed by the respective manufacturers in respect of the inputs used in the manufacture of the export goods and bring the outcome of such enquiry on record. Instead the Investigating Agency appears to have only relied upon the statement of the Authorized Signatory of the Applicant herein and the Customs Brokers to allege that the CENVAT credit had been availed. The statement dated 26.05.2016 of Sh. G. Jayanthilal, Authorized Signatory of the Applicant, however, does not indicate any specific admission in respect of any of the export consignments, though the statement does contain a generalized admission that *"I admit that we are not eligible to avail higher rate of drawback, since all the manufacturers supplying goods to us for export are manufacturing goods availing CENVAT credit and under ARE-1"*. However, this admission is prefaced by a statement that *"Our management has given clear directions only for availing the export benefits legally available to us. In a routine manner we send the ARE-1, invoice packing list and other export documents to our CHAs M/s Ahamed & Co. and M/s PSTS and we are not monitoring whether the CHA files the Shipping Bill availing higher rate of drawback or the lower rate. In the year 2011 when we started to avail drawback on a regular basis, the CHAs were asked by our management to avail whatever benefit was legally admissible for exports. Our CHAs filed the Shipping Bills based on the documents provided by us and we have not monitored whether they were filing the shipping bills to claim drawback only at the lower rate, as all our export goods are sourced from the manufacturers directly under ARE-1. Our CHAs have probably claimed higher drawback unknowingly. We had no intention to availing under benefit by ignorance and change of staff our head office in Chennai"*. The statements of concerned Customs Brokers also do not disclose any specific material details. It bears no reiteration that availment or non-availment of CENVAT credit is a matter, which could have been easily verified with reference to the statutory records maintained by the manufacturers of the export goods. This has not been done. Therefore, the Government is in agreement with the contention of the Applicants that the allegations made in the show cause notice are not substantiated or corroborated by any documentary evidence. It is trite that monetary and penal liabilities of this nature cannot be fastened to the Applicants herein merely based on a broad generalised statement of the authorised signatory, which is also largely exculpatory.

5.3 Further, it is also on record that there was no declaration on the respective ARE-1s regarding availment or non-availment of the CENVAT credit. In such a case, there is merit in the Applicants' contention that it was for the Customs Officers to cause verification with the concerned Central Excise authorities before sanctioning drawback at higher rate.

5.4 In these facts and circumstances, the Government finds that the allegation of availment of CENVAT credit in respect of the subject goods is unsubstantiated and, hence, the demand of drawback raised vide the show cause notice dated 11.05.2018 could not have been sustained. Since the demand cannot be sustained on merits itself, the Government refrains from traversing other legal submissions made on behalf of the Applicants herein.

6. In view of the above, the revision application is allowed and the Orders of the authorities below are set aside.



(Sandeep Prakash)

Additional Secretary to the Government of India

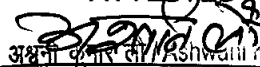
M/s. Mohan Mutha Exports Pvt. Ltd.,
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Poonamallee High Road,
Chennai-6000084.

Order No. 172/23-Cus dated 04-05-2023

Copy to:-

1. The Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin-628004.
2. The Commissioner of Customs & Central Excise (Appeals), No. 1, Williams Road, Cantonment, Tiruchirapalli-620001.
3. Sh. N. Viswathan, Advocate, Flat No. 8A, Rams, 26 South Mada Street, Srinagar Colony, Saidapet, Chennai-600015.
4. PPS to AS (RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED


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