

SPEED POST



F.No. 375/76-77/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..18.9.21

Order No. 175-176/21-Cus dated 10-9-2021 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 filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. NOI-CUSTOM-000-APP-1988 & 1989-17-18 dated 28.03.2018, passed by the Commissioner Appeals), Customs and Central Tax, Noida.
- Applicant : 1. M/s Design Sangrah, Noida.
2. Sh. Rakesh Baboo Sadh- Prop. The Design Sangrah
- Respondent : The Commissioner of Customs, Noida

ORDER

Two revision applications, bearing nos. 375/76-77/DBK/2018-RA dated 12.06.2018, have been filed by M/s Design Sangrah, and Sh. Rakesh Baboo Sadh Prop. of M/s The Design Sangrah, (hereinafter referred to as the Applicants) against the Order-in-Appeal No. NOI-CUSTOM-000-APP-1988 & 1989-17-18 dated 28.03.2018, passed by the Commissioner of Customs (Appeals), Customs and Central Tax, Noida. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal filed by the Applicant herein, inter-alia, on the grounds that they were an EOU Unit and representations to this effect were made to the Income Tax authorities. Hence the drawback is not admissible to them.

2. The brief facts of the case are that an intelligence was received by DRI, Delhi that some Export Oriented Units (EOUs) had adopted a modus operandi for availing simultaneous export benefits under different Export Promotion Schemes from different authorities/departments by resorting to mis-declaration. The Respondent had obtained license from SEZ, Noida and they had declared themselves as an operational EOU to the Income Tax authorities to avail exemption from payment of Income Tax under Section 10 B of the Income Tax Act, 1961. However, they had suppressed their identity of being an EOU to the Customs authorities and claimed duty drawback on the exported goods. Based on the investigations conducted by the DRI, a show cause notice dated 03.05.2016 was issued in respect of exports made through ICD, Dadri. Adjudicating authority, vide Order-in-Original no. 01-AC/Cus/ICD DD/2017 dated 31.01.2017, had confirmed the demand and recovery of duty drawback amount of Rs. 71,120/- under Rule 16A of the Customs & Central Excise Duties Drawback Rules, 1995 along with interest under Section 75A (2) of the Customs Act, 1962 from M/s Design Sangrah. Besides, penalty of Rs. 25,000/- was also imposed on M/s Design Sangrah under Section 114(iii) ibid. Further, penalty of Rs. 25,000/- was imposed on Sh. Rakesh baboo Sadh, under Sections Section 114(iii) and 114 AA. Aggrieved, the Applicants filed appeals before the

Commissioner (Appeals), which were rejected. Hence the instant revision applications.

3. The instant revision applications have been filed, mainly, on the ground that their unit was operational only for 06 days as EOU during the relevant period when the goods were exported. The drawback is admissible to them as the goods exported were manufactured out of the duty paid raw material and capital goods and they did not take cenvat credit. The Applicant has placed reliance upon the judgment of Hon'ble Karnataka High Court in *Karle International* {2012 (281) ELT 486 (Kar.)}, wherein it is held that the 100% EOU'S are not debarred from duty drawback completely. The order of the High Court was affirmed by the Apex Court in *Commissioner vs. Karle International* - 2015 (323) ELT A.74 (S.C.). The revenue filed a review petition which was also not entertained [*Commissioner v. Karle International – 2017 (348) ELT A 27*]. Additional submissions dated 06.04.2021 have also been filed wherein it is highlighted that present case is squarely covered by the decisions in *CBEC vs. KG Denim Ltd.* {2020 (371) ELT 646 (Mad.)} and *Fancy Images* {2017-TIOL-410-CESTAT-DEL}.

4. Personal hearing, in virtual mode, was held on 07.04.2021. Sh. Alok Agrawal, Advocate, attended the hearing on behalf of the Respondent. Sh. Alok Agarwal, reiterated the contents of the revision application and the additional submission dated 06.04.2021. Sh. Alok Agarwal highlighted that the issue involved is whether AIR of Drawback is admissible on the goods exported by an 100% EOU that are manufactured out of duty paid inputs. This issue is covered in their favour by the judgement of Hon'ble Karnataka High Court in the case of *M/s Karle International* (supra), which has been affirmed by the Apex Court. Sh. Rajesh Agarwal, Additional Commissioner requested that the additional submissions dated 06.04.2021, filed by the Applicant, may be shared with the department so that department can effectively defend it's case. The request was accepted. Respondent department has submitted written submissions dated 17.06.2021 wherein it is, interalia, stated that the party has itself admitted that prior to getting EOU status they were DTA unit and

procured the duty paid material, therefore, duty paid word must be limited to the period when it was DTA only. Further submissions dated 13.07.2021 and 06.09.2021 have been filed by the Applicants. It has been contended by the Applicants that in the case of Karle International it has been decided that if the export goods are manufactured out of duty paid raw material, a 100% EOU is eligible for AIR DBK since notification no 68/2007-Cus (NT) cannot override the provisions of Section 75 of the Customs Act; that though LOP was issued, the Customs Warehousing Bond was valid only for 06 days; that they did not make any duty free imports as certified by the Assistant Commissioner vide letters dated 30.07.2010; that the ratio decidendi of Karle International is squarely applicable to the case in hand; that the present case is completely covered by the decision of Tribunal in Fancy Images; that the 100% EOUs are not debarred from duty drawback completely. In the further submissions dated 14.08.2021, it has been brought out that the decision in Karle International has been followed by the Hon'ble Madras High Court in CBEC vs. KG Denim Ltd. (supra); that since the goods have been manufactured out of duty paid raw material, the matter is revenue neutral [UOI vs. Zenith Spinnes {2015 (326) ELT 23 (SC)}]; and that the matter may be decided at the earliest in view of Board's Circular F.No. 201/01/2014-CX dated 26.06.2014 issued in respect of need to follow judicial discipline. Personal hearing was again held, in virtual mode, on 06.09.2021. Sh. Alok Agrawal, Advocate appeared for the Applicant and reiterated the contents of written replies filed on 06.04.2021, 13.07.2021 and 14.08.2021. He submitted that in view of the position brought out, RA may be allowed. No one appeared for the Respondent department for hearing on 06.09.2021 nor any request for adjournment has been received. Therefore, the matter is taken up for disposal based on records.

5.1 The Government has carefully examined the matter. The issue that is required to be decided herein is that whether the drawback at All Industry rate is admissible to the goods exported by 100% EOU unit, which are manufactured out of duty paid raw material.

5.2 Before proceeding further, it would be appropriate to highlight following facts that are salient to the determination of issue involved:

- (i) A LOP dated 18.01.2006 was issued to the Respondent for conversion of existing DTA Unit under EOU Scheme, which expired on 31.03.2010.
- (ii) A Licence for private bonded warehouse was issued on 26.03.2010, which also expired on 31.03.2010 alongwith the expiry of LOP.
- (iii) The jurisdictional Assistant Commissioner has, vide letter dated 30.07.2010, certified that no CT-3 procurement certificate was issued to the Applicant.

Thus, there is no doubt that the subject exports were made by the Applicants by using duty paid raw material for manufacture of exported goods. The contention of the respondent department is that All Industry rate of drawback is not admissible to an EOU in view of the notification no. 68/2007-Cus (NT). On the other hand, the Applicants have defended the case not on the ground that they were not an EOU but on the ground that the export goods were manufactured out of the duty paid raw material and, hence, they are eligible for drawback irrespective of their EOU status.

5.3 It is observed that the Applicants have heavily relied upon the judgment in the case of Karle International. The Government observes that the ratio decidendi of the judgment in Karle International is contained in para 14 thereof wherein it has been held that *"Under Section 75, to be eligible for Duty Drawback, all that the exporter has to satisfy is that the goods are manufactured, processed or on which any operation has been carried out in India. It is immaterial where the said manufacturing or processing has taken place. It may in his Unit or it may be in EOU Unit. Guiding principle is, it should have been manufactured or processed in India and exported."* Further, in Karle International the main ground to deny the claim was based on notification no. 67/98-Cus (NT). The Hon'ble High Court, however, repelled this argument and held that the rights conferred in the statute i.e. under Section 75 of the Customs Act, 1962 cannot be taken away by issuing circulars. The Revenue challenged this order before the Apex Court [*Commissioner v. Karle International* - 2015 (323) ELT A.74 (S.C.)], which was rejected as follows:-

"Admittedly, the decision of the Madras High Court in the case of the respondent-assessee itself, on the same issue has not been challenged by the Revenue. In that view of the matter, we decline to entertain these Special Leave Petitions which are dismissed accordingly."

The review petitions filed by the Revenue were also dismissed by the Apex Court [2017 (348) ELT A27 (SC)].

5.4 As pointed out by the Hon'ble Supreme Court, while rejecting the SLPs in Karle International, the Hon'ble Madras High Court had in an earlier case of the same assessee taken an identical view, which was not even challenged by the Revenue. In this case reported as Commissioner of Customs, Tuticorin vs. LT Karle & Co. {2007 (207) ELT 358 (Mad.)}, the Hon'ble Madras High Court had held that a drawback claim on duties suffered on inputs cannot be denied on the ground that goods were manufactured by 100% EOU.

5.5 The Government further observes that in the case of CBEC vs. KG Denim Ltd. (supra), the Hon'ble Madras High Court has followed the judgments in Karle International (supra) and the LT Karle & Co. (supra) and held that the right vested by statutory provisions cannot be taken away by Circulars issued from time to time.

5.6 To summarise, the dictum of the above judgments is that:

- (i) To be eligible for drawback, the exporter has to satisfy that the goods are manufactured in India and it is immaterial where the said manufacturing has taken place.
- (ii) The exporter cannot be denied AIR DBK, if he is satisfied with the same.
- (iii) The rights conferred under Section 75 cannot be taken away by notifications Circulars etc.

In the present case, it is certified by the department that no duty free imports were made. Hence, it cannot be disputed that the exported goods were manufactured in India out of duty paid raw material. Therefore, the benefit of AIR drawback under

Section 75 cannot be denied only because these goods were manufactured and exported by a 100% EOU.

7. In view of above discussion, the impugned OIA is set aside and the revision applications are allowed.


(Sandeep Prakash)

Additional Secretary to the Government of India

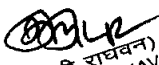
1. M/s The Design Sangrah,
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Noida, Distt.- G.B. Nagar - 201305 (U.P.)
2. Sh. Rakesh Baboo Sadh,
Prop. of M/s The Design Sangrah,
M-22A, Lajpat Nagar-II, New Delhi – 110024.

Order No. 175-176/21-Cus dated 10-9-2021

Copy to:

1. The Commissioner of Customs, Noida, Customs Commissionerate Inland
Container Depot, Tilpata Dadri, Gautam Budh Nagar, Noida (U.P.) – 201311.
2. The Commissioner of Central Tax (Appeals), Noida, C-56/42, Sector – 62, Noida
(U.P.) – 201301.
3. Sh. Alok Agarwal, Advocate, A-3/31, Sri Sai Kunj behind Sector D-2, Vasant
Kunj, New Delhi- 110070.
4. PS to AS (RA).
5. ✓ Guard File.
6. Spare Copy.

Attested


(लक्ष्मी राघवण)
(LAKSHMI RAGHAVAN)
अनुभाग अधिकारी / Section Officer
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