

SPEED POST



F.No. 380/02/DBK/2021-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...13/9/21

Order No. 178/21-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. CC (A) Cus/ D-II/ ICD/ TKD/ Exp/1014/20-21 dated 19.10.2020, passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : Commissioner of Customs (Exports), Tughlakabad, Delhi.

Respondent : M/s Churchit International, New Delhi.

ORDER

A Revision Application No. 380/02/DBK/2021-RA dated 25.01.2021 has been filed by the Commissioner of Customs (Exports), Tughlakabad, New Delhi-110020 (hereinafter referred to as the Applicant) against the Order No. CC (A) Cus/ D-II/ ICD/ TKD/ Exp/1014/20-21 dated 16.10.2020, passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, T-3, Delhi-110037. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal of the Applicant department against the Order-in-Original no. 183/2019 dated 14.10.2019, passed by the Additional Commissioner of Customs (Exports), Tughlakabad, New Delhi, vide which the proceedings initiated against M/s Churchit International, New Delhi (hereinafter referred to as the Respondent) for the demand and recovery of the already disbursed drawback amount under the provisions of Section 75A (2) of the Customs Act, 1962, were dropped.

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, 5 separate show cause notices dated 02.05.2016, 22.06.2016, 13.04.2016, 03.12.2015 and 24.03.2018 were issued in respect of exports made through ICD, Tughlakabad; ICD, Patparganj; ACC, New Delhi; JNCH, Navi Mumbai and ACC, Mumbai, respectively for demand of drawback, totally amounting to Rs. 2,18,89,554/-. However, the Additional Commissioner of Customs (Exports), Tughlakabad, acting as the Common Adjudicating Authority, dropped the proceedings, vide the aforesaid OIO dated 14.10.2019. The original authority,

relying upon the judgment of Hon'ble Karnāṭaka High Court in Karle International {2012 (281) ELT 486 (Kar.)}, 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*]. Aggrieved, the Applicant department filed an appeal before the Commissioner (Appeals), who vide the above mentioned OIA dated 19.10.2010 rejected the appeal. Hence, the present revision application.

3. The grounds of revision application are that All Industry rate of drawback is not admissible to the 100% EOU in terms of notification no. 68/2007-Cus (NT) dated 26.07.2007; that the respondent failed to disclose on the relevant shipping bills their 100% EOU status; that facts of the instant case are different from those in Karle International (supra); that the Commissioner (Appeals) has erroneously relied on the judgment of Tribunal in the case of Fancy Images {2017-TIOL-410-CESTAT-DEL}; that as per the relevant Export and Import Policy and the Foreign Trade Policy drawback is not admissible to an 100% EOU; and that the Directorate General of Export Promotion (DGEP) has clarified, vide letter F. No. DGEP/EOU/01/2014 dated 01.05.2014, that an EOU having been issued an LOP is not entitled to duty drawback whether or not such units have obtained bonding license during the relevant period.

4. Cross objection dated 06.08.2021 and further written submissions dated 14.08.2021 have been filed by the Respondent. It has been contended 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 not received and hence there was no requirement of filing a free shipping bill since the exports were made out of duty paid raw material; 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; and that the instructions issued by DGEP are binding on officers only when acting in administrative capacity. 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. {2020 (371) ELTd 646 (Mad.)}; that since the goods have been manufactured out of duty paid raw material, the matter is revenue neutral [UOI vs. Zenith Spinnex {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.

5. Personal hearing, in virtual mode, was held on 06.09.2021. Sh. D.K. Chaudhary, Superintendent, appeared on behalf of the Applicant and submitted that the judgment in Karle International is not applicable in the facts of the case. Sh. Alok Agrawal, Advocate, attended the hearing on behalf of the Respondent. Sh. Alok Agarwal, reiterated the contents of cross objections filed on 06.08.2021 and written submissions dated 14.08.2021.

6.1 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 goods exported by 100% EOU unit, which are manufactured out of duty paid raw material.

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

- (i) A LOP dated 14.06.2007 was issued to the Respondent for conversion of existing DTA Unit under EOU Scheme. This LOP was valid for 03 years and expired on 13.06.2010.
- (ii) The Respondent had, however, not executed the warehousing bond and therefore could not become functional as an 100% EOU during the validity of LOP.

- (iii) The subject exports were made during 2007-08, 2008-09, 2009-10 and 2010-11, when no duty free raw material was imported by taking advantage of the EOU Scheme.
- (iv) The original authority has brought out that the exported goods were made out of the duty paid raw material – a fact that is not disputed by the Applicant department in the present proceedings.

Thus, there is no doubt that the subject exports were made by the Respondent by using duty paid raw material for manufacture of exported goods. The contention of the Applicant 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 Respondent has defended its 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.

6.3 It is observed that the authorities below have heavily relied upon the judgment in the case of Karle International to decide the case in favour of the Respondent herein. On the other hand, the department has contended that the Karle International case is in respect of the DTA exporter getting the goods manufactured by EOU on job work basis wherein the Hon'ble Karnataka High Court held that the DTA exporter was entitled to Duty Drawback even if such goods were directly exported from the premises of such EOU. Hence, the ratio of Karle International is not applicable in the present case. 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 were also dismissed by the Apex Court [2017 (348) ELT A27 (SC)].

6.4 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.

6.5 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.

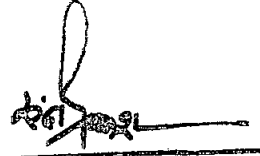
6.6 To summarise, the dictum of the above judgments is that:

- (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 Circulars etc.

In the present case, there is no dispute 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. As such, the issue involved herein has to be decided in favour of the Respondent.

7. In view of above discussion, Government does not find any reason to interfere with the order of the Commissioner (Appeals) and the revision application is rejected.



(Sandeep Prakash)
Additional Secretary to the Government of India

Commissioner of Customs (Exports),
ICD Tughlakabad,
Delhi-110020.

Order No. 178/21-Cus dated 10-9-2021

Copy to:

1. M/s Churchit International, B-1/223, Lajpat Nagar, New Delhi 110024.
2. Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037.
3. Joint Commissioner, ICD (Export), Tughlakabad, Delhi-110020.
4. PS to AS(RA).
5. Guard File.
6. Spare Copy.

Attested



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