

SPEED POST



F.No. 375/09/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..05/10/21.

Order No. 205/21-Cus dated 04-10-2021 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 under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 382(SM)CUS/JPR/2018 dated 29.11.2018 passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Jaipur.

Applicant : M/s Lal ji Handicrafts, Jodhpur.

Respondent : The Commissioner of Customs, Jaipur.

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**ORDER**

A Revision Application, bearing no. 375/09/DBK/2019-RA dated 06.03.2019, has been filed by M/s Lalji Handicrafts, Jodhpur (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 382(SM)CUS/JPR/2018 dated 29.11.2018 passed by the Commissioner (Appeals), Customs & CGST, Jaipur, vide which the appeal filed by the Applicant against the Order-in-Original No. 12/2013-14 dated 22.01.2014 has been rejected on the ground that the supplementary claim filed by the Applicant is not admissible as there was no enhancement in the rate of drawback by the Government for the items exported i.e. 'article of wood' classifiable under CTH 4421.

2. The brief facts of the case are that the Applicant filed a supplementary drawback claim on the ground that there was change in the rate of drawback for the items 'Indian Furniture items of wood' which falls under CTH 940303 vide Notification No. 68/2007-Customs (NT) dated 16.07.2007 as they had earlier wrongly filed the Shipping Bill for the item declared as 'Wood' which falls under CTH 4421. A Show Cause Notice dated 07.02.2008 was issued to the Applicant to show cause as to why the supplementary claim should not be rejected on the ground of late filing. Assistant Commissioner of Customs, Thar Dry Port, Jodhpur vide OIO No. 01/2008 dated 05.05.2008 condoned the delay in filing of claim but rejected the claim on the ground that the claim was not sustainable as the original drawback claim was filed under Chapter 4421 and there was no change in the rate of drawback for the items falling under CTH 4421. Aggrieved, the Applicant filed an appeal before the Commissioner

(Appeals) who, vide the OIA No. 154(DK)CUS/JPR-II/2008 dated 24.09.2008, allowed the appeal of the Applicant and set aside the OIO dated 05.05.2008 on the ground that the original authority had rejected the supplementary claim on the ground which was not the subject matter of the Show Cause dated 07.02.2008. Pursuant to the OIA dated 24.09.2008, the Applicant filed an application before the Dy. Commissioner of Customs, Drawback for the sanction of consequential relief. However, instead of sanctioning the supplementary claim, another Show Cause Notice dated 05.04.2010 was issued by the Respondent department to the Applicant asking them to show cause as to why their claim should not be rejected on merits. Adjudicating authority, vide OIO dated 22.01.2014, rejected the supplementary drawback claim on merits as there was no change in rate of drawback for the Drawback Schedule 4421. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed, mainly, on the ground that they had filed an application for the release of supplementary drawback claims on the strength of OIA dated 24.09.2008; that if the Respondent department had any grievance against the Order dated 24.09.2008 they should have filed an appeal against that order but no such appeal was filed by the department; that revenue raised an issue for the rejection of the claim which was not there in the original show cause notice; that if this is allowed then the office of the Commissioner (Appeals) would become non-existing in the eyes of law as department would raise new issues in the fresh notice on the basis of findings given by the Commissioner (Appeals).

4. Personal Hearing, in virtual mode, was held on 01.10.2021. Sh. O.P. Agarwal, Chartered Accountant, attended the hearing on behalf of the Applicant and reiterated the contents of the revision application and relied upon the case laws cited in the email dated 01.10.2021, viz, RITES Ltd. Vs. Commissioner of Service Tax, Delhi {2016-TIOL-646-CESTAT-DEL}, Commissioner of Central Excise, Belgaum vs. M/s Dharwad Cooperative Milk Products Societies Union Ltd. {2015-TIOL-1655-HC-KAR-ST}, and Sulochana Amma vs. Narayanan Nair {1995 (77) ELT 785 (SC)}. No one appeared for the Respondent department nor any request for adjournment has been received. Hence, the matter is taken up for disposal based on records.

5. Government has carefully examined the matter. It is observed that the Commissioner (Appeals), vide OIA dated 24.09.2008, had set aside the OIO dated 05.05.2008. Respondent department did not challenge the OIA dated 24.09.2008. Thus, the OIA dated 24.09.2008 has attained finality. Once an OIA has attained finality, it is obligatory on the part of the department to implement the same and provide consequential relief, if any, to the aggrieved parties. In the instant case, the respondent department instead of implementing the OIA dated 24.09.2008, issued another Show Cause Notice raising issues on merits. This would have been permissible had the Commissioner (Appeals) set aside the earlier OIO, and remanded the matter for de-novo consideration on merits. However, in the present case, the Commissioner (Appeals) has set aside the OIO without any directions for consideration afresh. In these circumstances, it was not open to the department to reagitate/reopen the matter by issue of a fresh show cause notice and the consequential relief ought to have been granted. The issue is squarely covered by the judgment of Hon'ble

Karnataka High Court in the case of Dharwad Cooperative (supra). As such, the proceedings arising out of the show cause notice dated 05.04.2010 cannot be sustained.

6. In view of the above, the revision application is allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India

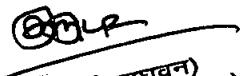
M/s Lalji Handicrafts,  
Opposite Umed Bhawan Palace Road,  
Jodhpur (Raj.) – 342 005.

Order No. 205/21-Cus dated 04-10-2021

Copy to:

1. The Commissioner of Customs, Jaipur, New Central Revenue Building, Statue Circle, "C" Scheme, Jaipur – 302 005.
2. The Commissioner (Appeals), Central Excise & CGST, Jaipur, New Central Revenue Building, Statue Circle, Jaipur – 302 005.
3. M/s. Om P. Agarwal & Co., Chartered Accountant, 56, Section 7, N. Power House Road, Jodhpur (Rajasthan) – 342003.
4. PA 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