

SPEED POST



F.No. 373/149/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. 26/05/23

Order No. 206/23-Cus dated 26-05-2023 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. 175/2020 dated 03.11.2020, passed by Commissioner of Customs (Appeals), Bengaluru.

APPLICANT : M/s Authentic Ocean Treasure, Mangaluru

RESPONDENT : The Commissioner of Customs, Mangaluru.

ORDER

A Revision Application No. 373/149/DBK/2021-RA dated 28.04.2021 has been filed by M/s Authentic Ocean Treasure, Mangaluru, (hereinafter referred to as the Applicants) against the Order-in-Appeal No. 175/2020 dated 03.11.2020 read with the Corrigendum dated 09.03.2021, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, set aside the Sanction Order No.01/2019-20/DBK/MSEZ/AOT dated 24.06.2019, passed by the Specified Officer of the Mangalore SEZ, sanctioning drawback of Rs. 62,34,873/- to the Applicants herein.

2. Brief stated, the Applicants herein had filed drawback claims by filing Bills of Export (BoE) under Rule 24 read with Rule 30 (5) of the Special Economic Zones Rules, 2006, based on All Industry Drawback Rates, on the goods (variety of fish) supplied to them by DTA supplier, namely, M/s Authentic Fisheries. The claims for supplies received, during August, 2018 against 27 BoEs and those received during September, 2018 against 29 BoEs, were filed before the Specified Officer on 20.05.2019 and 31.05.2019, respectively. The original authority sanctioned the drawback claim of Rs. 62,34,873/-, out of a total claim of Rs. 62,65,018/-. The department challenged the Order dated 24.06.2018, passed by the original authority, before the Commissioner (Appeals), who has, vide the impugned Order-in-Appeal, set aside the sanction of drawback by the original authority.

3. The revision application has been filed, mainly, on the grounds that the Commissioner (Appeals) has passed the impugned Order-in-Appeal in a mechanical manner and without recording reasoned findings on the contentions put forth by the Applicants herein; and that

the legislative intent behind the drawback scheme has been overlooked and the proceedings initiated are vexatious and needless.

4.1 Personal hearing, in virtual mode, was held on 26.05.2023. Shri Chandan Gowda Patil, Advocate appeared for the Applicant and requested that Additional Submissions emailed on 25.05.2023 may be taken on record. He reiterated the contents of the RA and the Additional Submissions. Shri Vasudeva Naik, AC supported the Order of Commissioner (Appeals).

4.2 In the Additional Submissions filed on 25.05.2023, the Applicants herein have pointed out that the Commissioner (Appeals) has traversed beyond the scope of appeal in as much as no ground was taken in the appeal for re-determination of the value of the export goods; and that the drawback claims filed by the Applicant were not time barred as no time limit was prescribed for filing these claims.

5 The Government has carefully examined the matter. It is observed that the department had challenged the sanction of drawback claims, before the Commissioner (Appeals), broadly, on the grounds that these claims were filed beyond the period of limitation; and that the bank realisation certificates in respect of the supplies made (i.e. deemed export) were not issued in the name of the claimant, i.e., the Applicants herein but in the name of the supplier, i.e., M/s Authentic Fisheries. The Government observes that the Commissioner (Appeals) has not recorded any findings in respect of these issues. He has rather proceeded to record that the transaction between the Applicants, i.e., M/s Authentic Ocean Treasure and their suppliers, i.e., Authentic Fisheries was a transaction

between the related parties and, therefore, the department should have re-determined the value in terms of Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and has, accordingly, proceeded to reject the order passed by the original authority. It would appear that the issue of valuation was never raised before the Commissioner (Appeals), by the department in its appeal. Therefore, it would appear that not only that the Commissioner (Appeals) has failed to record findings on the grounds of appeal but he has allowed the appeal on the grounds which were not taken in appeal by the department. As such, the impugned Order-in-Appeal cannot be sustained. The matter is, accordingly, remanded to the Commissioner (Appeals) with a direction to examine the matter afresh and dispose it of on merits, by recording reasoned findings on the grounds of appeal, inter-alia, after due consideration of the cross objections filed by the Applicants herein, i.e., the Respondents in appeal, before the Commissioner (Appeals).

6. The Revision Application is, accordingly, allowed by way of remand to Commissioner (Appeals), with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Authentic Ocean Treasure,
Plot No. IP-63A, Mangalore SEZ Ltd.,
Special Economic Zone,
Mangaluru – 574142.


Order No. 206 /23-Cus dated 26-05-2023

Copy to:-

1. The Commissioner of Customs, Mangaluru, New Custom House, Panambur, Mangaluru – 575 010.

2. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Domlur, Bengaluru – 560 071.
3. Sh. Chandan Gowda Patil, Advocate, No. 103, 1st Floor, Vimala Elite, Site No. 605, 15th Cross, 100 Feet Ring Road, JP Nagar 1st Phase, Bengaluru – 560 078.
4. PPS to AS (RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED



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