

F.No. 375/23/DBK/2019-RA  
F.No. 380/05/DBK/2019-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue: 08/10/21

Order No. 209-210/21-Cus dated 08-10-2021 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 Applications filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. LUD-CUS-001-APP/1998-1999/2018 dated 11.01.2019, passed by the Commissioner (Appeals), Customs & CGST, Ludhiana.
- Applicant : 1. M/s Bansal Spinning Mills Ltd., Ludhiana  
2. Commissioner of Customs, Ludhiana
- Respondent : 1. Commissioner of Customs, Ludhiana  
2. M/s Bansal Spinning Mills Ltd., Ludhiana

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F.No. 380/05/DBK/2019-RA

**ORDER**

Revision Application No.375/23/DBK/2019-RA dated 16.04.2019 and No. 380/05/DBK/2019-RA dated 8.04.2019, have been filed by M/s Bansal Spinning Mills Ltd., Ludhiana, (hereinafter referred to as the Applicant – 1) and Commissioner of Customs, Ludhiana (hereinafter referred to as the Applicant - 2), respectively, against the Order-in-Appeal No. CC(A)Cus/D-I/Air/1998-1999/2018 dated 11.01.2019, passed by the Commissioner (Appeals), Customs & CGST, Ludhiana. Commissioner (Appeals), vide the impugned Order-in-Appeal, has rejected the appeal of the Applicant -1 against the Order- in-Original No. D-91/AC/OWPL/DBK/2017 dated 26.04.2017, passed by the Assistant Commissioner of Customs, CFS, OWPL, Ludhiana and allowed the appeal of the Applicant-1 against the Order- in-Original No. D-91/AC/OWPL/DBK/2017 dated 29.05.2017, passed by the Assistant Commissioner of Customs, CFS, OWPL, Ludhiana.

2. Brief facts of the case are that the Applicant-1 had imported the –“Woolen Worsted yarn” vide Bill of Entry No. 2700991 dated 24.09.2015. The imported goods ostensibly were re-exported vide Shipping Bills No. 19 dated 07.11.2015 and 37 dated 10.07.2016 under claim of drawback under Section 74 of the Customs Act, 1962. Assistant Commissioner of Customs, vide OIO dated 26.04.2017 rejected the drawback claim in respect of the Shipping Bill No. 19, on the ground that the identity of the goods could not be established as the counts of yarn as found in the test report was not matching with the counts as were declared in the Shipping Bill. Further, the

claim was hit by time limitation as prescribed under Rule 5 of the Re-export of imported goods (Drawback of Customs Duties) Rules, 1995. Drawback claim in respect of the Shipping Bill No. 37 was also rejected on the ground that examination report was not counter signed by the Assistant Commissioner of Customs; that the goods were exported after a period of 09 months; and that FOB value in the Bill of Entry and Shipping Bill was different whereas no processing was undertaken or value addition was made. Aggrieved, Applicant-1 filed appeals before the Commissioner (Appeals) who, vide the impugned OIA dated 11.01.2019, rejected the appeal in respect of the Shipping Bill NO. 19 on the grounds that the identity of the exported goods could not be established with those of imported goods and the claim was also time barred. However, the appeal of the Applicant -1 was allowed in respect of the Shipping Bill No. 37, on the ground that it was the duty of the examination staff to get the report countersigned from the Assistant Commissioner and in the absence of signatures of the Assistant Commissioner, it can not be concluded that the exported goods were not the same which were imported earlier.

3. The revision application has been filed by the Applicant – 1, mainly, on the ground that the proper procedure was not followed for the testing of the impugned goods; that delay in filing of drawback claim was un-intentional and, therefore, was condonable. Applicant – 2 has filed the revision application, mainly, on the ground that the examination report was not counter signed by the Assistant Commissioner and as such identity of the goods was not established to the satisfaction of the Assistant Commissioner of Customs which is an essential condition for the grant of

drawback under Section 74 of the Customs Act, 1962; and that there was substantial difference in the invoice value of the goods declared in the Bill of Entry viz-a-viz to the FOB value declared in the Shipping Bill.

4. Personal hearing, in virtual mode, was held on 22.09.2021. Sh. Naveen Bindal, Advocate appeared on behalf of the Applicant-1 and reiterated the contents of the revision application & written submissions. He, accordingly, requested for the matter to be remanded to the original authority. None appeared for the Applicant -2, therefore, another hearing was held on 07.10.2021. Sh. Naveen Bindal, Advocate reiterated the contents of the RA No. 375/23/DBK/2019-RA. Sh. Bindal submitted that the delay in filing of the claim could have been condoned and relied upon the judgment of Hon'ble Kolkata High Court reported as 1991 SCC Online Cal 194. Accordingly, he requested that the matter may be remanded to the original authority. Sh. Mukesh Meena, Superintendent supported the order of Commissioner (Appeals). Sh. Mukesh Meena, Superintendent reiterated the contents of RA No. 380/05/DBK/2019-RA and submitted that the impugned OIA may be set aside to this extent. Sh. Naveen Bindal, Advocate reiterated the contents of the cross objections dated 20.06.2019 and supported the order of Commissioner (Appeals).

5.1 Government has examined the matter. It is observed that the impugned goods were got tested both at the time of import as well as at the time of re-export in respect of the Shipping Bill No. 19. The count of yarn was found as 33.8 in the test report pertaining to the import of impugned goods whereas the same was found as

35 in the test report pertaining to the re-export of impugned goods. Both the test reports were not challenged by the Applicant -1 and they had not asked for the re-test of the goods. As such, the test reports had attained finality. Further, the drawback claim has also been found to be hit by limitation. It is observed that the Applicant -1 had filed the condonation of delay application only after the OIO dated 26.04.2017 had been passed. Thus, the same could not have been considered at all. The ratio of the judgment relied upon <sup>by</sup> the Applicant is not applicable in the present case as the same pertains to the applications for extension of time under the Limitation Act. 437

5.2 As regard the Shipping Bill No. 37, the Applicant-2 has contended that the examination report has not been countersigned by the Assistant Commissioner so the identity of the impugned goods was not established. Applicant -1 has contended that the identity of the goods can be established also with reference to the documents on record, i.e. Bill of Entry, invoice, Shipping Bill, etc. This plea of the Applicant has weightage. However, the Government observes that there was a substantial difference in the value declared in the Bill of Entry viz a viz the value declared in the Shipping Bill. This increase in value has not been substantiated by the Applicant -1. Increase in value might be due to the some process carried out on the impugned goods or because the goods were not the same as those imported. Thus, it can not be concluded categorically that the same goods were re-exported. As such, identity of the goods can not be established with reference to the documents.

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6. In view of the above, the revision application No.375/23/DBK/2019-RA filed by the Applicant -1 is rejected whereas the revision application No. 380/05/DBK/2019-RA filed by the Applicant-2 is allowed.



(Sandeep Prakash)

Additional Secretary to the Government of India

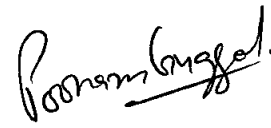
1. M/s Bansal Spinning Mills Ltd,  
Village Bilga, G.T. Road,  
Sahnewal, Ludhiana 141120
2. Commissioner of Customs , Container Freight Station,  
OWPL, C,-205, Phase – V,  
Focal Point Bhandhari Kalan,  
Ludhiana – 141120.

Order No. 209-2/0/21-Cus dated 08-10-2021

Copy to:

1. Commissioner (Appeals), Customs & CGST, F-Block Rishi Nagar, Ludhiana.
2. Assistant Commissioner of Customs , Container Freight Station, OWPL, C,-  
205, Phase – V, Focal Point Bhandhari Kalan, Ludhiana – 141010.
3. PS to AS(RA)
4. ~~Guard File.~~
5. Spare Copy

Attested

  
(Poonam Buggal)  
Supdt. P.A.)