

SPEED POST



F.No. 375/27/DBK/2014-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...08/07/22

Order No. 215/22-Cus dated 08-07-2022 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/247/2014 dated 31.03.2014, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi.

Applicant : M/s United Sanitation, Bhadurgarh.

Respondent : Commissioner of Customs (Export), ICD, TKD, Delhi

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ORDER

Revision Application, bearing no. 375/27/DBK/2014-RA dated 07.07.2014, has been filed by M/s United Sanitation, Bahadurgarh (herein after referred to as the Applicant) against the Order-in-Appeal No. CC(A)/Cus/D-II/247/2014 dated 31.03.2014, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi, vide which the appeal, filed by the Applicant herein, against the Order-in-Original No. 101/2013 dated 15.04.2013, passed by the Additional Commissioner of Customs, ICD, Tughlakabad, New Delhi, has been rejected.

2. Brief facts of the case are that the Applicant filed a Shipping Bill No. 5312257 dated 07.09.2011, under drawback claim, for the goods declared as, i.e., C.P. Sanitary Bathroom Fittings in brass (Basin mixer, bath mixer, sink mixer etc.,) under heading 7419A of the Drawback Schedule and claimed drawback at the rate applicable to heading 741902A. The goods were examined and found to be sanitary articles essentially mixers of different kinds and, on scrutiny, it was found that the Applicant had wrongly classified the items exported under DBK Schedule 7419 instead of 8481. The goods in question were provisionally released and thereafter a show cause notice dated 26.09.2012 was issued to the Applicant to show cause as to why the goods namely, C.P. Bathroom fittings (Sink mixer, basin mixer, bath mixer etc.,) should not be held as classifiable under Chapter heading 84188020 of the Schedule to the Customs Tariff Act, 1975 and under Tariff heading 848101 of the Drawback Schedule to the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The original authority, vide the above mentioned Order-in-Original, ordered

that the items exported shall be classified under DBK Schedule No. 8481012 and not under DBK Schedule 7419 and also confirmed the recovery of the erroneously excess paid drawback amount of Rs. 19,36,809/- in respect of the past exports. The goods exported were held liable to confiscation under Section 113(h)(ii) of the Customs Act, 1962. Redemption fine of Rs. 20,00,000/- and penalty of Rs. 15,00,000/- were also imposed. Aggrieved, the Applicant filed appeal before the Commissioner (Appeals), which was rejected. The instant revision application was rejected by the Government vide GOI Order No. 71/2018-Cus dated 18.06.2018 as the Applicant had failed to pay the application fee of Rs. 1,000/-, as required in terms of Section 129 DD(3) of the Act, *ibid*. The Applicant thereafter approached the Hon'ble Delhi High Court in WP (C) No. 9901/2018, which was disposed of by the Hon'ble High Court, vide Order dated 19.09.2018. The Hon'ble Court remitted the case for fresh consideration subject to the Applicant paying the requisite fee within one week. The fee has been paid vide TR 6 Challan No. 62179 dated 27.09.2018. Therefore, the matter is taken up for consideration afresh.

3. The revision application has been filed, mainly, on the grounds that both the lower authorities had not appreciated the fact that Chapter 84 does not cover articles of Chapter 74; that sanitary and bath room fittings have conventionally been classified under Chapter 74 in the duty drawback schedule; that the expression sanitaryware is not defined in the Customs tariff and drawback schedule and also the expression "sanitary and bathroom fittings" is not defined anywhere" and, hence, reliance has to be based on common understanding. It has been further contended that it is not a case of willful misdeclaration or suppression, hence, penalty is not imposable.

4. Personal Hearing, in virtual mode, was held on 01.07.2022. Sh. Pradeep Jain, Advocate appeared for the Applicant and reiterated the contents of the revision application. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, the case is taken up for final decision.

5.1 The Government has examined the matter carefully. Government observes that the main issue to be decided here is whether the drawback claimed under DBK schedule 7419 was correct or the goods exported were rightly classifiable under DBK Schedule 8481. It has been brought out by the original authority that, on examination of the live consignment, the goods were found to be essentially mixers of different kinds. The original authority thereafter found that the goods are correctly classifiable under Heading 8481, broadly, for the following reasons:

- (i) In terms of Section Note 1(f) of Section XV (Chapter 72-83) of the Customs Tariff, the said Section does not cover articles of Section XVI (machinery, mechanical appliances and electrical goods). Therefore, the classification of brass taps (mixers) under Ch.74 is ruled out as these are the appliances covered under Heading 8481 as "Tap".
- (ii) Even otherwise as per Rule 3(a) of the General Rules for Interpretation, the heading which provides more specific description shall be preferred to the heading providing a more general description.

5.2 The Government finds that the view taken by the original authority is also supported by the relevant HSN Explanatory Notes. The Explanatory Notes for Chapter

heading 8481 state as under:

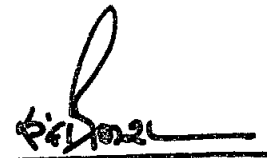
"In general, taps, valves, etc., are of base metal or plastics, but those of other materials (other than unhardened vulcanised rubber, ceramics or glass) are also covered by the heading. -----

(12) Mixing taps and valves with two or more inlets and a mixing chamber. The heading also covers thermostatically controlled mixing valves incorporating an adjustable tension thermostatic element, which actuates the plugs or stoppers regulating the admission of fluids at different temperatures into the mixing chamber....."

53. As such, the Government does not find any infirmity in the orders of the authorities below, on this count.

5.4 In respect of penalty, the contention of the Applicant has been duly examined by the original authority, who has found that the Applicant had been declaring a generic description of "Sanitary Bathroom fittings" instead of specific description, which is "mixers" in order to claim higher drawback under heading 7419. This finding is based upon examination of live consignment and is factually correct. Hence, the Government finds no merit in the revision application on this count as well.

6. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India


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M.I.E. Red Cross Road, Bahadurgarh,
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Order No. 215/22-Cus dated 08-07-2022

Copy to:

1. The Commissioner of Customs (Exports), ICD, Tughlakabad, New Delhi -110020.
2. Commissioner of Customs (Appeals), Delhi, New Custom House, New Delhi 110037.
3. Sh. Rajnish Kumar Verma, Advocate, C-2A/267-B, Janakpuri, Opposite Kendriya Vidyalaya, New Delhi 110058.
4. PS to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED


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