

SPEED POST



F.No. 375/111/DBK/2018-RA
F.No. 375/112/DBK/2018-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. 20.10.21

Order No. 224-225/21-Cus dated 18-10-2021 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. 29-32/SLM/CUS/JPR/2015 dated 01.05.2015 passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Jaipur.
- Applicant : 1. M/s Latiyal Handicrafts Pvt. Ltd., Jodhpur.
2. M/s Bhati & Company, Jodhpur.
- Respondent : The Commissioner of Customs, Jaipur.
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ORDER

Revision Applications, bearing nos. 375/111/DBK/2018-RA and 375/112/DBK/2018-RA both dated 30.07.2015, have been filed by M/s Latiyal Handicrafts Pvt. Ltd, Jodhpur (Applicant-1) and M/s Bhati & Company, Jodhpur, (Applicant-2), respectively, against the Order-in-Appeal No. 29-32/SLM/CUS/JPR/2015 dated 01.05.2015 passed by the Commissioner (Appeals), Customs & CGST, Jaipur, vide which the appeals, inter-alia, filed by the Applicant-1 and 2 against the Order-in-Original No. 9/2014 dated 19.03.2014 and 8/2014 dated 19.03.2014, respectively, have been rejected on the ground that the exported goods are rightly classifiable under DBK Schedule No. 442101 and not under DBK Schedule 9401 and 9403.

2. Brief facts of the case are that the Applicants filed drawback claims for the goods exported, i.e., various types of wooden/iron furnitures/handicrafts items under CTH 9401 and 9403 of the schedule to the Customs Tariff Act, 1975 and claimed drawback at the rate applicable to heading 9401 and 9403, and received the drawback claims. Subsequently, on scrutiny, it was found that the Applicants had wrongly classified the items exported under DBK Schedule 9401 and 940399 instead of 442101 as all artware or handicraft items shall be classifiable under the heading of artware or handicraft, of the constituent material, as mentioned in the relevant Chapter Note and Condition (3) of the Drawback Schedule Notification No. 103/2008-Cus (N.T.) dated 29.08.2008. Accordingly, show cause notices were issued to Applicants to show cause as to why the excess paid drawback should not

be recovered from them under subsection (1) of Section 142 of the Customs Act, 1962 read with Section 75A (2) of the Customs Act, 1962 and rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Asstt. Commissioner of Customs, ICD, Rajsico, Jodhpur, vide the above mentioned Orders-in-Original, had ordered that the items exported shall be classified under DBK Schedule No. 4421 and not under DBK Schedule 9401 & 940399 and also confirmed the recovery of the erroneously excess paid drawback amount. Aggrieved, the Applicants filed appeals before the Commissioner (Appeals), which were rejected.

3. The revision applications have been filed, mainly, on the ground that the assessment of the items exported was final as it was not challenged by the department and , therefore, demand for the recovery of drawback is not sustainable; that demand is also hit by limitation as they had not suppressed or mis declared any facts in order to avail ineligible drawback; and that prior to 17.09.2010, exported goods were classifiable under 9401 & 9403.

4. Personal Hearing, in virtual mode, was held on 13.10.2021. Sh. O.P. Agarwal, Chartered Accountant, attended the hearing on behalf of the Applicants and submitted that both the cases involve an identical issue and hence these may be taken up together for hearing. Sh. Agarwal drew attention to the synopsis emailed on 12.10.2021 as well as Hon'ble Supreme Court's judgment in Sulochana Amma 1995(77)ELT785(SC), which were taken on record. Sh. Agarwal reiterated the contents of the revisions applications and synopsis filed. He submitted that the

classification of export goods has attained finality and hence the demand for drawback cannot be sustained.

5.1 The Government has examined the matter carefully. It is observed that the revision applications have been filed, mainly, on the ground that the assessment under CTH 9401 or 9403 was final as the same was never challenged by the respondent department. Government observes that the main issue to be decided here is whether the drawback claimed under DBK schedule 9401 or 9403 was correct or otherwise the goods exported were rightly classifiable under DBK Schedule 4421. The Applicants have contended that the goods are classifiable under CTH 9401 or 9403 as per the Customs Tariff Act, 1975. The issue of classification of a particular item under any chapter heading is governed by the Customs Tariff Act, 1975 whereas for the drawback purposes classification is to be as per the Drawback Schedule issued by the Government, from time to time. As such, the classification under Customs Tariff Act, 1975 and classification under Drawback Schedule for drawback purpose are two distinct matters. In the instant case, issue pertains to the classification of the goods exported i.e. 'Handicraft and artistic wooden furniture' under the DBK Schedule. As per Para 2 of the Notification No. 103/2008-Cus (N.T) dated 29.08.2008, the General Rules for the Interpretation of the First Schedule to the Customs Tariff Act, 1975 shall mutatis-mutandis apply for classifying the export goods listed in the Drawback Schedule and, accordingly, all artware or handicraft items shall be classified under the heading of artware or handicraft (of constituent material) as mentioned in the relevant Chapters. Thus, the items exported are

rightly classifiable under DBK Schedule under Chapter 44 as the constituent material of the goods exported was mainly wood.

5.2 It is also the contention of the Applicants that the Drawback Schedule was amended, vide notification no. 84/2010-Cus (NT) dated 17.09.2010, and a new heading 4421 was created. Therefore, prior to 17.09.2010, such goods were not covered under 4421. The Government observes that the Board had issued a Circular No. 35/2010-Cus dated 17.09.2010, explaining and elaborating the scope of aforesaid notification dated 17.09.2010. In para 4 (iv)(a) of the said Circular, it is stated that *"(a) In the earlier schedule, wooden artware and handicrafts were covered under the heading 4420. On representations from the exporters that a number of wooden handicraft items are not covered under the said heading, it has been decided to have a uniform rate of 2.5% for wooden items of headings 4414, 4419 and 4420. A specific entry has also been created for wooden handicraft and artware under the residuary head 4421 with a drawback rate of 2.5%."* Thus, it is clear that till 16.09.2010, the wooden handicrafts were covered under heading 4420 of the Drawback Schedule and thereafter under the heading 4421. In other words, there is no possibility of placing wooden handicrafts under headings 9401 & 9403, even prior to 17.09.2010. The Government, however, observes that though the original authority has taken note of the change effected from 17.09.2010 but has not examined the issue with reference to coverage under heading 4420 prior to 17.09.2010 and drawback admissible thereon. Thus, it will be in the interest of

justice that the matter is, to this extent, examined and decided afresh by the original authority.

5.3 As regard the contention of the Applicant that the limitation clause is applicable in the instant case, the Government observes that Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, does not prescribe any limitation period for demand and recovery of the drawback amount. Hence, this contention of the Applicants does not have any merit.

6. In view of the above, the revision applications are allowed by way of remand to the original authority for decision afresh, to the extent and with the directions indicated above.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. M/s Latiyal Handicrafts Pvt. Ltd,
Near Kanahiya Gaushala, Pal Road,
Jodhpur (Raj.).
2. M/s Bhati & Co.
E-524-526, MIA, Basni,
Phase-II,
Jodhpur (Raj.)

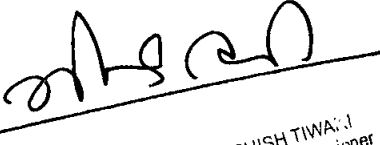
Order No. 224-225/21-Cus dated 18-10-2021

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



आशीष तिवारी / ASHISH TIWARI
सहायक आयुक्त / Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
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