

REGISTERED
SPEED POST



F.No. 375/46/DBK/2019-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue... 12/11/21

Order No. 257/21-Cus dated 11-11-2021 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. LUD-CUS-001-APP-2508-2019 dated 17.05.2019, passed by the Commissioner (Appeals), CGST & Customs, Ludhiana.

Applicant : M/s Hero Exports, Ludhiana

Respondent : The Commissioner of Customs (Preventive), Amritsar.

ORDER

A revision application No. 375/46/DBK/2019, dated 12.07.2019, has been filed by M/s Hero Exports, Ludhiana (hereinafter referred to as the Applicant) against the Order-in-Appeal No. LUD-CUS-001-APP-2508-2019 dated 17.05.2019, passed by the Commissioner (Appeals), CGST & Customs, Ludhiana, vide which the appeal filed by the Applicant against the Order-in-Original No. 08/ASR/CUSTM/PRV/2016 dated 18.02.2016, passed by the Additional Commissioner of Customs, Preventive Commissionerate, Amritsar, has been rejected.

2. Brief facts of the case are that the Applicant are engaged in the export of 'Bicycles, Bicycle Parts, and Bicycle Accessories". An intelligence was received by the Anti Smuggling Unit, Ludhiana, that the Applicant was claiming higher rate of drawback under Drawback Heading 871201 by declaring the exported items as "Complete Bicycle" instead of declaring the same as "Complete Bicycle & Accessories", and thereby claiming excess drawback on the accessories, i.e. Bicycle Pump, Bell, Tool Kit, Dynamo, Puncture kit, Mirror, Carrier, helmet etc., that were actually not part of complete bicycle but only accessories. The Applicant was allegedly declaring these accessories under Drawback heading 8712019 (which is specifically meant for Complete Bicycle only) instead of declaring them under respective Drawback headings where the rate of drawback is less. After investigation, a show cause notice dated 05.06.2015 was issued to the Applicant. Vide the above said Order-in-Original dated 18.02.2016, the demand & recovery of erroneous drawback amounting to Rs. 43,07,752/- was confirmed under Rule 16 of the Customs, Central Excise Duties &

Service Tax Drawback Rules, 1995, along with interest. Besides, a penalty of Rs. 43,07,752/- was also imposed on the Applicant under Section 114 of the Customs Act, 1962. Penalty of Rs. 5,00,000/- each, was also imposed on the Shri Ashok Goyal, General Manager (Finance & Accounts), of M/s Hero Exports, under Section 114 and under Section 114 AA of the Customs Act, 1962. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed, mainly, on the grounds that the Additional Commissioner of Customs, Preventive Commissionerate, Amritsar did not have the jurisdiction to decide the case in respect of the territorial area that falls under the jurisdiction of Commissioner of Customs, Ludhiana; that the demand is barred by limitation as the limitation for the purposes of Rule 16 of Customs & Central Excise Drawback Rules, 1995 is only five years; that there was no requirement/provision in the Drawback Schedule at the relevant time to segregate the "accessories" from the "complete bicycle".

4. Personal hearing, in virtual mode, was held on 08.11.2021. Sh. Sudhir Malhotra, Advocate, appeared for the Applicant and stated that a compilation has been emailed on 08.11.2021 which may be taken on record. While reiterating the contents of the revision application, Sh. Malhotra submitted that the export had been made through ICD, Ludhiana, whereas Show Cause notice was issued and adjudicated by the Additional Commissioner of the Customs, Preventive Commissionerate, Amritsar. Further, the issue of jurisdiction was raised before the original authority who failed to

address the same; that the Show Cause Notice was issued on 05.06.2015 and covers the period of exports covering July, 2007 onwards. As per the judgment of Hon'ble Punjab & Haryana High Court in *Jairath International* {2019(370)ELT116}, a period of 05 years is the reasonable period of limitation for the purposes of Rule 16 of the Drawback Rules, 1995. Further, the goods had already been exported and as such can not be termed as "export goods" in terms of the Customs Act, 1962. As such, the Rule 6 of the Customs Valuation (Determination of value of export Goods) Rules, 2017 could not have been invoked to reassess the value, as held in the case of *M/s Jairath International* (Supra). The Applicant had exported "Complete bicycle" as ordered by their customers. Keeping in view of the provisions made in the Drawback Schedule, at the relevant time, there was no warrant to segregate the "accessories" from the "complete bicycle". 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. The Government has examined the matter carefully. The preliminary issue raised by the Applicant is regarding jurisdiction of the Additional Commissioner of Customs, Preventive Commissionerate, Amritsar, in the matter. The Government observes that this issue of jurisdiction was also raised by the Applicant, vide their letter dated 22.12.2015 before the original adjudicating authority but the same was neither noted nor addressed in the above mentioned OIO dated 18.02.2016. Commissioner (Appeals) has discussed this issue of jurisdiction but only in reference to the CBEC Circular No. 24/2011-Cus dated 31.05.2011. However, it is observed that the said

Circular dated 31.05.2011 deals with the monetary limit prescribed for adjudication of the Customs cases by the various categories of Officers of Customs and does not deal with the issue of territorial jurisdiction. Thus, the impugned OIA also does not address the subject issue. The Government finds that an appropriate determination in respect of this preliminary issue was a pre-requisite before deciding the other issues involved, including those in respect of limitation as well as those on merits. Therefore, it would be in the interest of justice to remand the case back to the original authority for de-novo consideration with a direction to decide the issue of jurisdiction first. All other contentions of the Applicant are also kept open for de-novo consideration.

6. The revision application is, accordingly, allowed by way of remand to the original authority, with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Hero Exports,
Hero Nagar, G.T. Road,
Ludhiana – 141014.


Order No. 257/21-Cus dated 11-11-2021

Copy to:

1. The Commissioner of Customs (Preventive), Customs House, Central Revenue Building, The Mall, Amritsar-143001
2. The Commissioner (Appeals), Customs & CGST, Ludhiana, GST Bhawan, F-Block, Rishi Nagar, Ludhiana – 141001.
3. Sh. Sudhir Malhotra, Advocate, Chamber No. 103, C.K. Daphtary Lawyer's Chamber Supreme Court of India, Bhagwan Das Road, New Delhi.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

Attested

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(Lakshmi Raghavan)
अनुभागी अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

