

REGISTERED  
SPEED POST



F.No. 375/75/DBK/2019-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue.. 16/11/21

Order No. 259/21-Cus dated 15-11-2021 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. CC(A)/CUS/D-II/ICD/PPG/155/2018-2019 dated 24.05.2019, passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : M/s S. Oliver Fashion India Pvt. Ltd., Gurgaon.

Respondent : The Commissioner of Customs, ICD, Patparganj Delhi.

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**ORDER**

A revision application No. 375/35/DBK/2019-RA, dated 10.12.2019, has been filed by M/s S. Oliver Fashion India Pvt. Ltd., Gurgaon (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)/CUS/D-II/ICD/PPG/155/2018-2019 dated 24.05.2019, passed by the Commissioner of Customs (Appeals), New Delhi, vide which the appeal filed by the Applicant against the Order-in-Original C.No. VIII (6) ICD/PPG/DBK/S.Oliver/709/2015 dated 30.07.2015, passed by Assistant Commissioner of Customs, ICD-PPG, Delhi, has been rejected.

2. Brief facts of the case are that the Applicant had filed four drawback claims, on 02.05.2014, with the Assistant Commissioner of Customs, ICD, Patparganj, New Delhi, for a total amount of Rs. 44,36,764/-, under Section 74 of the Customs Act, 1962. Respondent department, vide deficiency memo dated 08.07.2014, directed the Applicant to submit certain documents as per the provisions of Rule 5 (4) (a) of the Re-export of Imported Goods (Drawback of Customs duties), Rules, 1995. Since, the Applicant did not submit the requisite documents within 30 days from the date of the receipt of the Deficiency Memo, a Show Cause Notice dated 25.05.2015 was issued asking the Applicants herein to show cause as to why their drawback claims should not be denied. Assistant Commissioner of Customs, ICD, Patparganj, vide above mentioned OIO dated 30.07.2015 rejected the drawback claims as barred by limitation as the Deficiency Memo was complied beyond the time period prescribed under Rule 5(4)(b) ibid. Aggrieved the Respondent filed an appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed, mainly, on the grounds that the deficiency memo was not issued within 15 days of the receipt of the claim as per the provisions of Rule 5(4)(a) of the Rules; that the time limits are applicable only for purpose of interest under Section 75A and not per-se for the drawback claim under Section 74; that since the deficiency memo was not issued within the prescribed period of 15 days it was invalid in eyes of law and any thing that is invalid can not be the basis for any punishment.

4. Personal hearing, in virtual mode, was held on 12.11.2021. Sh. Manish Sachdeva, Advocate appeared for the Applicant and requested that the Synopsis emailed on 12.11.2021 may be taken on record. He reiterated the submissions made in the revision application and the Synopsis taken on record. No one appeared for the Respondent department nor any request for adjournment has been received.

5.1 The Government has carefully perused the case papers including the Written Submissions dated 12.11.2021. It is observed that the drawback claim of the Applicant was rejected by the respondent department under the provisions of Rule 5(4)(b) ibid. Before proceeding further in the matter, it would be gainful to reproduce the Rule 5 of the said Rules and Section 75 A of the Customs Act, 1962, as under:

***5. Manner and time of claiming drawback on goods exported other than by post.-***

(1) A claim for drawback under these rules shall be filed in the form at Annexure II ] within three months from the date on which an order permitting clearance and loading of goods for exportation under Sec. 51 is made by proper officer of customs Provided that the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may, if he is satisfied that the exporter was prevented by sufficient cause to file his claim within the aforesaid period of three months, allow the exporter to file his claim within a further period of three months.

(2) The claim shall be filed alongwith the following documents, namely :-

(a) Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export.

(b) Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation.

(c) Import invoice.

(d) Evidence of payment of duty paid at the time of importation of the goods.

(e) Permission from Reserve Bank of India for re-export of goods, wherever necessary.

(f) Export invoice and packing list.

(g) Copy of Bill of lading or Airway bill.

(h) Any other documents as may be specified in the deficiency memo.

(3) The date of filing of the claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on the claims which are complete in all respects,

*and for which an acknowledgement shall be issued in such form as may be prescribed by the [Commissioner of Customs].*

*(4) (a) Any claim which is incomplete in any material particulars or is without the documents specified in sub-rule (2) shall not be accepted for the purpose of section 75A and such claim shall be returned to the claimant with the deficiency memo in the form prescribed by the [Commissioner of Customs] within fifteen days of submission and shall be deemed not to have been filed;*

*(b) Where exporter complies with requirements specified in deficiency memo within thirty days from the date of receipt of deficiency memo, the same will be treated as a claim filed under sub-rule (1).*

*(5) Where any order for payment of drawback is made by the [Commissioner (Appeals)], Central Government or any Court against an order of the proper officer of customs, the manufacturer exporter may file a claim in the manner prescribed in this rule within three months from the date of receipt of the order so passed by the [Commissioner (Appeals)], Central Government or the Court, as the case may be.*

*SECTION 75A. Interest on drawback. - (1) Where any drawback payable to a claimant under section 74 or section 75 is not paid within a 25[period of 26[one month]] from the date of filing a claim for payment of such drawback, there shall be paid to that claimant in addition to the amount of drawback, interest at the rate fixed under section 27A from the date after the expiry of the said 25[period of 26[one month]] till the date of payment of such drawback:*

5.2 On a plain reading of sub-rule 4(a), it is clear that any incomplete claim shall not be accepted "for the purpose of Section 75A". Further, Section 75 A is relevant only for the purpose of interest on drawback claim. Therefore, it is apparent that even if the drawback claim is incomplete, a deficiency memo can be issued in terms of Rule 5(4)(a), within 15 days, so as to dispense with the interest liability under Section 75A. Consequently, the time bar under clause (b) of sub-rule (4) can also be applied only for the purposes of interest under Section 75A. Hon'ble Kerala High Court has, in the case of Travancore-Cochin Chemicals Ltd. vs. UOI {2017 (346) ELT 228 (Ker)}, held that:

*"9. Where the claimant has applied for drawback on re-export of duty paid goods only under S. 74 of the Customs Act, 1962, the time bar under R. 5(4)(a) and (b) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 cannot be applied; but it can be pressed into service, where the claim is for interest on drawback under S. 75(A) of the Customs Act, 1962. Where any claim for interest on drawback is returned to the claimant as incomplete in any material particulars or is without the documents specified, unless the requirements specified in deficiency memo are complied within thirty days from the date of receipt of deficiency memo, the same will not be treated as claim filed under sub-rule (1) of Rule 5 of the aforesaid Rules.*


*10. But in the instant case, claim is for drawback only under S. 74 and interest is not claimed. So, R. 5(4)(a) and (b) will not come into application; but the 5th respondent Revisional Authority went wrong by applying R. 5(4) and (b) of the*

above Rule. But the 5th respondent failed to appreciate the distinction between R. 74 and 75A in its correct perspective."

5.3 Further, it is observed that the deficiency memo under the provisions of Rule 5(4)(a) is to be issued within 15 days from the receipt of the drawback claim. In the instant case, drawback claim was submitted by the Applicant on 02.05.2014 whereas the deficiency memo was issued on 08.07.2014, i.e., after a lapse of more than 15 days. Thus, having itself failed in complying with the time limits prescribed, respondent department can hardly take shelter of the same Rule to allege non-adherence of the time limits prescribed for the other party, to reject the drawback claim.

5.4 In view of the above, the findings of lower authorities that the drawback claims under Section 74 are barred by limitation, since the Applicant failed to comply with the Deficiency Memo, within a period of thirty days, cannot be sustained.

6. The revision application is allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India


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Unit No. 405, 4<sup>th</sup> Floor, Vatika Professional Point,  
Golf Course Extension Road, Sector 66,  
Gurgaon, Haryana – 122002.

Order No. 259 /21-Cus dated 15-11-2021

Copy to:

1. The Commissioner of Customs, ICD, Patparganj, Delhi – 110096.
2. The Commissioner of Customs (Appeals), New Custom House, Near I.G.I. Airport, New Delhi – 110037.
3. M/s. Hiregange & Associates, Chartered Accountants, 509, Vipul Trade Centre, Sector 48, Sohna Road, Gurgaon – 122009.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

Attested

  
(Lakshmi Raghavan)  
(Lakshmi Raghavan) Officer.  
अनुसंधान अधिकारी (अनुसंधान विभाग)  
वित्त मंत्रालय (अनुसंधान विभाग)  
(Ministry of Finance (Investment & Public Rev.))  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi