

SPEED POST



F. No. 372/06/DBK/2022-R.A.
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. 17/8/22

Order No. 268 / 22-Cus dated 17.08.2022 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

SUBJECT : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. KOL/CUS(CCP)/291/2021 dated 17.03.2021, passed by Commissioner of Customs (Appeals), Kolkata.

APPLICANT : M/s. Indian Oil Corporation, Kolkata.

RESPONDENT : The Commissioner of Customs (Preventive), Kolkata.

ORDER

A Revision Application No.372/06/DBK/2022-RA dated 25.02.2022 has been filed by M/s. Indian Oil Corporation, Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(CCP)/291/2021 dated 17.03.2021, passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals) has, vide the above mentioned Order-in-Appeal, rejected the appeal of the Applicant, against the Order in Original No. 26/DC(DBK)/2019-20 dated 22.10.2019, passed by the Deputy Commissioner of Customs, Drawback Cell, CC(P), Custom House, Kolkata.

2. Brief facts of the case are that the Applicant had exported High Speed Diesel and Motor Spirit and submitted their Drawback claims under brand rate of Duty Drawback Scheme under Section 75 of the Customs Act, 1962. Original authority, vide 4 separate Orders-in-Original, all dated 25.10.2018, rejected the drawback claims on the grounds of non-compliance of declaration on Bill of Export by the exporter as per Rule 12(1)(a)(ii) of the Customs, Central Excise & Service Tax Drawback Rules, 1995. Aggrieved, the Applicant filed appeals before the Commissioner (Appeals) who, vide the Orders-in-Appeal No. KOL/CUS/AA/306-309/2019 dated 07.05.2019, set aside the orders of lower authority and remanded the matter to the original authority with the directions to decide the matter afresh and also directed the Applicant to submit the relevant documents along with copy of declaration in accordance with Rule 12(1)(a)(ii); 6, 7 & 12, as the case may be, of Customs, Central Excise & Service Tax Drawback Rules, 1995. The matter was again heard and decided by the lower authority and who, vide the aforesaid OIO dated 22.10.2019, rejected the drawback claims on the grounds of limitation as the Applicant did not file the drawback claims within one year of fixation of brand rate. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected.

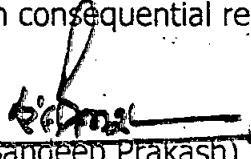
3. The revision application has been filed, mainly, on the grounds that the Order-in-Original is beyond the scope of remand; that no limitation has been prescribed for drawback under statute and it can not be introduced by way of Circular; that brand rate

order was issued for specific exports without any time limit; and that procedural infirmity cannot deny the substantive benefit.

4. Personal hearing, in virtual mode, was held on 27.07.2022. Ms. Reena Khair, Advocate and Sh. Shubham Jaiswal, Advocate appeared for the Applicant and reiterated the contents of the revision application. After proceeding with the hearing for sometime, Ms. Reena Khair, Advocate sought time to file additional submissions to clarify facts of the case. Accordingly, one weeks time was allowed to file additional submissions and documents. The additional submissions were filed on 29.07.2022 and on 16.08.2022. In the hearing held on 16.08.2022, Sh. Shubham Jaiswal, Advocate appeared for the Applicant and requested that the written submissions dated 16.08.20022 filed by email may be taken on record. He reiterated the submissions made therein. No one appeared for the Respondent department on any of the above mentioned dates nor any request for adjournment has been received. Therefore, the matter is taken up for disposal based on records.

5.1 The Government has examined the matter carefully. At the outset, it is observed that the Applicant has contended that the Commissioner (Appeals) while remanding the matter back to Commissioner (Appeals) had, vide OIA dated 07.05.2019, only directed that the matter may be decided afresh after the submission of relevant documents by them. The issue of limitation was not raised in the first round of litigation, neither in the OIO dated 25.10.2018, passed by the original authority nor before the Commissioner (Appeals). Government further observes that this position has not been disputed by the Respondent department and OIA dated 07.05.2019 has attained finality. Further, on merits, it is observed that the exports, in question, had taken place pending fixation of brand rate. This position is stated to have been specifically indicated on the relevant Shipping Bills. The brand rate of drawback was subsequently fixed, specifically in respect of the exports that had already taken place. In such a situation, the contention that brand rate fixation was beyond its validity, when the claim was preferred, cannot be accepted.

6. In view of the above, the revision application is allowed with consequential relief.


(Sandeep Prakash)

Additional Secretary to the Government of India


M/s. Indian Oil Corporation
Limited, (Marketing Division),
Indian Oil Bhawan,
7th Floor, 2, Gariahat Road (South),
Kolkata-700068.

Order No. 268/22-Cus dated 17.8.2022

Copy to:-

1. The Commissioner of Customs (Preventive), Custom House, 15/1, Strand Road, Kolkata-700001.
2. The Commissioner of Customs (Appeals), 3rd Floor Custom House, 15/1, Strand Road, Kolkata-700001.
3. Ms. Reena Khair, Advocate, R-163, 2nd Floor, Greater Kailash, Part-I, New Delhi-110048.
4. P.S. To A.S (RA)
5. Guard File
6. Spare Copy

ATTESTED


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