

**SPEED POST**



F. No. 373/33/DBK/2017-R.A.  
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. 27/01/2023

Order No. 28 / 23-Cus dated 27-01-2023 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. VIZ-CUSTOM-000-APP-084-16-17 dated 31.10.2016, passed by Commissioner of Customs (Appeals), Visakhapatnam.

APPLICANT : M/s Suraj Impex (India) Pvt. Ltd., Indore.

RESPONDENT : The Commissioner of Customs, Visakhapatnam.

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**ORDER**

A Revision Application No. 373/33/DBK/2017-RA dated 03.02.2017 has been filed by M/s Suraj Impex (India) Pvt. Ltd., Indore (hereinafter referred to as the Applicant) against the Order-in-Appeal No. VIZ-CUSTOM-000-APP-084-16-17 dated 31.10.2016, passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 01/2014 dated 06.01.2014, passed by the Additional Commissioner of Customs, Custom House, Visakhapatnam.

2. Briefly stated, the Applicants herein were engaged in the export of agriculture products including Soya Bean Meal and De-Oiled Cake during the years 2006 to 2009. On the basis of an intelligence, the Directorate General of Central Excise Intelligence initiated investigation in respect of drawback availed in respect of goods exported. It was alleged that the Applicant had attempted to avail drawback on the export of above said goods despite the fact that the manufacturer of the said goods had availed the benefit of Rule 19(2) of the Central Excise Rules, 2002 whereas the condition No. 7(f), 7(f) and 8(f) of notification Nos. 81/2006-Cus (NT) dated 13.07.2006, 68/2007-Cus (NT) dated 16.07.2007, 103/2008-Cus (NT) dated 29.08.2008, respectively, clearly stipulate that the rates of drawback specified in the Schedule shall not be applicable to the export of commodity or product, if such commodity or product is manufactured or exported in terms of sub-rule (2) of rule 19 ibid. It was also alleged by the department that the Applicant had attempted to export the goods in question by willfully suppressing the fact of availment of benefit of Rule 19(2) ibid. Accordingly, a show cause notice dated 11.11.2011 was issued to the Applicants herein. Original authority, vide the above mentioned OIO dated 06.01.2014 ordered that the benefit of AIR drawback was not available if exported product was manufactured by availing the benefit under Rule 18 or 19(2) of CER, 2002. The appeal filed by the Applicants herein has been rejected by the Commissioner (Appeals), vide the impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that they are eligible for drawback as well as benefit under Rules 18 & 19(2) ibid in terms of Board's

Circular No. 35/2010 dated 17.09.2020; that the language of notification issued prior to 17.09.2010 and those issued on or after 17.09.2010 is same; that once benefit of Rule 18/19(2) has been availed, the benefit of excise portion cannot be claimed but that of Customs portion can be claimed; that at the relevant time drawback on subject export goods pertained to customs component only; and that Circular No. 35/2010 dated 17.09.2010 has retrospective effect.

4. Personal hearing in the matter was held on 25.01.2023. Sh. Ashutosh Upadhyay, Advocate appeared in physical mode and filed Written Submissions dated 23.01.2023, which were taken on record. Sh. Upadhyay reiterated the contents of the revision application and Written Submissions dated 23.01.2023. He also relied upon decision reported in {1996(83) ELT670 (Tribunal)} in support of his contention. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5.1 Government has examined the matter carefully. The issue involved herein is that whether drawback is admissible, in case, the exported goods are manufactured after availing the benefit in terms of Rule 19(2) of the Central Excise Rules, 2002 during the relevant time.

5.2 At the outset, it is observed that the exported goods, in the instant case, were, admittedly, manufactured by the manufactures only after availing the benefit of Rule 19(2) ibid. Further, the exports in the instant case were made during the year 2006 to 2009. During the relevant years, the drawback was governed in terms of notification Nos. 81/2006-Cus (NT) dated 13.07.2006, 68/2007-Cus (NT) dated 16.07.2007 & 103/2008-Cus (NT) dated 29.08.2008. Condition No. 7(f), 7(f) and 8(f) of these notifications, respectively, clearly prescribed that the rates of drawback specified in the Schedule shall not be applicable to export of a commodity or product if such commodity or product is "manufactured or exported in terms of sub-rule (2) of rule 19 of the Central Excise Rules, 2002". The said condition does not make any distinction between the cases where the rate specified pertains only to customs component and the cases where composite rate is specified. Therefore, the contention of the Applicants that the aforesaid

condition does not come in their way as they have availed drawback rate pertaining to customs component only, cannot be accepted.

5.3 Certain averments have been made by the Applicants with reference to Board's Circular No. 35/2010-Cus dated 17.09.2010. It is observed that the said Circular was issued with reference to the Notification No. 84/2010-Cus (NT) dated 17.09.2010, vide which the Drawback Schedule effective 17.09.2010 was notified. The relevant condition in the said notification i.e. Condition (9) (b) reads as under:

"(9) The rates and caps of drawback specified in columns (4) and (5) of the said schedule shall not be applicable to export of a commodity or product if such commodity or product is-

(b) manufactured or exported in terms of sub-rule (2) of rule 19 of the Central Excise Rules, 2002."

The difference between condition 9 (b) of notification dated 17.09.2010 and condition 8 (f) of earlier notification dated 29.08.2008 has been explained in the Circular dated 17.09.2010, in following terms:

"(vi) Miscellaneous.


(d) The earlier notification (No. 103/2008-Cus.(N.T.) dated 29.08.2008 as amended) provided that the rates of drawback in the Drawback Schedule would not be applicable to products manufactured or exported by availing the rebate of Central Excise duty paid on materials used in the manufacture of export goods in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002. References have been received that exporters are being denied 1% of drawback, which is the customs component of the AIR drawback, on the basis of the above condition although the manufactures had taken only the rebate of central Excise duties in respect of their inputs/procured the inputs without payment of central excise duties; and the Customs duties which remained unrebated should be provided through the AIR drawback route.

The issue has been examined. The present notification No. 84/2010-Cus. (N.T.) dated 17.09.2010 provides that customs component of AIR drawback shall be available even if the rebate of Central Excise duty paid on raw material used in the manufacture of export goods has been taken in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw-materials were procured without payment of Central Excise duty under Rule 19 (2) of the Central Excise Rules, 2002."

Thus, it is clear that the notification dated 17.09.2010 bars the availment of Central excise component only if benefit of Rule 19 (2) had been availed but allowed customs component whereas earlier notification did not make such a distinction and barred availment of drawback as a whole irrespective of the component involved.

5.4 In view of the above, the Government does not find any infirmity in the impugned Order-in-Appeal.

6. The Revision Application is, accordingly, rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Suraj Impex (India) Pvt. Ltd.,  
Saket Tower, 4<sup>th</sup> Floor,  
3A, Ratlam Kothi, A.B. Road,  
Indore-452001. (M.P.)

Order No. 28/23-Cus dated 27-01-2023

Copy to:-

1. The Commissioner of Customs, Custom House Port Area, Visakhapatnam-530035.
2. The Commissioner (Appeals), 4<sup>th</sup> Floor Custom House, Port Area, Visakhapatnam-530035.
3. Sh. Ashutosh Upadhyay, Advocate, 4 Kishan Colony, 567 MG Road, Opposite High Court, Near Rajani Building, Indore-(M.P.)-452001.
4. P.S to A.S (RA)

5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED

LR  
27.01.2023

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