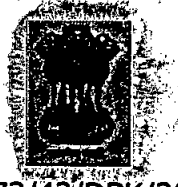


SPEED POST



F. No. 373/43/DBK/2015-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.....14/10/22

Order No. 316/22-Cus dated 14-10-2022 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. CMB/CEX/000/APP/222/14 dated 20.11.2014, passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals-I), Coimbatore.

Applicant : M/s Golden Sun Industries, Coimbatore.

Respondent : Commissioner of Customs (Preventive), Tiruchirapalli

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ORDER

A Revision Application, bearing no. 373/43/DBK/2015-RA dated 05.02.2015, has been filed by M/s Golden Sun Industries, Coimbatore (hereinafter referred to as the Applicant), against the Order-in-Appeal No. CMB/CEX/000/APP/222/14 dated 20.11.2014, passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals-I), Coimbatore. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein, against the Order-in-Original No. 933/2014(BRC) dated 30.06.2014, passed by the Assistant Commissioner of Customs, ICD, Chettipalayam, Tirupur, for failing to make pre-deposit in terms of Section 129E of the Customs Act, 1962.

2. Brief facts of the case are that the Applicant availed drawback of Rs. 1,78,376/- in respect of exports made against 04 Shipping Bills during October-November 2009. However, it was subsequently noticed that the export proceeds were not realized in respect of the relevant Shipping Bills. Therefore, the original authority, vide the above mentioned Order-in-Original dated 30.06.2014, confirmed the demand of Rs. 1,78,376/- of the drawback paid, under Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The Commissioner (Appeals) has rejected the appeal for non-compliance with the requirements of Section 129E in as much as the Applicant failed to make requisite pre-deposit.

3. The revision application has been filed, mainly, on the grounds that the matter relates to drawback and is not related to the demand of duty short paid or excess refund of duty. Therefore, the question of mandatory pre-deposit under Section 129E does not arise.

4. Personal hearing in the matter was fixed on 08.10.2021, 22.03.2022, 29.03.2022, 26.09.2022 and 14.10.2022. No one appeared for the Applicant and Respondent department and no request for adjournment has been received. Since sufficient opportunities have already been granted, the matter is taken up for final disposal based on records.

5.1 The Government has carefully examined the matter. The issue involved in the revision application is whether pre-deposit is required to be made in terms of Section 129E of the Customs Act, 1962, while filing appeal before the Commissioner (Appeals) in the cases related to demand and recovery of drawback.

5.2 Section 129E of the Customs Act, 1962 reads as under:

"Section 129E. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal. – The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal, -

- (i) under sub-section (1) of Section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Principal Commissioner of Customs or Commissioner of Customs;*
- (ii) against the decision or order referred to in clause (a) of sub-section (1) of Section 129A, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;*
- (iii) against the decision or order referred to in clause (b) of sub-section (1) of section 129A, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against :*

Provided that the amount required to be deposited under this section shall not exceed rupees ten crores:

Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014."

The subject drawback claims, have been made under the Drawback Rules of 1995 wherein the drawback is defined under Rule 2(a) as: "(a) "drawback" in relation to

any goods manufactured in India and exported, means the rebate of duty or tax, as the case may be, chargeable on any imported materials or excisable materials used or taxable services used as input services in the manufacture of such goods;". Thus, it is apparent that drawback is nothing but the rebate or refund of duty or tax chargeable on the imported materials and excisable materials used in the manufacture of goods or taxable services. As such, any demand of drawback is nothing but a demand of duty or tax chargeable on the materials used in the manufacture of exported goods.

5.3.1 Further, Section 129E was inserted in the Customs Act, with effect from 06.08.2014. Immediately thereafter, several representations were made to the Board representing that the drawback is not a duty, and hence, Section 129E would not apply to these cases. The position was clarified by the Board, vide Circular No. 993/17/2014-CX dated 05.01.2015, as under:

"5. Several representations have been received by the Board stating that some Commissioners (Appeals) have been insisting on pre-deposit in cases of demand of erroneous drawback granted. It has been represented that drawback is not a duty and hence the amended provisions would not apply to such cases.

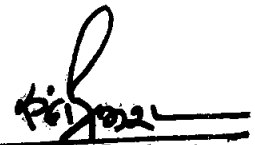
6. The issue has been examined. Drawback, like rebate in Central Excise, is refund of duty suffered on the export goods. Section 129E stipulates that appellant filing appeal before the Commissioner (Appeals) shall pay 7.5% of the duty demanded where duty and penalty are in dispute. Accordingly, it is clarified that mandatory pre-deposit would be payable in cases of demand of drawback as the new section 129E would apply to such cases."

5.3.2 The contemporaneous exposition of law is a well recognised principle of interpretation of statutes. Hon'ble Supreme Court has, in the case of Collector of Central Excise, Guntur vs. Andhra Sugar Ltd. {1988 (38) ELT 564 (SC)}, held that "*It is well settled principle of interpretation that courts in construing a statute will give*

much weight to the interpretation put upon it at the time of its enactment and since, by those duty has been to construe, execute and apply the same enactment." In the case of Oswal Agro Mills Ltd. vs. Collector of Central Excise {1993 (66) ELT 37 (SC)}, the Hon'ble Supreme Court has observed that "But the contemporaneous construction placed by administrative or executive officers charged with executing the statute, although not controlling, is nevertheless entitled to considerable weight as highly persuasive." Similarly, in the case of Indian Metal & Ferro Alloys Ltd. {1991 (51) ELT 165 (SC)}, Hon'ble Supreme Court has held that "a contemporaneous exposition by the administrative authorities is a very useful and relevant guide to the interpretation of expressions used in a statutory instrument." Similar observations have been made by the Hon'ble Allahabad High Court in the case of Shahnaz Ayurvedics vs. Commissioner of Central Excise {2014 (173) ELT 337 (All.)} wherein the Hon'ble High Court has held that "Circulars of the Board are binding on the Tax department, they are in the nature of contemporaneous exposition furnishing legitimate aid the construction to the relevant provisions."

5.4 In view of the above, there is no doubt that the provisions of 129E of the Customs Act, 1962 are applicable to the cases relating to the demand and recovery of drawback. Therefore, the Government finds no infirmity in the impugned Order-in-Appeal.

6. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

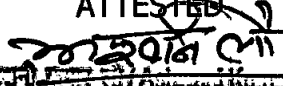
M/s Golden Sun Industries,
214, East Sambandam Road,
R.S. Puram,
Coimbatore-641002

Order No. 316/22-Cus dated 14/10-2022

Copy to:

1. The Commissioner of Customs (Preventive), Tiruchirapalli, No. 1, Williams Road, Cantonment, Trichy-620001.

2. The Commissioner of Customs, Central Excise & Service Tax (Appeals-I), 6/7, A.T.D. Street, Race Course Road, Coimbatore-641018.
3. Sh. S. Murugapan, Advocate, C-4, Level -3, Anmol Palani No. 88, G.N. Chetty Road, T Nagar, Chennai-600017.
4. PA to AS(RA)
5. Guard File
6. ~~Spare Copy~~

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