

SPEED POST



F.No. 373/26/DBK/2017-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.....27/10/22

Order No. 326/22-Cus dated 21-10-2022 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. 124/2016 dated 05.10.2016, passed by the Commissioner of Customs (Appeals), Cochin.

Applicant : M/s Kitex Garments Ltd., Ernakulam.

Respondent : The Commissioner of Customs, Cochin.

ORDER

A Revision Application, bearing no. 373/26/DBK/2017-RA dated 13.11.2017, has been filed by M/s Kitex Garments Ltd., Ernakulam (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 124/2016 dated 05.10.2016, passed by the Commissioner of Customs (Appeals), Cochin, vide which the appeal filed by the Applicant herein against the Order-in-Original No. 29/2016 dated 19.07.2016, passed by the Dy. Commissioner of Customs, Custom House, Cochin, has been rejected.

2. Brief facts of the case are that the Applicant had filed a Shipping Bill No. 1481869 dated 08.03.2014 for the export of Terry Burp Cloth garments under Drawback Sl. No. 630802A, claiming drawback of Rs. 5,59,410/-. The claim of the Applicant was processed as 'Nil' under 9801, on 13.05.2014, due to incorrect classification claimed by them. The Applicant then filed a supplementary drawback claim, on 26.05.2016, before the jurisdictional Customs authorities which was rejected as the claim was not filed within the stipulated period of 3 months or even condonable period of another 15 months. Aggrieved, the Applicant filed appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed, mainly, on the grounds that the order of Commissioner merely follows the order of the original authority without addressing any issues raised; that the Shipping Bill was processed for 'Nil' drawback without following the principles of natural justice; and that the reason for rejecting the request for condonation by the competent authority was not conveyed to them.

4. Personal hearing, in virtual mode, was held on 03.10.2022. Sh. Keerthivas Giri *appeared* Advocate *for* the Applicant. After proceeding with the hearing for sometime, he requested for a short adjournment so as to ascertain certain facts. The matter was, accordingly, adjourned to 21.10.2022. In the hearing held on 21.10.2022, in virtual mode, Sh. P.R. Venkatesh, Advocate, appeared on behalf of the Applicant and

reiterated the contents of the revision application. Upon being asked, he submitted that the ,Nil, processing of the drawback claim on the Shipping Bill was not challenged by them. However, he submitted that the Nil processing was incorrect and supplementary claim is available on merits. Sh. Arsen Jojo, Assistant Commissioner submitted that the supplementary claim was filed even beyond the totally extendable period of 18 months. Hence, the claim has been correctly rejected.

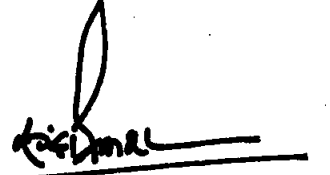
5.1 Government has examined the matter carefully. At the outset, it clear that sanction of the drawback claim, at reduced rates, was an order adversely affecting the substantive rights of the Applicant. Therefore, if aggrieved, the Applicant ought to have challenged this order in appeal, as per the provisions of the Customs Act, 1962. Since this has not been done, the sanction order has attained finality. In the case of ITC Limited Vs. Commissioner of Central Excise, Kolkata- IV {2019(368) ELT 216 (SC)}, the Hon'ble Supreme Court has held that appeal under Section 128 of Customs Act, 1962 is provided not just against speaking orders but against "any order" which is of wide amplitude. Further, unless an order of assessment is modified in accordance with law, a refund claim cannot be entertained. Similar view was taken by the Apex Court earlier in the case of Priya Blue Industries Ltd. Vs Commissioner of Customs (Preventive) {2004(172)ELT145 (SC)}. Applying the ratio of aforesaid judgments of the Hon'ble Supreme Court, in the present case, the supplementary drawback claim could not have been entertained unless the earlier order sanctioning drawback, at the reduced rate, had been modified in accordance with law. As such, the Government holds that the revision application filed by the Applicant is liable to be dismissed on this ground alone.

5.2 Further, Government observes that the Commissioner (Appeals) has also rejected the appeal as the Applicant had not filed the supplementary claim within the stipulated period. As per the proviso to Rule 15 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, the supplementary claim can be made within 3 months. However, this period of 3 months can be extended, by a

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further period of nine months by the Deputy Commissioner of Customs and further 6 months by the Principal commissioner of Customs or Commissioner of Customs. It is on record and also admitted by the Applicant that the supplementary claim was filed after a lapse of 18 months. Thus, the claim was filed even beyond the condonable period of 15 months. It is settled by a catena of judgments of the Hon'ble Supreme Court that a statutory authority is not empowered to condone the delay beyond the statutorily provided condonable period [Ref. Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur {2008 (221) ELT 0163 (SC)} & Amchong Tea Estate vs. UOI {2010 (257) ELT 3 (SC)}]. Therefore, the Government does not find any infirmity in the order of Commissioner (Appeals).

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



(Sandeep Prakash)

Additional Secretary to the Government of India

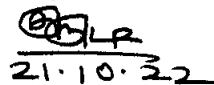
M/s Kitex Garments Ltd.,
P.B. No. 5, Kizhakkambalam, Aluva,
Ernakulam, Kerala-683562.

Order No. 326/22-Cus dated 21-10-2022

Copy to:

1. The Commissioner of Customs, Custom House, Willingdon Island, Cochin-682009. (Kerala)
2. The Commissioner of Customs (Appeals), Customs House, Cochin-682009.
3. Sh. P.R. Venkatesh (Advocate), SVS Ayyar Associates, C.L. Anand Lane, M.G. Road, Cochin-682011.
4. PA to AS(RA)
5. Guard File
6. ✓ Spare Copy

ATTESTED



21.10.22

(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