

REGISTERED  
SPEED POST



F.No. 373/83/DBK/2018-RA  
F.No.373/253/DBK/2018-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. 09/02/2023

Order No. 40-41/23-Cus dated 09-02-2023 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 Applications, filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CMB-CEX-000-APP-327-17 dated 06.12.2017, passed by the Commissioner of Customs, GST and Central Excise (Appeals), Coimbatore and 114/2018-TRY(CUS) dated 28.06.2018, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli.

Applicant : M/s Lakshmi Machine Works Ltd., Coimbatore.

Respondent : The Commissioner of Customs (Preventive), Tiruchirapalli.

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**ORDER**

Two Revision Applications, bearing Nos. 373/83/DBK/2018-RA dated 05.03.2018 and 373/253/DBK/2018 dated 07.09.2018, have been filed by M/s Lakshmi Machine Works Ltd., Coimbatore (hereinafter referred to as the Applicant) against the Orders-in Appeal No. CMB-CEX-OOO-APP-327-17 dated 06.12.2017 and No. 114/2018-TRY(CUS) dated 28.06.2018, passed by the Commissioner (Appeals), Coimbatore and Commissioner (Appeals), Tiruchirapalli, respectively, vide which the appeals filed by the Applicants against the Orders-in-Original No. VIII/20D/24/2015-DBK (Brand Rate) dated 25.11.2016 and No. VIII/20D/78/2015-DBK (Brand Rate) dated 31.10.2017, passed by the Deputy Commissioner of Customs, Coimbatore and Joint Commissioner of Customs, Coimbatore, respectively, have been rejected.

2. Brief facts of the case are that the Applicants had filed various applications for fixation of Brand Rate of drawback in respect of goods exported by them, under Rule 7 of the Customs, Central Excise Duties and Service Taxes Drawback Rules, 1995 (Drawback Rules). The said claims were rejected by the original authorities, on the grounds that the Applicant had earlier filed the shipping bills claiming drawback at All Industries Rates (AIR) and the drawback as per AIR was already sanctioned to the Applicants. Aggrieved with the said orders of the original authority, the Applicants filed appeals before the Commissioner (Appeals), which have been rejected.

3. The instant revision applications have been filed, mainly, on the grounds that there is no bar in the Drawback Rules which debars an exporter from seeking determination of Brand Rate of drawback under Rule 7, merely on the ground that they had already claimed the All Industry Rate of drawback under Rule 3.

4. Personal hearing was fixed on 08.02.2023. Sh. Sarvanan, Consultant appeared for the Applicant, in virtual mode. At his request both the matters were heard together as issue involved is identical. Sh. Sarvanan reiterated the contents of the revision applications. He also requested for time to file additional submissions, if any, which was granted. Applicants submitted Written submissions vide email dated 09.02.2023.

None appeared on behalf of 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. It is observed that the main issue involved in the present proceedings is whether the drawback as per brand rates can be sanctioned to an exporter even after he had already availed drawback as per AIR. The Government finds that sub-rule (1) of Rule 7 prescribes that an application for fixation of brand rate can be made with the Central Excise Commissionerate even if AIR is already fixed for the exported goods under Rule 3 or Rule 4, as the case may be, in case the DBK as per AIR is less than four-fifth of duties or taxes actually paid on inputs etc. used in the manufacturing of exported goods. However, the said sub-rule (1) of Rule 7 has been amended by virtue of Notification No. 109/2014-Customs(NT) dated 17.11.2014, to the effect that the provisions thereof are applicable "except where a claim for drawback under rule 3 of rule 4 has been made." Therefore, it is clear that w.e.f. 17.11.2014, an exporter cannot make an application for fixation of brand rate, in case a claim for the AIR drawback has been made. In the present case, the applications for fixation of brand rate have been filed (after 17.11.2014) when AIR drawback had already been claimed on respective Shipping Bills, which also pertain to a period after 17.11.2014. Hence, it is clear that the Applicants could not have filled the subject applications for fixation of brand rate. As such, it is held that the authorities below have correctly rejected these applications.

5.2 The Applicant has also contended, perhaps in the alternate, that they are eligible for fixation of brands rate of drawback in terms of Rule 7 (3) *ibid*. It is observed that in terms of Rule 7 (3) the exporter is required to file Shipping Bill as provisional under AIR of drawback. There was, however, admittedly no such indication on the relevant Shipping Bills. The Applicant also failed to indicate the requisite identifier, in terms of Board's Circular No. 13/2014-Gus dated 18-11-2014. Thus, sub-rule (3) of Rule 7 also cannot also be employed to rescue the case of the Applicants herein.

5.3 Further, the drawback claims were sanctioned on AIR basis without being provisional. As such, the subject Shipping Bills have become final. It is also on record that the Applicants had not requested Customs authorities for any amendment of the Shipping Bills nor had they filed any appeal before the appellate authority for the review of the drawback sanctioned. Therefore, the AIR drawback sanctioned has attained finality. The request of the Applicants for fixation of brand rate and disbursal of drawback accordingly could not have been entertained for this reason as well.

6. The revision applications are rejected for the reason aforesaid.

  
(Sandeep Prakash)

Additional Secretary to the Government of India

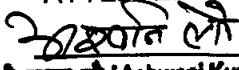
M/s Lakshmi Machine Works Ltd.,  
Perianaickenpalayam,  
S.R.K.V. Post,  
Coimbatore - 641659.

Order No. 40-41/23-Cus dated 09-02-2023

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. PA to AS(RA)
4. Guard File
5. Spare Copy.
6. Notice Board.

ATTESTED

  
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