

SPEED POST



F. No. 373/209/DBK/2016-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. 23/12/22

Order No. 40/22-Cus dated 23-12-2022 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. COC-CUSTOM-000-APP-62/2016-17 dated 11.07. 2016, passed by Commissioner of Customs (Appeals), Cochin.

APPLICANT : M/s. Ramacharan Company, Ernakulam.

RESPONDENT : The Commissioner of Customs, Cochin

ORDER

A Revision Application No.373/209/DBK/2016-RA dated 14.10.2016 has been filed by M/s. Ramachandran Company, Ernakulam (hereinafter referred to as the Applicant) against the Order-in-Appeal No. COC-CUSTOM-000-APP-62/2016-17 dated 11.07.2016, passed by the Commissioner of Customs (Appeals), Cochin. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, upheld the Order-in-Original No. 05/2016 dated 22.01.2016 passed by the Assistant Commissioner of Customs (Drawback), Custom House, Cochin.

2. Briefly stated, the Applicants herein had filed a drawback claim under Section 74 of the Customs Act, 1962 against re-export made under Shipping Bills No. 110 dated 11.05.2015. However, the drawback claim was rejected by the jurisdictional customs authorities on the ground that the Applicant had not submitted the triplicate copy of the Shipping Bill, which is mandatory under Rule 5 (2) of Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which has been rejected.

3. The revision application has been filed, mainly, on the grounds that the examination report was there both on the duplicate as well as on the triplicate copy of the Shipping Bill which clearly state that the identity of the goods is established; that they had paid the duty at the time of import and filed the drawback claim; and that they had submitted an affidavit clearly affirming that they will not claim drawback in case of restoration of lost triplicate copy of Shipping Bill.

4. Personal hearing in the matter was held on 23.12.2022, in virtual mode. Sh. Joseph Alexander, Consultant appeared for the Applicant and reiterated the contents of the revision application. He highlighted that the duplicate copy of Shipping Bill carrying the examination report has been produced. Mate Receipt was also produced evidencing actual export. Further an affidavit has been submitted undertaking that in case triplicate copy is subsequently available, they will not claim drawback against it. Sh. Ajith A, Preventive Officer appeared for the Respondent department and supported the orders of lower authorities. Upon being asked he confirmed that duplicate copy of Shipping Bill carrying

examination order and examination report was produced; and that as per records no drawback has been sanctioned against triplicate copy of Shipping Bill.

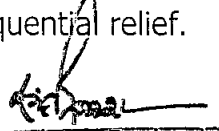
5. The revision application has been filed with a delay, which is attributed to postal delays. Delay is condoned.

6.1 Government has examined the matter carefully. At the outset, it is clear that the drawback claim was rejected solely on the ground that the triplicate copy of the Shipping Bill was not submitted along with drawback claims, as required in terms of Rule 5(2) *ibid*. It is observed that the Applicant had submitted the duplicate copy of Shipping Bill having the examination report. This fact is also admitted by the Respondent department during the course of personal hearing. Further, the Applicant had submitted the Mate Receipt evidencing that the goods were actually exported. An affidavit was also submitted by the Applicant stating that they will not claim any drawback, in case, the triplicate copy of the Shipping Bill is restored with them. It is further confirmed during the personal hearing that no claim has been made on the basis of the triplicate copy which had been misplaced.

6.2 The Government observes that as per clause (a) of said Rule 5(2), the claim has to be filed with " (a) *Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of exports.*" Thus, it is evident that the triplicate copy is required as it bears the examination report. In the present case, the duplicate copy has been submitted which also bears the very same examination report. Therefore, the purpose for which the triplicate copy of the Shipping Bill is required is fulfilled in the present case by producing the duplicate copy of the Shipping Bill. Hon'ble Supreme has, in the case of *Mangalore Chemicals & Fertilizers Ltd. {1991 (55)ELT437 (SC)}*, held that a distinction must be made between the statute which are of substantive character and those which are merely procedural and technical in nature. Non-observance of procedural and technical provisions is condonable. In the case of *Zandu Chemicals Ltd. vs Union of India, {2015(315) ELT 520 (Bom)}*, the Hon'ble Bombay High Court has held that "*The procedural provisions are capable of substantial compliance. There is no requirement of insisting on strict compliance therewith.*"

6.3 In the present case, since the procedural provision has been substantively complied by furnishing other documents, the benefit of drawback ought not have been denied.

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


(Sandeep Prakash)

Additional Secretary to the Government of India

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Order No. 401/22-Cus dated 23-12-2022

Copy to:-

1. The Commissioner of Customs, Customs House, Cochin-682009.
2. The Commissioner of Customs (Appeals), Custom House, Cochin-682009.
3. Jetz Global Logistics, AV George Building, Willingdon Island, Cochin-682016.
4. P.S TO A.S (RA)
5. Guard File
- ✓ 6. Spare Copy
7. Notice Board

ATTESTED



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