

REGISTERED
SPEED POST



F. No. 372/05/DBK/2021-RA
F. No. 372/07/DBK/2021-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... 09/2/22

Order No. 41-42/22-Cus dated 09-02-2022 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. KOL/CUS(CCP)/AKR/116/2021 dated 01.02.2021, and Order-in-Appeal No. KOL/CUS(CCP)/AKR/126/2021 dated 03.02.2021 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Sh. Jayabrata Maulick, (Proprietor of M/s J.M. Enterprise), North 24 Parganas, West Bengal.

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

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ORDER

Two Revision Applications, bearing nos. 372/05/DBK/2021-RA dated 22.03.2021 and 372/07/DBK/2021-RA dated 22.03.2021, have been filed by Sh. Jayabrata Maulick (Proprietor of M/s J.M. Enterprise), North 24 Parganas, West Bengal (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(CCP)/AKR/116/2021 dated 01.02.2021, and Order-in-Appeal No. KOL/CUS(CCP)/AKR/116/23021 dated 03.02.2021, passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) has, vide the impugned Orders-in-Appeal, upheld the Order-in-Original No. 31/JC(P)/CUS/WB/17-18 dated 19.09.2017, passed by the Joint Commissioner of Customs (Preventive), Kolkata, and Order-in-Original No. 10/DC(DBK)/2018-19 dated 15.03.2019, passed by the Deputy Commissioner of Customs (Preventive), Kolkata, respectively, and rejected the appeals filed by the Applicant herein.

2.1 Briefly stated, in respect of revision application no. 372/05/DBK/2021-RA, the Applicant herein had exported goods declared as 'Automobile Parts' under 71 Bills of Export under claim of drawback, totally amounting to Rs.1,73,65,230/-, which was sanctioned. Subsequently, on an investigation undertaken by the department, it was observed that the Applicant had claimed the drawback under CTH 8714 (Parts and Accessories of Motorcycles and cycles fitted with an auxiliary motor) but on investigation the items exported were identified, mostly, to be of 'three wheeled vehicle' and appropriately classifiable under CTH 8708, thus, attracting lesser rate of drawback. Therefore, a show cause notice dated 18.04.2017 was issued and a

demand of drawback of Rs. 31,40,802/- was confirmed , vide the aforesaid Order-in-Original dated 19.09.2017, alongwith applicable interest in terms of Rule 16 of the Customs and Central Excise Duties & Service Tax Drawback Rules, 1995 read with Section 75A (2) of the Customs Act, 1962. A penalty of Rs. 18,00,00,000/- was also imposed under Section 114 (iii) ibid. The appeal filed by the Applicant herein was rejected by the Commissioner (Appeals). Applicant has challenged the impugned OIA by filing the instant revision application on the grounds that the adjudicating authority has placed reliance upon alleged examination of goods, investigation with the suppliers of Applicant, statements of Applicant and purchase invoice of the Applicant but, however, the Show Cause Notice dated 18.04.2017 was issued without relying upon these documents and the same is against the principles of natural justice; and that Drawback Sl. No. was changed without assigning any reason or evidence. Several other averments have also been made.

2.2 In respect of revision application no. 372/07/DBK/2021-RA, the Applicant herein had exported goods declared as 'Automobile Parts' under 35 Bills of Export under claim of drawback, totally amounting to Rs.1,25,33,818/-. Out of this, an amount of Rs. 1,05,51,038/- was sanctioned and the remaining amount was rejected. However, subsequently, as per the directions of Hon'ble Calcutta High Court in WP No. 136/2018, the original authority decided the matter, vide the Order-in-Original dated 15.03.2019, after affording an opportunity of personal hearing to the Applicant. The part of the drawback claim amounting to Rs. 19,82,780/- was rejected on the grounds that earlier the department had conducted investigations in

respect of 71 numbers of Bills of Export (as part of revision application no. 372/05/DBK/2021-RA), and 26 number of Bills of Export, involved in the present case, wherein the items were mostly identified as those for 'three wheeled vehicle' and appropriately classifiable under CTH 8708 instead of CTH 8714 (Parts and Accessories of Motorcycles and cycles fitted with an auxiliary motor) as declared by the Applicant. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected. The instant revision application has been filed on the grounds that the goods exported were as alleged by the Respondent department to be identified mostly to be of 'three wheeled vehicles' and meriting classification under CTH 8708 instead of those of 'two wheeled vehicles' classifiable under CTH 8714 without any examination of the goods; and that for the change of drawback Sl. No. the respondent department had not issued any Show Cause Notice. Several other contentions have also been raised.

3. Personal hearing, in virtual mode, was held on 07.02.2022. Sh. Arijit Chakrabarti, Advocate appeared for the Applicant and reiterated the contents of the revision applications. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, the matter is taken up for disposal based on records.

4. The Government has examined the matter carefully. The allegation of the department in both these cases is that the Applicant had exported goods, claiming classification under Drawback Schedule No. 8714 as 'parts' of two wheeled vehicles

whereas the 'parts' were, mostly, of three wheeled vehicles, which are classifiable under Drawback Schedule No. 8708. Government observes that the Show Cause Notice dated 18.04.2017 was issued on the ground that after the goods were exported and the claimed drawback was sanctioned to the Applicant, an investigation was conducted by the respondent department with the parties (suppliers) who had supplied the export goods to the Applicant. The Applicant and the CHAs were also interrogated and their statements were recorded under Section 108 of the Customs Act, 1962. However, the details of the investigations conducted are not forthcoming in the show cause notice nor have the documents collected/statements recorded/ inquiry report received, as may be applicable, been cited as Relied Upon Documents (RUD)s). Needless to say that it was incumbent upon the original authority to disclose the details of the evidence collected in the matter to the Applicant herein and to supply ^{them to} ~~thereon~~ all relevant documents so as to provide them an effective opportunity to defend themselves. Thus, evidently, there has been a contravention of the principles of natural justice. Further, it is the respondent department that has alleged that the Applicant had not classified the goods correctly and, hence, the onus is on the respondent department to prove the same. Since both the cases appear to have been finalized based on a common investigation, these observations apply to the case covered by RA No. 372/07/DBK/20221-RA as well. In these circumstances, it would be in the interest of justice that these cases are remanded back to the original authority to decide them afresh after disclosing in detail all the evidence and after supplying all the relevant documents on the basis of which it was originally decided by the respondent

department that the exported goods were classifiable under 8708 instead of 8714.

Adequate opportunity of hearing shall also be granted.

5. In view of the above, the revision applications are allowed by way of remand to the respective original authorities, with directions as above.


(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Jayabrata Maulick,
Proprietor of M/s J.M. Enterprise,
Military Road, Motiganj,
Dist. – North 24-Parganas,
West Bengal – 743235.

Order No. 41-42/22-Cus dated 9-02-2022

Copy to:

1. The Commissioner of Customs (Preventive), Custom House, 3rd Floor, 15/1 Strand Road, Kolkata – 700001.
2. The Commissioner of Customs (Appeals), 3rd Floor, 15/1, Customs House, Strand Road, Kolkata – 700001.
3. Sh. Arijit Chakraborti, Advocate...
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED


09/2/22

GULSHAN BHATIA
Superintendent