

REGISTERED
SPEED POST



F. No. 372/15/DBK/2020-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHICAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue.....23/02/22

Order No. 60/22-Cus dated 23-02-2022 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 filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/CUS(PORT)/AKR/530/2020 dated 14.08.2020, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s M.K. Shah Export Ltd., Kolkata.

Respondent : Commissioner of Customs (Port), Kolkata

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ORDER

A Revision Application No. 372/15/DBK/2020-RA dated 21.10.2020 has been filed by M/s M.K. Shah Export Ltd., Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(PORT)/AKR/530/2020 dated 14.08.2020, passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal of the Applicant against the Order-in-Original No. KOL/CUS/DC/228(DBK)/2015 dated 20.02.2015 passed by the Deputy Commissioner of Customs, Drawback Department, Kolkata.

2. Brief facts of the case are that the Applicant (a 100% EOU) had, during the period 10.04.2000 to 24.07.2000, exported 28 consignments of tea under claim of drawback, at all Industry rate of duty drawback, for an amount of Rs. 10,87,500/-, which was sanctioned. However, subsequently, it was observed by the office of Respondent that the drawback was paid erroneously as the drawback was not admissible to the Applicant as being a 100% EOU unit. Accordingly, show cause notice dated 30.10.2014 was issued to the Applicant for a demand of Rs. Rs. 10,87,500/-, which was confirmed along with interest payable thereon, by the original authority, vide aforesaid Order-in-Original dated 20.02.2015. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed, mainly, on the ground that the goods were procured from the domestic market and under the Foreign Trade Policy the drawback entitlement of suppliers could be transferred to any Export Oriented Unit and EOU unit can claim such drawback on account of deemed export; and that the Show Cause Notice was issued after a gap 14 years of export and hence it is not maintainable under Rule 16. Written submissions dated 22.02.2022 have also been filed.

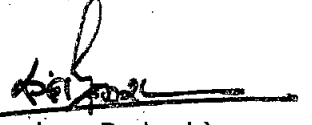
4. Personal hearing, in virtual mode, was held on 23.02.2022. Sh. N.K. Chowdhury, Advocate appeared for the Applicant and reiterated the contents of the RA as well as the Written Submissions dated 22.02.2022. He highlighted that:

- (i) The action under Rule 16 of the Drawback Rules is time barred in view of the case laws cited.
- (ii) On merits, the goods have been proceeded from DTA Unit (s) on payment of duty and the Applicant has claimed drawback on the basis of disclaimer by DTA Unit (s). Hence, drawback is admissible in view of the case laws cited.

None appeared for the Respondent nor any request for adjournment has been received. Therefore, the matter is taken up for disposal based on records.

5.1 The Government has carefully examined the matter. The two main issues to be decided herein are that i) whether the action under Rule 16 of the Drawback Rule is time barred and ii) and whether 100% EOU unit is entitled for drawback when the goods are procured from DTA Unit (s) on payment of duty. Government observes that the Applicant has contended that the goods were procured from the DTA Unit on payment of duty, and that the DTA Unit has not claimed drawback and instead issued a disclaimer enabling the Applicant to obtain the drawback. It has been contended that the drawback is admissible to the Applicant, despite being 100% EOU, in view of the Board's Circular No. 67/1998- Cus dated 14.09.1998 and the judgment of Hon'ble Madras High Court in the case of LT Karle & Co. {2007(207) ELT358 (Mad.)}. The Applicant appears to have maintained this stand right from the beginning of the case. However, the original authority as well as the Commissioner (Appeals) have failed to factually verify this contention. They have also not recorded any findings with reference to the Board's Circular dated 14.09.1998 and the judgment in the case of LT Karle & Co. (supra). In these facts and circumstances, Government considers it appropriate to remand the matter to the original authority to verify and address the contention of the Applicant that the export goods were procured from DTA Unit on payment of duty and pass a fresh order accordingly. Other issues raised, including in respect of limitation, are also kept open for de-novo adjudication.

6. In view of the above, the revision application is allowed by way of remand to the original authority, with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India


M/s M.K. Shah Exports Ltd.,
2/2 Justice Dwarka Nath Road,
Kolkata, West Bengal – 700020.

Order No. 60/22-Cus dated 23-02-2022

Copy to:

1. The Commissioner of Customs (Port), Kolkata, 15/1, Strand Road, Custom House, Kolkata.
2. The Commissioner of Customs (Appeals), 15/1, 3rd Floor, Strand Road, Kolkata – 700001.
3. Sh. Nirmal Kumar Chowdhury, Advocate, Hastings Chambers, Room No. B/G (Basement), 7-C, Kiran Sankar Roy Road, Kolkata – 700001.
4. PS to AS (RA).
- ✓ 5. Guard File.
6. Spare Copy.

ATTESTED



(रघुवर्ण राघवण)
(Raghavan)
अनुसंधान विभाग / Section Officer
वित्त विभाग (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi