

REGISTERED
SPEED POST



F. No. 372/17/DBK/2020-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.. 28/2/22

Order No. 66/22-Cus dated 28-02-2022 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(PORT)/AKR/374/2020 dated 06.07.2020 passed by the Commissioner of Customs (Appeals), Customs House, Kolkata.

Applicant : M/s Malancha Polymers Pvt. Ltd., Kolkata.

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

ORDER

A revision application No. 372/17/DBK/2020-RA dated 10.11.2020 has been filed by M/s Malancha Polymers Pvt. Ltd., Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(PORT)/AKR/374/2020 dated 06.07.2020 passed by the Commissioner of Customs (Appeals), Customs House, Kolkata. The Commissioner (Appeals) has upheld the Order issued, vide F.No. S.34M-231/2019DBK dated 18.07.2019, by the Assistant Commissioner of Customs, Drawback Department (Port), Kolkata.

2. Briefly stated, the Applicant herein had exported "Menthol", under 08 Shipping Bills all dated 12.04.2018, and availed drawback amounting to Rs. 3,03,766/-. Later on, the Applicant filed 08 claims of input rebate involving Rs. 33,67,561/-, under Rule 18 of the Central Excise Rules, 2002 with the Central Excise authorities. The rebate claims were rejected by the jurisdictional Central Excise authorities, vide the OIO dated 14.11.2008, on the grounds that the Menthol procured from a Unit availing benefit of area based exemption under notification no. 32/99-CE & 33/99-CE both dated 08.07.1999, could not be regarded as duty paid goods. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected, vide OIA dated 24.11.2009. The revision application filed by the Applicant herein, against the OIA dated 24.11.2009, was allowed by the Government, vide Order No. 1457/2011-CX dated 02.11.2011, with certain directions. Pursuant to the Government's Order dated 02.11.2011, a show cause notice dated 09.04.2012 was issued to the Applicant. Assistant Commissioner of Central Excise, Khidderpore, Division of Kolkata – V Commissionerate, vide OIO dated 05.09.2012, rejected the rebate claim on the ground that the Applicant had availed duty drawback on the exported goods and as such the rebate is not admissible as it would amount to double benefit. The Applicant herein, again, approached the Commissioner (Appeals) in appeal against the OIO dated 05.09.2012. However, to avoid unnecessary controversy, Applicant returned the already availed drawback amount of Rs. 3,03,766/- along with interest amounting to Rs. 2,40,558/- to the Customs authorities. The appeal was, however, rejected, vide

OIA dated 01.08.2014. The Applicant herein filed another revision application, this time assailing the OIA dated 01.08.2014. The Government allowed this RA, vide Order No. 161/2018-CX dated 02.04.2018, mainly on the ground that since the Applicant had already returned the drawback amount, the grant of rebate of duty would not amount to double benefit. Pursuant to the Government's order dated 02.04.2018, the jurisdictional Central Excise authorities sanctioned the rebate claim of Rs. 33,67,561/-. Thereafter, the Applicant, vide letter dated 07.03.2019, requested the Assistant Commissioner of Customs, Drawback Department, Kolkata to refund the drawback amount of Rs. 3,03,766/- towards custom portion of drawback along with interest of Rs. 2,40,558/- which they had returned erroneously, which was rejected by the original authority vide the aforesaid Order dated 18.07.2019. 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 they had sought the refund of duty drawback only in respect of customs portion which they had returned erroneously; that Notification No. 68/2007- Cus(NT) dated 16.07.2007 only debars the Central Excise and Service tax portion of the drawback in case the CENVAT facility has been availed. Written submissions dated 24.02.2022 have also been filed by the Applicant.

4. Personal hearing, in virtual mode, was held on 25.02.2022. Sh. Joy Kumar, Advocate appeared for the Applicant and requested that the Written Submissions filed on 24.02.2022 may be taken on record. He reiterated the contents of the RA and the Written Submissions dated 24.02.2022. None appeared for the Respondent department nor any request for adjournment has been received. Therefore, the matter is taken up for disposal based on records.

5.1 The Government has examined the matter carefully. The issue involved in the present case is whether the duty drawback is admissible when the rebate of Central

Excise duty paid in respect of inputs used in manufacture of exported goods had already been availed.

5.2 The Government observes that the drawback rates, for the relevant period, were notified, vide notification no. 68/2007-Customs (NT) dated 16.07.2007. As per condition 7 of the said notification dated 16.07.2007, the rate of drawback specified in the Schedule shall not be applicable to export of a commodity or product if such commodity or product is, inter-alia,:

"(e) manufactured or exported by availing the rebate of duty paid on materials used in the manufacture or processing of such commodity or product in terms of rule 18 of the Central Excise Rules, 2002."

Thus, it is clear that the duty drawback is not admissible, in case, the rebate of duty has already been availed on material used in manufacture of exported goods. In the instant case, it is not disputed that the Applicant had already availed the rebate of duty paid on materials used in manufacture of export products and, therefore, the question of grant of duty drawback does not arise.

5.3 The Government further observes that the Hon'ble Madras High Court has, in the case of *M/s Raghav Industries [2016 (334) E.L.T. 584 (Mad.)]*, held that:

"13. While sanctioning rebate, the export goods, being one and the same, the benefits availed by the applicant on the said goods, under different scheme, are required to be taken into account for ensuring that the sanction does not result in undue benefit to the claimant. The 'rebate' of duty paid on excisable goods exported and 'duty drawback' on export goods are governed by Rule 18 of Central Excise Rules, 2002 and Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Both the rules are intended to give relief to the exporters by offsetting the duty paid. When the applicant had availed duty drawback of Customs, Central Excise and Service Tax on the exported goods, they are not entitled for the rebate under Rule 18 of the Central Excise Rules, 2002 by way of cash payment as it would result in double benefit."

The judgment in Raghav Industries (supra) has been followed by the Hon'ble Madras High Court in the case of *M/s Kadri Mills (CBE) Ltd. [2016(334) ELT 642 (Mad.)]*. Thus, it is clear that grant of rebate as well as drawback amounts to double benefit and, thus, both are not to be allowed simultaneously.

5.4 In view of the above, the Government holds that, in the instant case, duty drawback is not admissible as the Applicant had already availed rebate of duty. Thus, the question of refund of incorrectly availed drawback amount, which was deposited by the Applicant on its own, does not arise.

6. The revision application is rejected, for the reasons aforesaid.



(Sandeep Prakash)

Additional Secretary to the Government of India


M/s Malancha Polymers Pvt. Ltd., Kolkata,
C/o NPS Business Centre, 2nd Floor, 7A Kiran,
Shankar Roy Road, Kolkata – 700001.

Order No. 66/22-Cus dated 28-02-2022

Copy to:

1. The Commissioner of Customs (Port), Kolkata, 15/1, Strand Road, Customs House, Kolkata – 700001.
2. The Commissioner of Customs (Appeals), Kolkata, 15/1, 3rd Floor, Customs House, Strand Road, Kolkata – 700001.
3. Sh. Joy Kumar, Advocate, Office cum residence Flat No. 261/1, Sec – 45-A, Chandigarh – 160047.
4. PA to AS(RA).
5. ✓ Guard File.
6. ✓ Spare Copy.

ATTESTED



(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