

SPEED POST



F. No. 372/17/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. 21/03/22.

Order No. 88 /22-Cus dated 11-03-2022 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/236/2021 dated 03.03.2021, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s Arvind Ltd., Ahmedabad.

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

ORDER

A Revision Application No. 372/17/DBK/2021-RA dated 24.06.2021 has been filed by M/s Arvind Ltd., Ahmedabad (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(CCP)/AKR/236/2021 dated 03.03.2021 passed by the Commissioner of Customs (Appeals), Kolkata, vide which the appeals filed by the Applicant against the Order-in-Original No. 51/DC(DBK)/2015-16 dated 17.02.2016 has been rejected.

2. Brief facts of the case are that the Applicants filed 16 Shipping Bills for the export of goods namely "Cotton Dyed Denim Cloth" under claim of drawback and classified the goods exported under DBK sub SI. No. 520904, 520906, 520907 and 521103 where the rate of drawback was 4.7% and 5% of the FOB value. The drawback claims amounting to Rs. 25,97,031/-were sanctioned by the jurisdictional Customs authorities. Subsequently, on scrutiny it was observed by the Respondent department that the Applicant had claimed CENVAT credit on the exported goods and thus the exported goods were rightly classifiable under DBK Sub SI. No. 520904B, 520906B and 521103B where the applicable rate of drawback was 1%. The incorrect classification, thus, resulted in excess payment of drawback of Rs. 20,54,723/-. Accordingly, a Show Cause Notice dated 08.06.2015 was issued to the Applicants to show cause as to why the excess paid drawback should not be recovered from them under rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Section 28AA of the Customs Act, 1962 and Section 75A (2) of the Customs Act, 1962. Dy. Commissioner of Customs, Drawback Cell, CC(P), West Bengal, Kolkata, vide the above mentioned Order-in-Original dated 17.02.2016, confirmed the demand of Rs. 18,36,666/-, out of Rs.20,54,723/-, along with applicable interest. Aggrieved, the Applicants filed appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed, mainly, on the ground that they had not availed any CENVAT credit which is evident from the certificate dated 05.12.2011 issued by the Jurisdictional Central Excise authorities; and that the demand under Rule 16 cannot survive in view of the judgment of Hon'ble Punjab & Haryana High Court in

the case of *Famina Knit Fabs {2019 (9) TMI 970}*. Applicant also submitted written submissions dated 17.02.2022.

4. Personal Hearing, in virtual mode, were fixed on 21.02.2022 & 11.03.2022. In the hearing held on 21.02.2022, Sh. Shridev J. Vyas, Advocate appeared for the Applicant but hearing could not be conducted due to technical difficulties at the end of learned Advocate. The matter was again heard on 11.03.2022. Sh. Shridev J. Vyas, Advocate appeared for the Applicant and reiterated the contents of the RA. He highlighted that:

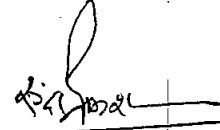
- (i) The show cause notice is issued under Rule 16. Hon'ble P & H High Court has, in the case *Famina Knit Fabs {2019 (9) TMI 970}*, held that Rule 16 does not have any machinery provision for recovery of erroneous drawback. Hence, show cause notice issued under Rule 16 cannot survive.
- (ii) On merits, the jurisdictional AC has certified, vide letter dated 05.12.2011, that CENVAT credit had not been availed against the subject exports. Hence, the demand has no basis.

No one appeared on either of the dates for the Respondent department nor any request for adjournment has been received. Therefore, the matter is taken up for disposal based on records.

5. The Government has examined the matter carefully. It is observed that the case against the Applicants is that they had availed CENVAT credit on the goods exported but availed drawback at a higher rate. It is contended by the Applicant that they had not availed the CENVAT credit on the goods exported and also submitted a certificate dated 05.12.2011 issued by the Superintendent of Central Excise, A.R.-I, Division-II, Ahmedabad-II wherein it is stated that the Applicant had not availed CENVAT Credit on input and input services used in the manufacture of textile products which were exported under the ARE-1s mentioned therein. Since, it is clearly certified by the jurisdictional Central Excise authorities that the CENVAT credit was not availed, Government holds that subject to verification of these documents, no case for recovery of drawback is made out. Accordingly, the matter is remanded to original authority to

verify the aforesaid certificate issued by the jurisdictional Central Excise authorities and to decide the matter afresh after following the principles of natural justice. If upon verification the contentions of the Applicant are found to be correct, the original authority shall close the subject matter against the Applicant.

6. Accordingly, the orders of authorities below are set aside and 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

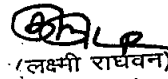
M/s Arvind Limited,
Naroda Road,
Ahmedabad – 380025.

Order No. 88/22-Cus dated 11-03-2022

Copy to:

1. The Commissioner of Customs (Preventive), Custom House, 3rd Floor, 15/1, Strand Road, Kolkata – 700001.
2. The Commissioner of Customs (Appeals), Custom House, 3rd Floor, 15/1, Strand Road, Kolkata – 700001.
2. Sh. Shridev J. Vyas, Advocate, Jay Apartments, Opp. Azad Society, Ambawadi, Ahmedabad – 380015.
3. PA to AS(RA)
4. Guard File
5. Spare Copy

ATTESTED



(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