

F.No. 375/52/DBK/2020-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue... 23/3/22

Order No. 92/22-Cus dated 23-03-2022 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 filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. NOI-CUSTM-000-APP-107-20-21 dated 26.05.2020, passed by the Commissioner Appeals), CGST, Customs and Central Excise, Noida.

Applicant : M/s Dewan & Sons, Moradabad.

Respondent : Commissioner of Customs, Noida

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**ORDER**

Revision Application No.375/52/DBK/2020-RA dated 11.09.2020 has been filed by M/s Dewan & Sons, Moradabad, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. NOI-CUSTM-000-APP-107-20-21 dated 26.05.2020, passed by the Commissioner (Appeals), CGST, Customs and Central Excise, Noida. Commissioner (Appeals), has vide the above mentioned Order-in-Appeal, rejected the appeal of the Applicant against the Order-in-Original No. 01/DC/NOIA-CUS/2019 dated 01.08.2019, passed by the Deputy Commissioner of Customs (DBK), ICD Dadri.

2. Brief facts of the case are that, during the period from October 2008 to January 2010, the Applicant exported goods, against 35 shipping bills, declared as Artware/Handicrafts of various metals under claim for duty drawback. During the course of scrutiny of drawback claims, it was observed by the Respondent department that the Applicant had wrongly classified the goods for export and, accordingly, drawback was sanctioned at reduced rates. The Applicant did not contest the sanction at reduced rates for a period of 05 years but thereafter filed supplementary drawback claims of Rs. 20,80,705/- with interest. Respondent department issued a show cause notice dated 17.06.2019 to reject the supplementary claim. Supplementary claim was rejected by the original authority vide the above mentioned OIO dated 01.08.2019. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals) who vide the above mentioned OIA rejected the appeal on the ground that the original claim was sanctioned 9 years ago

at reduced rates, but no appeal was filed by the Applicant against the same. Hence, the sanction rates had become final. Further, the Applicant had failed to substantiate that the supplementary claim was filed within the stipulated time period.

3. The revision application has been filed by the Applicant, mainly, on the ground that the supplementary claims were filed within the stipulated time period.

4. Personal hearing was fixed on 16.03.2022 and 30.03.2022. However, the Applicant, vide letter dated 14.03.2022 and email dated 21.03.2022, submitted that the case may be decided on merits on the basis of their submissions made in writing. Accordingly, the case is being taken up for final decision on the basis of facts available on record.

5. The Government has carefully examined the matter. At the outset, it <sup>is</sup> clear <sup>to</sup> that sanction of the drawback claims, at reduced rates, was an order adversely affecting the substantive rights of the Applicant. Therefore, if aggrieved, the Applicant ought to have challenged this sanction in appeal, as per the provisions of the Customs Act, 1962. Since this has not been done, the sanction order has attained finality. In the case of ITC Limited Vs. Commissioner of Central Excise, Kolkata- IV {2019(368) ELT 216 (SC)}, the Hon'ble Supreme Court has held that appeal under Section 128 of Customs Act, 1962 is provided not just against speaking orders but against "any order" which is of wide amplitude. Further, unless an order

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of assessment is modified in accordance with law, a refund claim cannot be entertained. Similar view was taken by the Apex Court earlier in the case of Priya Blue Industries Ltd. Vs Commissioner of Customs (Preventive) {2004(172)ELT145 (SC)}. Applying the ratio of aforesaid judgments of the Hon'ble Supreme Court, in the present case, the supplementary drawback claim could not have been entertained unless the earlier order sanctioning drawback, at the reduced rate, had been modified in accordance with law.

6. In view of the above, there is no infirmity in the impugned OIA. The revision application is rejected.

  
(Sandeep Prakash)

Additional Secretary to the Government of India

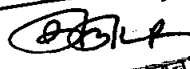
M/s Dewan & Sons,  
Lakrifazalpur,  
Mini Bye Pass, Delhi Road,  
Moradabad 244001  
Uttar Pradesh.

Order No. 92/22-Cus dated 23-03-2022

Copy to:

1. The Commissioner of Customs, Noida, Concor Complex, P.O. Container Depot, Greater Noida, Gautam Budh Nagar, Uttar Pradesh-201311 .
2. The Commissioner (Appeals), CGST, Customs & Central Excise, C-56/42, Renu Tower, Sector 62, Noida, Uttar Pradesh.
3. PA to AS(RA)
4.  Guard File.
5. Spare Copy

**ATTESTED**

  
(Rajesh Raghavan)  
(Liaison Officer / Section Officer)  
अनुसंधान अधिकारी / राजस्व विभाग  
दिल्ली क्षेत्रालय (Deptt. of Rev.)  
Ministry of Finance / Govt. of India  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi