

SPEED POST



F.No. 380/11/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.....05/04/22

Order No. 121 /22-Cus dated 05-04-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/CUS(CCP)/AKR/237/2021 dated 03.03.2021, passed by the Commissioner of Customs (Appeals), Kolkata.

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

Respondent : M/s. PERI (India) Private Limited, Mumbai.

ORDER

A Revision Application No. 380/11/DBK/2021-RA dated 20.07.2021 has been filed by the Commissioner of Customs (Preventive), Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(CCP)/AKR/237/2021 dated 03.03.2021, passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals), vide the impugned Order-in-Appeal, has allowed the appeal of M/s. PERI (India) Private Limited, Mumbai, (herein after referred to as the Respondent) by setting aside Order-in-Original No. 24/DC(DBK)/2019 dated 17.09.2019, passed by the Deputy Commissioner of Customs, Drawback Cell, CC(P), Kolkata.

2. Brief facts of the case are that the respondent had filed a drawback claim in respect of Shipping Bill No. 03/Sec-74/16/17 dated 03.01.2017, with the Deputy Commissioner of Customs, Drawback, Air Cargo Complex, Kolkata, under Section 74 of the Customs Act, 1962, which was rejected on the ground that the identity of goods was not established to the satisfaction of Assistant/Deputy Commissioner of Customs since the Shipping Bill was neither counter signed by the jurisdictional Assistant Commissioner (Export) nor had he recorded any comments; and that the goods were not examined by the Customs authorities at the time of exportation. Aggrieved, the Respondent filed an appeal before the Commissioner (Appeals) who, vide the OIA dated 03.03.2021, allowed the appeal on the ground that drawback cannot be denied as the identity of the goods stands established with the goods imported vide relevant Bill of Entry as per examination of Inspector and Superintendent and that the Applicant herein cannot be penalized for the failure of Superintendent to put up his report to the AC for approval.

3. The revision application has been filed on the grounds that the Respondent herein did not fulfil the conditions of Section 74 ibid in as much as no order permitting the clearance of the goods for exportation, by the proper officer, was issued; and that the goods exported were not identified to the satisfaction of Assistant Commissioner/Deputy Commissioner of Customs.

4. Personal hearing was fixed on 25.02.2022, 21.03.2022 and 04.04.2022. In the personal hearing held in virtual mode, on 04.04.2022, Sh. Anil Balani, Advocate appeared for the Respondent and reiterated the contents of the revision application as well as written submissions filed on 21.03.2022. None appeared on behalf of the Applicant on any of the dates fixed for personal hearing nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for disposal based on records.

5.1 The Government has carefully examined the matter. It is observed that for admissibility of drawback under the provisions of Section 74 of the Customs Act, 1962, the following ingredients are to be satisfied :-

- i) The imported goods should be capable of being easily identified;
- ii) Duty of customs should be paid on importation and the imported goods should be exported within 2 years from the date of payment of duty on imported goods; and
- iii) The re-exported goods should be identified to the satisfaction of Assistant/Dy. Commissioner of Customs as the goods which were imported.

5.2 No doubts have been expressed by the lower authorities regarding fulfillment of the above mentioned first two ingredients in this case. But the Dy. Commissioner has denied duty drawback for the reason that identity of the goods was not established to the satisfaction of the Dy. Commissioner of Customs, which is a necessary condition for claim of drawback under Section 74(1)(a) of the Customs Act, 1962, since the jurisdictional Assistant Commissioner (Export) had neither counter signed or recorded any comments on the impugned Shipping bill at the time of export. It is also held by the original authority that "the identity of said goods could be established only by the Assistant Commissioner(Export) at the time of examination with respect to import documents, which was not done." Government observes that it is undisputed that the Respondent had made all the required declarations on the face of Shipping Bill. The Shipping Bill was marked for examination as per the direction of the jurisdictional Assistant Commissioner (Export) with the remark that " Examine the goods properly to ascertain & confirm that these are the same goods which were imported. Necessary Rules of Section 74 may be given. As directed by the AC (Export)". Inspector and Superintendent of Customs in their examination report had observed as under that " Examination have been done and found in order. The consignment is loaded in truck no. CG-04EW-6034. Export may be allowed, if deem fit". Accordingly, let export order (LEO) was given by the Officer of Customs. It is stated in the instant revision application that the order permitting the clearance of goods was not given by the proper officer, however, no explanation is forthcoming as to if this was so, why did the officer who issued the LEO did not put it up to the "proper officer". Further from the examination order, it is clear that no where therein it was directed that the goods

may be allowed for export only after the identity of the goods is established "by the Assistant Commissioner (Export) at the time of examination." In effect, the department's case appears to be that goods should have been examined by the Assistant Commissioner (Export) himself. However, there is no instruction to this effect in the examination order. In any case, there is nothing in Section 74 to indicate that the satisfaction has to be arrived at by the Assistant/Deputy Commissioner by himself examining the goods. Thus, this finding of original authority is without any legal basis.

5.3 In these peculiar facts and circumstances, the Government does not find any infirmity in the impugned OIA.

6. In view of the above, the Revision Application is rejected.


(Sandeep Prakash)

Additional Secretary to the Government of India


The Commissioner of Customs (Preventive),
15/1 Strand Road, Custom House,
Kolkata, 700001.

ORDER NO. 121/22-Cus dated 05-04-2022

Copy to:-

1. M/s PERI (India) Private Limited, 1406, DLH Park, S.V. Road, Goregaon (W), Mumbai 400062
2. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata, 700001.
3. PS 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