

**SPEED POST**



**F. No. 380/05/DBK/2020-R.A.  
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 26/05/22

Order No. 156 / 22-Cus dated 25-05-2022 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 129DD of the Customs Act, 1962 against the Order-in-Appeal No. LUD-EXCUS-001/APP/3046/19-20 dated 19.12.2019, passed by The Commissioner (Appeals), Central Goods & Service Tax Excise & Customs, Ludhiana.

**APPLICANT :** The Commissioner of Customs, Ludhiana

**RESPONDENT:** M/s. Nexo Industries Pvt. Ltd., Ludhiana

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**ORDER**

A revision application number 380/05/DBK/2020-RA dated 20.03.2020 has been filed by the Commissioner of Customs, Ludhiana (hereinafter referred to as the Applicant), against the Order No. LUD-EXCUS-001/APP/3046/19-20 dated 19.12.2019, passed by the Commissioner (Appeals), Customs & CGST, Ludhiana, whereby the appeal of M/s Nexo Industries Pvt. Ltd., Ludhiana, (herein after referred to as the Respondent) against Order-in-Original No. 01/AC/OWPL/DRAWBACK/2017 dated 08.05.2017, passed by Assistant Commissioner of Customs, CFS (OWPL), Dhandari Kalan, Ludhiana, was allowed.

2. Brief facts of the case are that the Respondent had exported nuts and bolts made of non alloy steel under claim of drawback vide 22 Shipping Bills during 2010 & 2011. The drawback claims against the said Shipping Bills were processed as Zero (0) by the Department since the Respondent failed to reply to the query raised by the Department. All 22 Shipping Bills were thereafter moved to "History" status in EDI system. Respondent, vide letter dated 02.05.2016, requested the Department to release the Drawback against the above said 22 Shipping Bills. However, the Department informed the Respondent that since the Respondent had not filed any supplementary drawback claim under Rule 15 of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Drawback Rules) within the stipulated period of 03 months, the Respondent's request for the release of the drawback amount is invalid. Subsequently, vide the above said Order-in-Original dated 08.05.2017, the drawback claims of the Respondent were rejected by the original authority. Aggrieved, the respondent filed an appeal before the

Commissioner (Appeals) who set aside the Order-in-Original dated 08.05.2017 and ordered that the 22 cases of drawback be examined and processed expeditiously in accordance with Board's Circular F.No. 609/14/2014-DBK dated 30.06.2016. Accordingly, the Order-in-Original dated 08.05.2017 was set aside.

3. The instant revision application has been filed, mainly, on the ground that the time limit for filing supplementary drawback claim under Rule 15 of the Drawback Rules is 03 months whereas the Respondent did not file any supplementary claim at all; that the Circular referred to by the appellate authority is an administrative circular and cannot take precedence over the Notifications which are part of the statute.

4. Personal hearing was granted on 30.03.2022, 09.05.2022 & 23.05.2022. No one appeared for the Applicant department nor any request for adjournment has been received. In the hearing held, in virtual mode, on 23.05.22, Sh. Naveen Bindal, Advocate appeared for the Respondent and supported the Order of Commissioner (Appeals). In this regard, he reiterated the contents of Written Reply dated 11.08.2020.

5.1 The Government has carefully examined the matter.

5.2 At the outset, it clear that the drawback claims in respect of 22 Shipping Bills filed by the Respondent were rejected by the original authority without issuance of any Show Cause Notice etc. Government further observes that the query was raised by department in respect of only 07 Shipping Bills and in respect of remaining 15 Shipping Bills no query was also raised. Thus, it is evident that the drawback were processed as Zero, i.e. in effect, rejected, without following the principles of natural justice.

5.3.1 Moreover, when the Respondent, vide letter dated 02.05.2016, requested the department to process their drawback claims, the Applicant department advised the Respondent to file supplementary claim in terms of Rule 15 of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995.

5.3.2 Before proceeding further in the matter, it would be gainful to reproduce the relevant extract of Rule 15 of the said Rules, as under:

**Rule 15. Supplementary claim. -**

*(1) Where any exporter finds that the amount of drawback paid to him is less than what he is entitled to on the basis of the amount or rate of drawback determined by the Central Government or Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, he may prefer a supplementary claim in the form at Annexure III:*

**Provided** that the exporter shall prefer such supplementary claim within a period of three months, -

*(i) where the rate of drawback is determined or revised under rule 3 or rule 4, from the date of publication of such rate in the official Gazette;*

*(ii) where the rate of drawback is determined or revised upward under rule 6 or rule 7, from the date of communicating the said rate to the person concerned;*

*(iii) in all other cases, from the date of payment or settlement of the original drawback claim by the proper officer.*

**Provided** further that the aforesaid period of three months may be extended by the Assistant Commissioner of Customs or Deputy Commissioner of Customs for a further period of nine months on being satisfied that the exporter was prevented by sufficient cause from filling his supplementary claim within the aforesaid period of three months.

On a plain reading, it is clear that a supplementary claim arises as and when there are some changes in the drawback rates and the revised drawback rates are higher than the rates on which the original claims were decided earlier.

5.3.3 In the instant case there was revision, only in respect of value cap. Further, in the instant case the original drawback claims of the Respondent were never decided by

the Applicant department but were processed as Zero and transferred to "History". In such a situation the question of filing supplementary drawback claims does not arise. The Commissioner (Appeals) has correctly pointed out that none of the conditions as prescribed under Rule 15 (1) *ibid*, are applicable in the instant case for a supplementary claim to be filed.

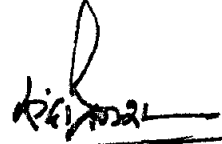
5.3.4 As such, the Government holds that there is no infirmity in the order of Commissioner (Appeals) on this count.

5.4 The Applicant has further contended that the Board's Circular dated 30.06.2016 is only administrative in nature and, thus, not binding. The Government observes that the Circular dated 30.06.2016 was issued by the Board in light of the representations made by the trade. It was represented that "the field formation insisting on timely "supplementary" claim from the exporters when the Drawback Cell had, themselves, in the past made drawback Zero-Zero without following normal procedure or principles of natural justice was also raised and the Association pointed out that Zero drawback was an administrative action so such insistence was not appropriate." In response, the Board had directed the Commissioners to "(b) redress the above cited type of Zero drawback cases where exporter have produced the documents/replies to queries." In terms of Section 151 A of the Customs Act, 1962 the instructions and directions of the Board are binding on the Customs Officers. The averments made in the instant revision application amount to the Applicant Commissioner refusing to comply with the Board's directions, which is in contravention of Section 151 A. Needless to say that the subject contention can, therefore, be not countenanced.

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5.5 Further, the Commissioner (Appeals), has only directed the original authority to decide the case afresh in respect of impugned Shipping Bills, on merits, in accordance with the Circular dated 30.06.2016, after affording a reasonable opportunity of hearing to the Respondent herein. In such a situation, the Applicant department should have decided the case of Respondent on merits, instead of filing the instant revision application. The filing of instant revision application is totally unwarranted and, needs to be deprecated.

6. In view of the above, the Government holds that there is no merit in the instant revision application and the same is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

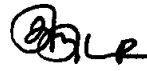
The Commissioner of Customs, Ludhiana,  
Customs House, ICD-GRFL Complex,  
G.T. Road, Sahnewal, Ludhiana-141120.

Order No. 156/22-Cus dated 25-05-2022

**Copy to:-**

1. M/s. Nexo Industries Pvt. Ltd., Regd. Office, 585, Overlock Road, Ludhiana-141003.
2. Commissioner (Appeals), Customs & CGST, F-Block, Rishi Nagar, Ludhiana
3. Mr. Naveen Bindal, Advocate, 2307/1, Sector 38-C, Chandigarh-160036.
4. P.S to A.S (RA)
5.  Guard File
6. Spare Copy

ATTESTED



(लक्ष्मी राघवन)  
(Lakshmi Raghavan)  
अधुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi

(Lakshmi Raghavan)  
अधुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi