

SPEED POST



F.No. 373/40-47/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 20.03.24

Order No. 70-77 / 24-Cus dated 20.03.2024 of the Government of India, passed by Smt. Shubhagata Kumar, 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 Air Cargo Cus.I No. 259 to 266/2019 dated 23.10.2019, passed by Commissioner of Customs (Appeals-I), Chennai.

APPLICANT : M/s Sundram Fasteners Ltd., Kancheepuram.

RESPONDENT : The Commissioner of Customs, Chennai-VII.

ORDER

Revision Application Nos. 373/40-47/DBK/2020-RA all dated 03.02.2019 have been filed by M/s. Sundram Fasteners Ltd., Kancheepuram, (hereinafter referred to as the Applicant/ M/s. SFL) against the Order-in-Appeal Air Cargo Cus.I No. 259 to 266/2019 dated 23.10.2019, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original Nos. i.e. Order for Drawback Claim Nos. passed by the Deputy Commissioner of Customs, MEPZ-Special Economic Zone, Chennai as mentioned in the table below:-

S. No.	RA No.	Drawback Claim No. and Date	Amount of Drawback Claim (in Rs.)	Amount of Drawback claim disallowed (in Rs.)	Amount of drawback claim sanctioned (in Rs.)
1	373/40/DBK/2020	1/2017 dated 05.05.2017	11,06,422/-	11,06,422/-	NIL
2	373/42/DBK/2020	3/2017 dated 01.07.2017	26,66,108/-	12,35,822/-	14,30,286/-
3	373/43/DBK/2020	4/2017 dated 01.07.2017	18,93,162/-	3,13,178/-	15,79,984/-
4	373/41/DBK/2020	5/2017 dated 08.07.2017	15,47,294/-	7,65,796/-	7,81,498/-
5	373/46/DBK/2020	6/2017 dated 01.09.2017	4,94,541/-	1,98,853/-	2,95,688/-
6	373/44/DBK/2020	9/2017 dated 01.09.2017	4,83,592/-	2,23,825/-	2,59,767/-
7	373/47/DBK/2020	10/2017 dated 01.09.2017	4,80,487/-	44,074/-	4,36,413/-
8	373/45/DBK/2020	11/2017 dated 01.09.2017	4,57,437/-	2,92,535/-	1,64,902/-

2. Briefly stated, the Applicant filed application for claims with their jurisdictional officer as detailed above under section 26 of the SEZ Act, 2005 and Rules 24 & 30 of the Special Economic Zone Rules, 2006 read with Section 75 of the Customs Act, 1962 with relevant documents and disclaimer cum no objection certificate given by M/s. Mukand Ltd., as M/s. Mukand Ltd. supplied the goods to M/s. SFL, for claiming duty drawback benefits. The applicant stated that they procured raw material from the Domestic Tariff Area (DTA) supplier – M/s. Mukand Ltd., Ambattur, Chennai with the benefits of duty drawback. The drawback claims were based on the invoices relating to goods procured from M/s. Mukand Ltd., at Hospet Road, Ginigera, Karnataka. On scrutiny of documents, it was observed that though the invoices were under the name of M/s. Mukand Ltd., they bear the 'out seal' of M/s. Hospet Steels Lts., Ginigera, Karnataka.

3. With regard to query on the same, the Applicant submitted a letter dated 20.12.2017 wherein they have stated inter-alia that "M/s. Hospet Steels Ltd. has been set up under the Strategic Alliance agreement between M/s. Kalyani Steels Limited and M/s. Mukand Limited. M/s. Hospet Steels is a service provider and not a manufacturing Company; they provide Security Service to m/s. Mukand Ltd. and recovers the expenses; that at the time of clearance of the lorry carrying the goods from the factory, the security staff of M/s. Hospet Steels verifies the goods and issue the 'out pass' by affixing the stamp showing the Gate Entry No., the out time and the vehicle number; that inadvertently, the invoices issued by the manufacturer bear the 'out pass' stamp of M/s. Hospet Steels Ltd. instead of M/s. Mukand Limited." In order to confirm the fact that only services were provided by M/s. Hospet Steels Ltd. to M/s. Mukand Ltd., the Applicant was asked to produce copy of purchase order/agreement between 'Hospet Steel Ltd. and Mukand Steel Ltd.' for providing such service and the service-related invoices raised by M/s. Hospet Steel upon M/s. Mukand Steel Ltd.

4. The Applicant submitted certificate from the Assistant Commissioner of Commercial Taxes, L.G.S.T.0510, Koppal Dt., ref. No. ACCT/LGSTO-510/Kpl/2017-18/902 dated 16.02.2018 vide which the Assistant Commissioner of Commercial Taxes, LGST0510, Koppal, Karnataka, has certified that M/s. Hospet Steel Ltd., Ginigera, has been registered under GST, and is not a manufacturer but purely engaged in the business of providing

services only. However, the Applicant did not produce the copy of any agreement/purchase order and invoices to support their claim that only security services were provided by M/s. Hospet Steel to M/s. Mukand Ltd., during the claim period and charges were paid by M/s. Mukand Ltd., for receiving such services only. Applicant was also not able to produce any documentary evidence like agreement, service invoices raised by M/s. Hospet Steels Ltd., on M/s. Mukand Steel at Ginigera. The original authority then rejected the Applicant's drawback claims as mentioned above. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals) which has been rejected.

5. The revision application has been filed, mainly, on the grounds that M/s. Hospet Steels Ltd. are security service providers and therefore have affixed their stamp/seal (out pass) on the invoice/s when the goods left the premises of M/s. Mukand Ltd.; that the authorities without conducting enquiry as to whether M/s. Mukand Ltd. have a factory at Ginigera, Karnataka and are manufacturing the impugned goods, have come to the conclusion that M/s. Mukand Ltd. have not supplied the goods; that the authorities ought to have enquired as to whether M/s. Hospet Steels Ltd. are rendering security services or not and whether they are charging service tax for such services rendered; that the authorities ought to have appreciated that the invoice, bill of export and ARE-1 relating to this supply are corroborative evidence for the petitioner's submissions and the above documents have been rejected without any grounds.

6. Personal hearings were fixed on 15.12.2023, 12.01.2024 and 19.02.2024. In the hearing held on 19.02.2024, Sh. Ranganath advocate appeared for the Applicant and reiterated his revised submissions sent via email in his respect of the eight RAs; these relate to drawback claims in respect of 121 Bills of Export & Invoices vide which M/s. Mukand Steels supplied Alloy Steel Bars to M/s. Sundram Fasteners. He submitted that these have been denied by the department on the ground that the invoices bear the 'out stamp' of another company named M/s. Hospet Steels though the department has not held that the manufacturer is any entity other than M/s. Mukand Steels; that the jurisdictional officer has certified the documents; that they also submitted a letter from the Commercial Taxes Department, Karnataka stating that M/s. Hospet Steels is solely a service provider agency and submitted further that they have no manufacturing activity.

He however, expressed inability to produce any invoices pertaining to the period before or after the period of the impugned claims, stating that he did not have any invoices for the previous period and for the period after the claim period, they changed the practice since the claims were rejected by the department. He prayed that the OIA be struck down and RAs allowed.

7. It is seen that the main reason for denying the export benefit i.e. the drawback claims is the 'out stamp' of M/s. Hospet Steels Ltd. on the invoices and ARE-1s issued by M/s. Mukand Ltd. The original authority in para 7 of the Order-in-Original has noted that the authorized officer of Mahindra World City-SEZ vide his letter No. 3/2018 dated 04.01.2018 addressed to M/s. SFL has raised a query and has observed that on perusal of information available on website it was seen that the manufacturing facility of M/s. Kalyani Steels at Hospet is known as M/s. Hospet Steels Ltd. and it is an integrated Steel Mill equipped with state of the art technology in steel making, finishing and testing facilities. Since this was contrary to the claim of M/s. SFL that M/s. Hospet Steel is not a manufacturing unit but only a security service provider, they were requested to produce a letter from the concerned jurisdictional officer.

8. In order to confirm the fact that only services were provided by M/s. Hospet Steels Ltd. to M/s. Mukand Ltd., the claimant i.e. the Applicant were asked to produce copy of Purchase order/agreement between M/s. Hospet Steel and M/s. Mukand Steel Ltd. for providing the service and service invoices raised by M/s. Hospet Steel on M/s. Mukand Steel Ltd. It is seen that the Applicant did not provide the same. Instead they provided a copy of certificate from the Assistant Commissioner of Commercial Taxes, L.G.S.T.0510, Koppal, vide which it was certified that M/s. Hospet Steel Ltd., Ginigera has been registered under GST and is not a manufacturer but purely engaged in the business of providing services. However, this letter does not confirm the status of M/s. Hospet Steels Ltd. during the claim period.

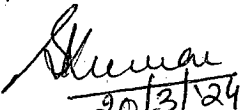
9. This certificate is in contrast to the letter dated 04.01.2018 issued by the Authorised Officer, Mahindra World City-SEZ as mentioned above vide which he has raised query and has observed that on perusal of information available on website it was seen

that the manufacturing facility of M/s. Kalyani Steels at Hospet is known as M/s. Hospet Steels Ltd. and it is an integrated Steel Mill equipped with state of the art technology in steel making, finishing and testing facilities.

10. Government has examined the matter. The certificate provided by the Assistant Commissioner of Commercial Taxes is relevant only for the GST regime and does not pertain to the period of the impugned claims. Also the issue of the invoices and ARE-1s bearing the signatures of the jurisdictional officers have not been discussed in the OIO or OIA. The applicant has also submitted a voluminous paperbook which contains pictures and documents that ought to have been verified *ab initio* by the adjudicating authority, and many of which constitute additional evidence which may not have been produced before the original authority.

11. In view of the above, it would be in the interest of justice that the matter is decided afresh by the adjudicating authority in a time bound manner.

12. Accordingly, the matter is remanded to the original authority with directions to consider the case afresh and after giving the applicants an opportunity to be heard and to pass a comprehensive, reasoned and speaking order within three months from the date of receipt of this order. So, ordered.


20/3/24
(Shubhagata Kumar)

Additional Secretary to the Government of India

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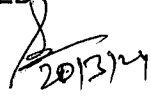
Order No. 70-77/24-Cus dated 20-03-2024

Copy to:-

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Chennai Air Cargo, 3rd Floor, New Custom House, GST Road, Meenambakkam, Chennai-600016.
2. The Commissioner of Customs (Chennai-VII), Air Cargo Complex, Meenambakkam, Chennai-600027.

3. Sh. P.R Renganath & Sh. M. Kannan, Advocates, R. Raghavan Chambers, Luz Golden Enclave, TNHB Complex, 180, Luz Church Road (Off. Nos. 17 & 43), Mylapore, Madras-600004.
4. PPS to AS (RA)
5. Guard File
6. ✓ Spare Copy
7. Notice Board

ATTESTED


20/3/24

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