SPEED POST

F.No. 373/285/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 22/03/24

Order No. 87 / 24-Cus dated 22-03-2024 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 No. HYD-CUS-000-APP-029-21-22 (APP-I) dated 29.06.2021, passed by Pr. Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

APPLICANT : M/s Sitaram Spinners Pvt. Ltd., Siddipet.

RESPONDENT : The Commissioner of Customs, Hyderabad.

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ORDER

A Revision Application No. 373/285/DBK/2021-RA dated 17.09.2021 has been filed by M/s. Sitaram Spinners Pvt. Ltd., Siddipet, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. HYD-CUS-000-APP-029-21-22(App-I) dated 29.06.2021, passed by the Pr. Commissioner of Customs & Central Tax (Appeals), Hyderabad. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 07/2020-2021 CUS-DBK-EPD dated 27.01.2021, passed by the Assistant Commissioner of Customs, Secundrabad except to the extent of setting aside the penalty of Rs. 1,00,000/- imposed upon the Applicant under Section 117 of the Customs Act, 1962.

2. Briefly stated, the Applicant filed an application for fixation of special brand rate of drawback on goods exported during the months of 'October, 2019 to December, 2019' under Rule 7(1) of the Customs & Central Excise Drawback Rules, 2017 and sought drawback of Anti-Dumping Duty paid by them. The Applicant vide letter dated 20.01.2020 stated that they had paid import duty of Rs. 11,36,933.84/- and had received drawback of Rs. 4,13,153.44/- as AIR drawback at the rate of 1.8% and claimed differential drawback amount of Rs. 7,23,780.41/- as the drawback amount received by them was less than four-fifth of the import duty paid by them. The applicant had paid Rs. 8,25,828/- towards IGST @ 18% and Rs. 3,11,105/- towards Anti-Dumping Duty on the quantity of imported inputs used in the manufacture of export goods. Further, the applicant also declared that they had availed credit of duty paid under IGST.

As the All Industry Rate of Drawback (AIR Drawback) had already been availed, the original authority, vide the aforesaid Order-in-Original dated 27.01.2021, rejected the claims for Special Brand Rate of Drawback as the same was not permissible in terms of Rule 7 of the Customs, Central Excise Duties and Service Tax Rules, 2017. The appeal filed by the Applicants has been modified by the Commissioner (Appeals) as mentioned above.

3. The revision application has been filed, mainly, on the grounds that Circular No. 106/95-Cus., dated 11.10.1995, clarifies that Anti Dumping Duty is not considered while fixing the AIR of Drawback, therefore, the exporter has to claim the Drawback in terms of

Rule 7 of the Customs and Central Excise Duties Drawback Rules, 2017 as applicable; that the reference to duties paid mentioned in Rule 7(1) is for the Customs duties paid in terms of Section 2(15) read with Section 12 of the Customs Act, 1962 and Section 3(1)(5)(7) of the Customs Tariff Act, 1985; that the total Customs duty paid by the Applicant at the time of import is BCD+IGST+Anti Dumping Duty and as the drawback is less than 80% of the total Customs Duty paid by them, hence they are eligible to claim the Drawback for the Anti Dumping Duty; and that total Customs Duty referred to in Rule 7 cannot exclude the CVD/SAD/IGST as they are all part of Customs Duty and collected as such by the Customs department.

4. Personal hearing, in virtual mode, was held on 20.12.2023. Sh. Venkata Prasad, CA, appeared on behalf of the Applicant and submitted that their RA relates to the eligibility for brand rate of drawback since the applicants pay Anti Dumping Duty (ADD) on the import of yarn. He called into question CBIC's circular of October 2019 vide which IGST is to be excluded from drawback claims. He sought that while calculating the amount claimed, the IGST component including ADD should be included so that they can fulfill the eligibility condition of 80% without which they are not eligible for such drawback. He stated that though this should be included in the calculation for establishing eligibility; while granting drawback, the absolute amount of GST can be subtracted from the amount granted/finally approved as drawback. He reiterated that the applicants should be allowed to get drawback of the ADD, which has been wrongly rejected. No one appeared for the Respondent nor any request for adjournment has been received. Hence, it is presumed that the department has nothing to state or add in the matter.

5. Government has examined the matter. It is observed that the main issue involved in the present proceedings is whether duty of IGST paid at the time of import can be considered to arrive at total customs duties paid for the purpose of calculating the percentage of AIR drawback. The contention of the Applicant that the total customs duties paid by them at the time of import is BCD+IGST+Anti Dumping Duty. The Government observes that this contention is in the teeth of law settled by Rule 2(a) of the Customs and Central Excise Duties Drawback Rules, 2017 effective from 01.10.2017 which specifically excludes Integrated Tax collected under sub-section (7) of Section 3 of the

Customs Tariff Act, 1975 on any imported material used in the exported goods. In this connection the Commissioner (Appeals) has rightly quoted the case of Interglobe Aviation Ltd. Vs. Commissioner of Customs, New Delhi [2020 (43) G.S.T.L 410 (Tri. - Del.)]. In this case the Department's contention was that Section 12(1) of the Customs Act provides that duties of customs are levied not only under the provisions of the Customs Act and the Tariff Act but also under 'any other law for the time being in force' and thus, the integrated tax leviable on imported goods by the Integrated Tax Act would also be a duty of customs. Integrated Tax has been defined under Section 2(12) of the Integrated Tax Act to mean the 'integrated goods and services tax levied under the Integrated Tax Act.' The proviso to Section 5 of the Integrated Tax stipulates that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Tariff Act on the value as determined under the Tariff Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act. Accordingly, the Hon'ble Tribunal concluded that though integrated tax is levied under Section 5 of the Integrated Tax Act, it is collected in accordance with the provisions of Section 3 of the Tariff Act on the value as determined under the Tariff Act and at the point when duties of customs are levied under section 12 of the Customs Act. Thus, integrated tax is levied under section 5(1) of the Integrated Tax Act and only the procedure for collection has been provided under Section 3 of the Tariff Act. As integrated tax is not levied under Section 12 of the Customs Act, the Hon'ble Tribunal held that it cannot be called 'duty of customs'. The charging section for integrated tax, in terms of which it is levied, is section 5 of the Integrated Tax Act and not section 3(7) of the Tariff Act. Section 3(7) of the Tariff Act only provides for the manner of collection of the said integrated tax to be done by the Customs Authorities in case of import of goods. Therefore, the Hon'ble Tribunal rejected the argument of the Department that integrated Tax is a duty of Customs.

6. Further, the submission of the Applicant that Circular No. 106/95-cus. Dated 11.10.1995 clarifies that Anti Dumping Duty is not considered while fixing the AIR of Drawback and therefore they made the claim of Drawback in terms of Rule 7 of Drawback Rules, 2017 is not sustainable as the drawback claim under Rule 7 of the said rules is subject to the condition of sub rule (1) of Rule 7 that the amount or rate of drawback

determined under rule 3 or, as the case may be, revised under rule 4, for the class of goods is found to be less than eighty percent of the duties paid on the materials or components used in the production or manufacture of the said goods. In this case, the amount of AIR drawback received is Rs. 4,13,513/- whereas the duty paid is Rs. 3,11,105/- (excluding of IGST as mentioned above) which is even more than 100%.

7. The Applicant has relied on case of Alfa Laval (India) Ltd. Vs. Union of India [2014 (309) ELT 17 (Bom.)] wherein it was held that availment of Drawback under AIR will not hamper the party from claiming the Drawback by way of Brand Rate fixation under Rule 7. In that matter, the drawback claim of the Applicant was not rejected on the ground that they had already availed AIR drawback, as is the case in this matter hence the said case law does not come to the rescue of the Applicant.

8. In view of the above, the Revision Application is rejected for the aforesaid reasons.

22/3/24

(Shubhagata Kumar)
Additional Secretary to the Government of India

M/s. Sitaram Spinners Pvt. Ltd.
Survey No. 905, Tuniki Khalsa (V)
Wargal Mandal, Siddipet District
Telangana

Order No. 87/24-Cus dated 22-03-2024

Copy to:-

1. The Commissioner of Customs, Customs Commissionerate, GST Bhavan, Basheerbagh, Hyderabad.
2. Pr. Commissioner of Customs & Central Tax (Appeals-I), 7th Floor, Kendriya Shulk Bhavan, Opposite L.B Stadium, Basheerbagh, Hyderabad-500004.
3. Sh. R Muralidhar, Advocate, B 201, Highrise Apartments, Lower Tankbund Road, Hyderabad-500080.
4. PPS to AS (RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED

22/3/24

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