

REGISTERED
SPEED POST



F.No. 375/39/DBK/16-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.....11/12/18

Order No. 228/18-Cus dated 7-12-2018 of the Government of India passed by Shri R.P.Sharma, Principal Commissioner & 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/CUSTOM/000/APP/0008/16-17 dated 19.04.2016, passed by the Commissioner of Central Excise & Customs (Appeals), Meerut - II

Applicant : M/s Designco

Respondent : Commissioner of Customs, Noida Commissionerate, Gautam Budh Nagar, U.P.

ORDER

M/s Designco, Moradabad, (hereinafter referred to as the applicant) has filed a revision application No. 375/39/DBK/2016-RA dated 07.06.2016 against the Commissioner (Appeals)'s Order No. NOI/CUSTOM/000/APP/0008/16-17 dated 19.04.2016, whereby their appeal against OIO dated 18.08.2015, passed by the Dy. Commissioner of Customs, Inland Container Depot, Dadri, is partially allowed. The Assistant Commissioner, vide his above mentioned order, had rejected the drawback claim and also rejected the interest claim of the applicant on the amount of drawback which was sanctioned earlier after delay. However, the Commissioner (Appeals), vide his above mentioned Order-in-Appeal, upheld the order of adjudicating authority to the extent of rejecting the drawback claim of Rs. 22,47,772/- but allowed the interest on the sanctioned drawback from 19.06.2015 till the actual date of payment of drawback in terms of Section 75 A of the Customs Act, 1962.

2. Revision Application has been filed by the applicant mainly on the ground that that the Commissioner (Appeals)'s order with regard to rejection of their drawback claim of Rs. 22,47,772/- involved in 114 Shipping Bills is not correct as they have exported handicrafts only and in most of the cases the exported items covered under these Shipping Bills are the same for which certificates from Development Commissioner/EPCH were produced earlier. With regard to interest payment they have challenged the Order-in-Appeal on the ground that they had filed all the drawback claims during the period 03/2009 to 12/2009 and, therefore, interest is payable to them after one month from the each drawback claim as is mandated in Section 75A of the Customs Act, 1962.

3. Personal hearing in this case was held on 09.09.2018 and Sh. P.C. Patnaik, Advocate, appeared for personal hearing on behalf of the applicant

and reiterated the grounds of revision already stated in their application. However, no one from department appeared for personal hearing and no request for any other date of hearing was received from which it is implicit that they are not interested in availing the personal hearing.

4. The Government has examined the matter and it is observed that the goods were classified by the applicant as handicraft in the 506 Shipping Bills and the same were allowed as handicraft in the light of certificates from the Development Commissioner/EPCH in majority of the cases. Out of the said 506 Shipping Bills, the drawback of duty is already sanctioned by the lower authority in 392 Shipping Bills but it is rejected in the remaining 114 Shipping Bills mainly on the ground that the certificates from the Development Commissioner/EPCH are not produced by the applicant in respect of these Shipping Bills. Thus absence of the said certificates is taken as a basis for denying the drawback of duty to applicant in 114 cases and the classification of the goods as handicraft by the applicant in the Shipping Bills and other export documents with the approval of Customs authorities is completely ignored while examining the maintainability of the drawback claim in these cases. The Government does not have any hesitation in saying here that since the goods were cleared for export by the Customs authorities as handicraft only, lower authorities does not have any legitimate basis for not accepting the exported goods as handicraft while considering the drawback claim of the applicant. The certificates from Development Commissioner/EPCH etc. are mainly meant for guiding the Customs authorities for taking a proper decision with regard to classification of the goods at the time of export of the goods and these are not very relevant for considering the drawback claims at the subsequent stages when goods had already been exported as handicrafts. Since the goods were exported as handicraft only, the drawback of duty is admissible in respect of all such exported goods as per the classification already accepted by the Custom

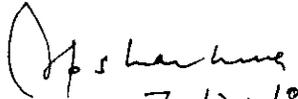
authorities irrespective of whether certificates from Development Commissioner/EPCH are produced or not. Moreover, out of 114 Shipping Bills, the applicant has claimed to have submitted the said certificates earlier in respect of 84 items involving drawback of Rs. 17,57,716/- and the drawback of duty is already sanctioned in respect of such identical items accepting them as handicraft. The applicant has contended that the drawback of duty in respect of such 84 items is admissible to them even when the certificates from Development Commissioner/EPCH are not provided since such certificates are not needed every time on repeated basis. This claim of the applicant that these items are already accepted as handicraft earlier and drawback of duty on such goods is already sanctioned is not controverted by the respondent in any manner and accordingly Government feels that the drawback of duty of Rs. 17,57,616/- is admissible to the applicant for above reason also. As regards drawback claim of Rs. 4,90,006/- involved in 27 more items, the applicant has accepted that they could not produce certificates from Development Commissioner/EPCH. However, it is asserted that all these items are handicraft and these were also classified by the departmental authorities as handicrafts at the time of export and they were never asked to produce the certificates from above authorities because of which they could not produce the certificates later on. The Government finds humongous force in the above argument that when the departmental authorities have already allowed the export of goods by classifying them as handicraft and the applicant was not asked to produce any certificate, there was no room for denying the drawback of duty in these cases subsequently on the pretext that certificates from Development Commissioner/EPCH are not produced. Above all, while drawback of duty has been denied in these cases merely because of non production of certificates from Development Commissioner/EPCH, it is nowhere clarified by the lower authorities as to what was the nature of those goods and what was their classification if these were not handicraft as per their claim. Their silence over

this point reveal that the goods were handicrafts only. Thus the Government is convinced that there is no valid basis with the departmental authorities in rejecting the classification of the exported goods subsequently at the time of disbursal of drawback claim, no proper procedure was followed for changing the classification at any stage and instead the classification of goods as handicraft was approved by all concerning departmental authorities without having any reservation. Therefore, the Government agrees with the applicant's case that Commissioner (Appeals) has committed an error by upholding the rejection of drawback claim of Rs.22,47,772/-.

5. As regard the issue regarding interest, Section 75A of the Customs Act, 1962 clearly envisages that the interest is payable in case the drawback is not paid within a period of one month from the date of filing the drawback claim. Whereas in the instant Drawback claims were undeniably filed between 03/2009 to 12/2009. But the same were paid only in 2015. The Commissioner (Appeals) in his order has held that since all requisite documents were made available by the appellant only on 19.06.2015, the drawback claim will be treated to be as filed on 19.06.2015 only and the interest will be payable only by taking this date as filing date. However, this argument of Commissioner (Appeals) is not backed by the facts on record and the aforesaid Section 75A as all the export documents and certificates from EPCH/Development Commissioner were available with the department soon after export of goods, the applicant had filed all the drawback claims within prescribed time limit and the drawback of duty could be paid well in time. But payment of drawback was apparently delayed due to laxity and indecision of the concerning authorities leading to long litigation in the matter for which the applicant can not be punished by denying the interest for the long delay. Therefore, in the instant cases there is no legal basis for taking 19.06.2015 as the date of drawback claims for payment of interest. Instead, the actual date of filing of claims in

2009 should be taken as the basis for payment of interest. Hence, interest is payable in these cases after lapse of one month from filing of drawback claims as is stipulated in Section 75A of the Customs Act, 1962.

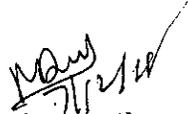
6. Accordingly, the above mentioned Order-in-Appeal is modified and Revision Application is allowed to the above extent.


7.12.18

(R.P.Sharma)
Additional Secretary to the Government of India

M/s Designco,
Lakri Fazalpur,
Muradabad,
Uttar Pradesh 244001

ATTESTED


(Nirmla Devi)

SECTION OFFICER (REVISION APPLICATION)

Order No. 228/18-Cus dated 7-12-2018

Copy to:

1. Commissioner of Customs, Noida Commissionerate, Concor Complex, P.O. Container Depot, Greater Noida, Gautam Budh Nagar, Uttar Pradesh.
2. The Commissioner of Customs & Central Excise (Appeals), Meerut – II, C-56/42, Sector 62, Noida, Uttar Pradesh.
3. Deputy/ Commissioner of Customs, Concor Complex, P.O. Container Depot, Greater Noida, Gautam Budh Nagar, Uttar Pradesh.
4. Sh. P.C. Patnaik , Advocate, 4, Hasanpur, Opposite Metro Pillar No. 179, I.P. Extension, Patparganj, Delhi 110092
5. PS to AS(RA)
- ~~6. Guard File.~~
7. Spare Copy