

**SPEED POST**



F. No. 373/33/DBK/SZ/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..18/04/23

Order No. 148 / 23-Cus dated 18-04-2023 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 Airport & Air Cargo C.Cus. No. II/358/2019 dated 19.09.2019, passed by the Commissioner of Customs (Appeals-II), Chennai.

APPLICANT : M/s Vasudha Pharma Chem Ltd., Visakhapatnam.

RESPONDENT : The Commissioner of Customs, Chennai-IV (Export).

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**ORDER**

A Revision Application No. 373/33/DBK/SZ/2020-R.A. dated 24.12.2019 has been filed by M/s Vasudha Pharma Chem Ltd., Visakhapatnam (hereinafter referred to as the Applicant), against the Order-in-Appeal Airport & Air Cargo C.Cus. No. II/358/2019 dated 19.09.2019, passed by the Commissioner of Customs (Appeals-II), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 67591/2019 dated 19.02.2019, passed by the Assistant Commissioner of Customs (Drawback), Chennai-VI, Chennai.

2. Briefly stated, the Applicants herein imported 4725 kgs of 2-N-Propyl-4-Methyl-6(1-Methylbenzimidazole-2-YL), vide Bill of Entry No. 9156001 dated 22.02.2017, and paid a duty of Rs. 46,42,206/- on the imported goods. Thereafter, out of the total imported quantity of 4725 kgs, 500 kgs were re-exported, vide Shipping Bill No. 100853 dated 28.08.2017, under a claim of drawback in terms of Section 74 of the Customs Act, 1962. The original authority, vide the aforesaid Order-in-Original dated 19.02.2019, sanctioned drawback corresponding to 85% of the basic customs duties, customs education cess and customs higher education cess, totally amounting to Rs. 1,22,051/- but did not sanction proportionate drawback amount corresponding to Additional Duty of Customs paid on the said goods at the time of import as the Applicant had not reversed the proportionate CENVAT credit availed by them. Instead the Applicants had paid IGST of Rs. 3,40,156/-, purportedly corresponding to proportionate CENVAT credit availed, at the time of re-export. The appeal filed by the Applicants herein has been rejected.

3. The revision application has been filed, mainly, on the grounds that according to Section 74 any duty paid on importation has to be paid as drawback if it is proved that those duties had been paid at the time of import; that neither Section 74 nor erstwhile CENVAT credit Rules, 2004 provided that the duty in respect of which CENVAT credit had been availed had to be excluded for arriving at the drawback amount; that despite such unambiguous position, drawback sanctioning authority has restricted the drawback claim to the basic customs duties; that CGST Act, 2017 has been made applicable to the subject goods w.e.f. 1<sup>st</sup> July 2017 and the provisions of the said Act alone are applicable for the

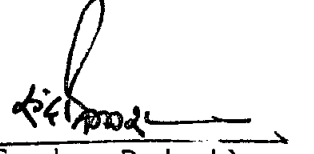
re-export of the goods; that they had cleared the goods for re-export after payment of IGST of Rs. 3,17,503/- plus an additional amount of Rs. 22,653/- which is required to be refunded by the customs authorities as per Rule 96 of the CGST Rules, 2017 suo-motu. It has, accordingly, been prayed that the differential drawback amount of Rs. 2,95,502/- may be sanctioned or in the alternate refund of IGST paid at the time of export may be granted.

4. Personal hearing, in virtual mode, was held on 17.04.2023. Sh. Viswanathan, Consultant appeared for the Applicant and requested that the Written Submissions emailed may be taken on record. He reiterated the contents of the RA and the Written Submissions. Sh. Sundaravadhanam, AC stated that Section 74 is applicable only in respect of duties paid at the time of import. In this case IGST has been paid at the stage of re-export. Hence, the lower authorities have correctly denied drawback to this extent.

5. The Government has carefully examined the matter. The dispute herein relates to non-sanctioning of drawback under Section 74 corresponding to the Additional Duty of Customs paid on the imported goods. The original authority has denied this amount on the grounds that CENVAT credit, which had been availed against the said duty, has not been reversed. The Government observes that, undisputedly, CENVAT credit in respect of the Additional Duty of Customs, paid at the time of importation, was availed which has not been reversed. Therefore, it is apparent that the credit availed against said duty would have been either used for payment of duty on other goods by the Applicant or would have been obtained as refund. In such a case, sanctioning of drawback also corresponding to this amount would undoubtedly lead to double benefit to the Applicant. As such, the Applicants have not been disadvantaged in any way by restricting the drawback only to the extent of basic customs duty plus cess. In so far as the drawback in respect of IGST paid on the re-exported goods, it has been correctly pointed out by the department during the personal hearing that Section 74 contemplates drawback of duty paid "on importation". Since in the present case IGST has been paid at the time of re-export and not at the time of importation, Section 74 does not cover the drawback in respect of IGST so paid. As such, the Government does not find any infirmity in the orders passed by the authorities below. As regards the alternate plea for sanction of IGST refund, the

Government refrains from expressing any views in the matter as the issue of IGST refund does not fall within the purview of Section 129DD of the Customs Act, 1962.

6. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

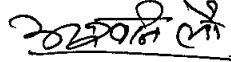
M/s. Vasudha Pharma Chem Ltd., Unit-II  
Plot No. 79, Jawaharlal Nehru  
Pharma City Parwada, Visakhapatnam-500019.

Order No. 148/23-Cus dated 18-04-2023

**Copy to:-**

1. The Commissioner of Customs, Chennai-IV (Export), Custom House, 60, Rajaji Salai, Chennai-600001.
2. The Commissioner of Customs (Appeals-II), 60, Rajaji Salai, Custom House, Chennai-600001.
3. Sh. G.R. Kumar & Co LLP, Chartered Accountants, 9, Merry Life Apartments, Doctor's Colony, Peda Waltai, Visakhapatnam-530017.
4. PPS to AS (RA)
5. Guard File
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7. Notice Board

ATTESTED



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