

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH NB (SM)

Appeal No. C/263/00-NB(SM)

Dated : 10/1/2001

CEGAT
NEW DELHI
To,

M/s Gypsy Exports

850-A, Indl. Arcat A,

Ludhiana (Pb)

In the matter of :

M/s Gypsy Exports

Appellant

vs.

C-C. Amritsar

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/S1/2001/NB(SM)
Dated : 4-1-2001 passed by the Tribunal under Section 35-C(1) of Central Excise
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

CC Amritsar

Asstt. Registrar
NB (SM)

- 1.
2. ECE / CC / (Appeal) Chandigarh
3. Chief Commissioner of Central Excise / Customs. New Delhi
4. Adv. / Consult. Shri Jagmohan Bansal, Adv.,
3503, Sector-38D
Chandigarh
5. S.D.R
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003
13. M/s Lex Site Com. Ltd., Mumbai
14. Office Copy
15. M/s Cen-Cus Publication.

Asstt. Registrar

CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL
NEW DELHI

Appeal No.C/263/00-NB(S)

(Arising out of Order-in-Original No.11/2000 dated 25.4.2000 passed by Commissioner of Customs, Amritsar)

M/s. Gypsy Exports .. Appellants
(Rep. by Shri Jagmohan Bansal, Advocate)

vs.

Commissioner of Customs, Amritsar .. Respondent
(Rep. by Shri H.R. Bheema Shankar, SDR)

FINAL Order No. A/51/01/NB(S/M)
dt: 4.1.2001

Per G.R. Sharma, Member (T):

This is an appeal against disallowance of Drawback. The facts of the case are that the appellant imported certain raw materials in terms of Notification No. 80/95 dt. 31.3.95. Public notice under which this Notification No.80/95 was issued provided "In case of exports made against quantity based Advance licences issued on or after 1.4.95 in discharge of obligations in terms of Notfn. No.80/95 dated 31.3.95, drawback at the rate equivalent to Central Excise allocation of rate of drawback shall be admissible. The goods in this case were exported in discharge of export obligation. The LUT/BG were discharged and licences were made transferable on 16.4.97. The appellant applied for grant of quantity based licences on 6.6.96, 19.9.96 and 28.11.96 which were issued to him on 20.6.96, 7.11.96 and 13.12.96. Exports against these licences were effected during June to September, 1991, September, 1996 to November, 1996 and November, 1996. The exports are governed by the provisions of Exim Policy 1992-977. Para 47 of Exim Policy provides for

duty free imports of inputs namely raw materials, intermediater components etc. However, such inputs had to suffer Additional Customs duty. This para also provides for adjustment of customs duty and states that the importer/licensee can claim drawback for additional duty paid on inputs imported. Authorities below rejected the claim of the appellant for conversion of 22 DEEC S/Bs into DEEC-cum-Drawback S/Bs".

2. Arguing the case for the appellants, Shri Jagmohan Bansal, ld. Counsel submits that after the issue of Notfn. No. 80/95 dt. 1.4.95, the Government of India, Ministry of Finance issued a clarification under Circular No. 91/95-CUS. dt. 11.8.95 which reads as under:

"There may be cases where exports may have been made on free Shipping Bills prior to 1.4.1995 and even thereafter say upto 31.5.1995 and (i.e. after the Handbook is published on 1.5.1995 and then taken for its circulation) towards discharge of export obligation against VABAL or QABAL to be issued on or after 1.4.1995 in terms of Para 66 of the Exim Policy. In such cases drawback can be paid only after requirement of Rule 11 of Customs and Central Excise Duties Drawback Rules, 1971 or Rule 11 of the new 1995 rules, is relaxed by the Central Government under Rule 15 of 1971 Rules or under Rule 17 of 1995 rules. Since in such cases exporters were not aware at the time of making exports, that they will be required to pay additional duty on imports against Advance Licences issued to them on or after 1.4.1995, requiring each exporter to seek relaxation from the Central Government individually would cause unnecessary hardship. It has therefore been decided that in all cases where exports were made on a free Shipping Bill on or before 31.5.1995 in discharge of export obligation under a VABAL or QABAL issued/to be issued on or after 1.4.1995 and the exporter desires to claim drawback in terms of Public Notice No. Drawback/PN-4/95, dated 2.5.1995 or in terms

of 1st Proviso to Note 2(b) of General Notes to Public Notice No. Drawback/PN-5/95, dated 15.6.1995, permission for conversion of Shipping Bills to Drawback Shipping Bills in relaxation of Rule 11 of 1971 or 1995 rules, as the case may be, shall be deemed to have been accorded by the Central Government under Rule 15 of 1971 rules or Rule 17 of 1995 rules respectively".

Ld. Counsel submits that the Government of India was aware of the fact that this notification had not come to the knowledge of the exporters spread throughout length and breadth of the Country and therefore instead the power of relaxation being retained by them, they delegated it to the Commissioner concerned.

Ld. Counsel submits that the appellants requested the Commissioner to relax the condition of the notification regarding filing of Green Shipping Bills & Drawback S/B along with the declaration that they will claim Drawback under Notfn. No. 80/95. Ld. Counsel submits that the ld. Commissioner rejected their request for relaxation on the ground that they effected the impugned shipments much after the date of issue of notification or clarification given by the Government.

Ld. Counsel further submits that this Tribunal in the case of M/s. Rana Deep Shipping and Transporter Co. (P) Ltd. vs. Collector of Customs, Bombay [1999 (112) ELT 791(T)] holding that Drawback will be admissible even if the goods were clandestinely imported if the import duty is paid. He submits that theirs is a very simple case inasmuch as exports were effected on White Shipping Bill clearly showing that no Drawback was claimed and that CVD was paid by the appellants in terms of Notfn. 80/95 dt.1.4.95. Ld. Counsel also referred to the decision of the Apex Court in the case of Union of India vs. Suksha International and Nutan Gems & Anr (1989 (39) ELT 503(S.C), in which the Apex

Court held that the beneficial provision should be interpreted liberally. The ld. Counsel submits that the Drawback is a beneficial provision and thereafter even if there was a procedural delay which was rectifiable, could be relaxed. The appellants should have been given the benefit of this provision. The ld. Counsel submits that in view of the fact that the appellant was an actual user who exported the goods and had not claimed Drawback. He therefore prays that he should be allowed to claim drawback, the procedural requirement should be relaxed and the appeal may be allowed.

4. Shri H.R. Bhimashankar, ld. SDR appearing for the Revenue submits that the authorities below have rejected Drawback claim of the appellants on the ground that the relaxation under Rule 12(1) of the Customs & Excise Duties Drawback Rules, 1995 were not applicable to the appellant, as the appellant had come up for a period which was much after the date of issue of notification or the clarification given by the Government on the issue, cited and relied upon by the ld. Counsel for the appellant. Ld. DR also submitted that there was another mistake inasmuch as out of 22 shipments, in the case of 10 shipments, though the number of application was correctly recorded but the date was wrongly noted. On this point, the ld. Counsel for the appellant submitted that it was a clerical mistake and clerical mistake cannot be made a ground for disallowing the Drawback claim. Ld. DR reiterated findings of the ld. Commissioner.

5. I have heard the rival submissions. I note in the instant case that the requirement of Notfn. No.80/95 dt. 1.4.95 was that the shipments should be made on the drawback Shipping Bills along with a declaration that Drawback shall be claimed in terms of Notfn. No.80/95.. In the instant case, I find that goods were exported under White Shipping Bills. Export of goods under White Shipping Bills clearly show that no Drawback was claimed. Thus, in the instant case, the admitted position was that Drawback was not claimed by the appellant. Further, admitted position was that the goods were exported in discharge of export obligation. The LUT/BG were discharged and licences were made transferable. Therefore, there is no risk to Revenue for sanctioning Drawback twice. Further, I find that CVD was paid by the appellant at the time of import of inputs in terms of Notfn. No.80/95. The Public Notice under which the above notification was issued provided for payment of drawback equivalent to Central Excise allocation of rate of drawback claimed. Thus, there has been only a procedural lapse. The ld. Counsel submitted that the applicant was not conversant nor was his Customs House Agent well informed about the requirement of the Notfn. No.80/95. I find that there are cases wherein it has been held that the benefit of beneficial provision should be denied to the appellant simply because he has not complied with certain procedural requirements. I find from the case cited and relied upon by the ld. Counsel for the appellant that even in a case while confirming demand of duty

when the goods were clandestinely imported, the Tribunal allowed Drawback claimed is applicable to the facts of the present case. The case of the appellant before me is not that bad. In regard to the mistake about recording the date, I am in agreement with the contention of the ld. Counsel for the appellant that it is a clerical mistake only. I further find that periodically DGFT issues a book to the Customs House and others concerned indicating the name of the licensee and the application number allotted to them along with the date. Thus on this account also, there is no risk to Revenue in the instant case inasmuch as the application number tallied. Looking to the above facts and circumstances of the case, I allow the Appeal. Consequential relief, if any, shall be admissible to the appellants in accordance with law.

(Pronounced and dictated in the open Court)

(G.R. SHARMA)
Member (Technical)

ms.