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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.373/217/DBK/15-RA
F.No 373/217-A/DBK/15-RA

Date of Issue: 10.01.2022

ORDER NO. 01-02 /2022-CUS (SZ) /ASRA/MUMBAI DATED 07.01.2022 OF
THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE
CUSTOMS ACT, 1962.

Applicant : M/s Navasakhti Tex,
No. 9, Khadi Colony,
Karuvampalayam, Tirupur 641 604

Respondent: The Pr. Commissioner, Customs, Coimbatore

Subject : Revision Applications filed, under Section 129DD of the
Customs Act, 1962 against the Orders-in-Appeal No. CMB-
CEX-000-APP-085-15 dated 20.04.2015 and Orders-in-Appeal
No. CMB-CEX-000-APP-086-15 dated 20.04.2015 passed by
the Commissioner (Appeals), Coimbatore

ORDER

These Revision Applications has been filed by M/s Navasakthi Tex, No 4, No 9 Khadi Colony, Karuvampalayam, Tirupur 641 604 (hereinafter referred to as the 'applicant') against the Orders-in-Appeal No. CMB-CEX-000-APP-085-15 dated 20.04.2015 and Orders-in-Appeal No. CMB-CEX-000-APP-086-15 dated 20.04.2015 passed by the Commissioner (Appeals), Coimbatore.

2. Brief facts of the case are that the applicant was granted drawback of Rs. 2,98,771/- and Rs. 75,657/- under Section 75 of the Customs Act, 1962 read with Rule 3 of the Customs, Central Excise Duties and Service Tax Drawback Rules,1995 for exports made against various shipping bills. The applicant failed to submit evidence regarding realisation of export proceeds in respect to the goods exported under the said shipping bills, within the period allowed under FEMA, 1999, including any extension of such period granted by the Reserve Bank of India.

2.1 Two separate show cause notices dated 19.01.2006 and 22.06.2006 were issued to the applicant respectively for recovery of the drawback sanctioned and paid. The adjudicating authority following the due process of the law, held in orders in original Nos 1607/2014 dated 30.06.2014 and 1606/2014 dated 30.06.2014 respectively that Rs. 2,98,771/- and Rs 75,657/- were recoverable under the second proviso to Section 75 (1) of the Customs Act, 1962 read with Rule 16A (1) of the Customs, Central Excise Duties and Service Tax Drawback Rules,1995 alongwith interest at the appropriate rate under Section 75A(2) of the Customs Act, 1962

3. Aggrieved by the orders in original, the applicant filed two appeals before the Commissioner (Appeals), Coimbatore. The Appellate authority vide Order-in-Appeal No. CEX-000-APP-085-15 dated 20.04.2015 and Orders-in-Appeal No. CMB-CEX-000-APP-086-15 dated 20.04.2015 rejected the appeal and upheld the order of recovery of drawback demand by the

adjudicating authority. The Appellate Authority made the following observations.

i) The drawback is given to the exporter immediately on exporter and the exporters are under obligation to produce the BRC's to the department within the prescribed time. Failure of production of BRC's within the prescribed time would lead to the recovery of sanctioned drawback. The applicant failed to submit the BRC's and the adjudicating authority has rightly demanded the drawback amount claimed and received by the applicant alongwith interest.

ii) Relaxation under Rule 16(A) (5) of the Drawback Rules, 1995 (as inserted w.e.f from 11.04.2011) is not available to the applicant as no evidence has been produced by the applicant.

iii) In the instant case the drawback is recoverable with interest as per Section 75 (A) (2) (inserted by Finance Act 2007) of the Customs Act, 1962.

iv) The applicant has neither replied to the show cause notice nor attended to the personal hearing granted or produced evidence of realization of sale proceeds of exported goods.

4. Aggrieved by the Order in Appeal, the applicant has filed this Revision Application with the Central Government against the impugned order under Section 129DD of the Customs Act, 1962, on the following grounds:

i) The applicant had not received the show cause notice issued to them and came to know the same when they received the copy of the orders in original

ii) Recovery of drawback sanctioned to the applicant is untenable on the grounds that the applicant were denied an opportunity to produce the proof

in terms of Ruls 16(A) (2) of the Drawback Rules 1995 as neither show cause notices nor personal hearing intimations were received by them.

iii) That the orders of the lower authorities were flawed by incurable defects, inasmuch as settled position of law has not been adhered to.

iv) The applicant have realised the export proceeds covered under the shipping bills through their Authorised Dealer Bank, well within the time limit stipulated under the FEMA, 1999 and Regulations made thereunder.

v) Recovery under second proviso to Section 75(1) of the Customs Act, 1962 is not applicable as even after duly realising the foreign exchange, the notice was issued and order-in-original passed confirming the demand of drawback, that too behind the back of the applicant, without adhering to principles of natural justice.

vi) The applicant have repatriated the export proceeds in respect of the shipping bills well within the time limit prescribed under the FEMA, 1999 and submitted to the Appellate Authority which has been disregarded by the Appellate Authority

5. Personal hearing was scheduled in this case on 07.10.2021. Shri Periasamy, Consultant appeared online for the personal hearing on 07.10.2021 and submitted that the show cause notice was not served on them and therefore they could not get an opportunity to submit the BRC's. He stated that all the BRC's have been submitted and the export proceeds stands realised and requested to drop the proceedings..

6. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Order-in-Appeal.

6.1 Government has meticulously considered all facets of the case and holds that whether the export proceeds were realized in time as per the RBI guidelines is central to the issue.

6.2 Government notes that the applicant has stated that the show cause notice issued to them for recovery of drawback amount sanctioned and paid to them for failure to submit the Bank Realisation Certificates as required under Section 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, was not received by them and they could not reply to the same. The applicant also stated that the personal hearing letters also were not received by them.

6.3 Government also notes that applicant has submitted that they had submitted evidence of realization of export proceeds to the Appellate Authority and Appellate Authority had disregarded the same

6.4 In the impugned order, the appeal was rejected as the BRC's were not submitted within six months from the date of export that took place in June 2006. Government notes that in view of the applicant having submitted the BRC's, the decision of the Appellate Authority on this count does not hold.

6.5 Government further notes that sub rule 4 of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 states that *"Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or sub-rule (3) and the exporter produces evidence about such realisation within one year from the date of such recovery of the amount of drawback, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs or Deputy Commissioner of Customs to the claimant"*.

6.6 In view of the above observations, Government sets aside the impugned Orders-in-Appeal No. CMB-CEX-000-APP-085-15 dated 20.04.2015 and No. CMB-CEX-000-APP-086-15 dated 20.04.2015 passed

by the Commissioner (Appeals), Coimbatore and remands the case back to the original authority for causing verification as stated in foregoing paras. The applicant shall submit the BRC's to the adjudicating authority for consideration and acceptance in accordance with the law. The original authority will complete the requisite verification expeditiously within eight weeks from the date of receipt of this order and pass a speaking order. A reasonable opportunity for hearing will be accorded to the applicant.

8. The Revision Application is disposed off on the above terms

Shrawan
07/01/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER NO. 01-07/2022-CX (SZ) /ASRA/MUMBAI DATED 07.01.2022

To,

M/s Navasakhti Tex,
No. 9, Khadi Colony,
Karuvampalayam, Tirupur 641 604

Copy to:

1. The Principal Commissioner of CGST, Coimbatore, No 6/7, A.T.D. Street, Race Course Road, Coimbatore 641 018
2. The Commissioner of CGST, (Coimbatore Appeals), No 6/7, A.T.D. Street, Race Course Road, Coimbatore 641 018
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare copy.