

REGISTERED SPEED POST



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. 373/46/DBK/2014-RA / 4062

Date of Issue:- 10/10/19

ORDER NO. 01 /2019-CX(SZ)/ASRA/MUMBAI DATED 27.08.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Sl.No.	Revision Application No.	Applicant	Respondent
1	373/46/DBK/2014-RA	M/s B.S. International, Erode	Commissioner, Customs, Coimbatore.

Subject: Revision applications filed under Section 129DD of the Customs Act, 1962, against the Order in Appeal No. CMB-CEX-000-APP-376-13 dated 12.12.2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore.

ORDER

This Revision application is filed by M/s B.S. International, Erode (hereinafter referred to as the 'applicant') against the Orders-In-Appeal CMB-CEX-000-APP-376-13 dated 12.12.2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore.

2. The Brief facts of the case are that a duty drawback amounting to Rs. 91,176/- (Rupees Ninety One Thousand One Hundred Seventy Six Only) was sanctioned to the applicant under Section 75 of the Customs Act, 1962 read with Rule 3 of the Customs, Central Excise and Service Tax Drawback Rules, 1995 for the export made under following shipping bills.

S.B. No. & Date	DBK Amount Sanctioned	Due date for the receipt of BRC
11627/24.06.2005	63461	23.12.2006
11979/30.06.2005	27715	29.12.2006
Total	91176	

3. However, the applicant failed to produce the evidence of realisation of export proceeds in respect of the said export goods covered under the above mentioned shipping bills within the period allowed under the Foreign Exchange Management Act, 1999, including any extension of such period granted by the Reserve Bank of India, read with Rule 16A of the Customs, Central Excise and Service Tax Drawback Rules, 1995. Hence a show cause cum demand notice dated 25.11.2011 was issued directing the applicant to produce evidences documentary or otherwise in support of their defence.

4. The Adjudicating Authority vide Order in Original No 56/2013(BRC) dated 31.10.2013 confirmed the demand of Rs. 91,176/- and directed the applicant to pay the said amount alongwith interest as applicable and also imposed a penalty of Rs. 200/- on the applicant under Section 117 of the Customs Act, 1962.

5. Aggrieved by the said order, the applicant filed an appeal with Commissioner (Appeals), Coimbatore. The Appellate Authority vide Order in Appeal No. CMB-CEX-000-APP-376-13 dated 12.12.2013 upheld the order in original on the following grounds :-

- i) The applicant had not submitted the BRC in time;
- ii) The applicant had exported goods in June 2005 and should have submitted the BRC within a period of Six Months. But the applicant had filed the BRC on 10.01.2012 after a lapse of 6 years and 6 months;
- iii) it shows lack of interest of the applicant to fulfil their part of the legal obligations. The drawback was sanctioned shortly after export. Yet the applicant did not find the time and inclination to submit the BRC in time, which shows their scant regard for statutory duties.

6. Being aggrieved with these Orders, applicant has filed the instant revision application before Central Government under Section 129DD of Customs Act, 1962 on the grounds that:-

- i) the department has not proved the non realisation of export proceeds;
- ii) there is no provision in Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 which mandates submission of BRC or any evidences proving realisation of export proceed;
- iii) invocation of penalty under Section 117 of the Customs Act, 1962 is erroneous application in as much as there is no proof for contravention of any provisions of Customs Act, 1962 in the notice. Therefore penalty imposed in the impugned order is liable to be set aside.
- iv) the applicant are not deprived of the drawback amount permanently by the operation of the Rule 16(A) of the Drawback Rules, 1995. Instead, in terms of sub rule 4 ibid, 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 evidences 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 to the claimant.

7. A Personal Hearing was held in matter on 19.08.2019 Shri Ganesh K.S. Iyer, Advocate appeared on behalf of the applicant for hearing. No one appeared on behalf of the Revenue. The Advocate reiterated the submission filed through Revision applications and written brief along with the case laws filed. It was pleaded that in view of the submissions Revision Application be allowed and Order in Appeal be set aside.

8. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

9. On perusal of records, Government observes that the applicant was granted the duty drawback with regard to exports made by them and demand of drawback already sanctioned was confirmed on the ground that they failed to submit Bank Realisation Certificate as evidence of remittance within stipulated period. The said order was upheld by the appellate authority also.

10. The Government notes that in the instant case, although, the exports were effected on 24.05.2005 and 30.06.2005, the department has issued Show Cause Notice only on 25.11.2011 towards non submission of BRCs. In reply dated 10.01.2012, the applicant had informed the department about realisation of export proceeds on 01.08.2005 itself and furnished proof endorsed by the bankers. The applicant has further explained that non submission of BRCs within time is unintentional and due to the ignorance about the provisions of BRC submission.

11. Considering the facts of the case, the Government opines that once the export proceeds are realised within the stipulated time, substantial compliance is achieved and the same should have been acknowledge by the department when it is brought to its notice by the applicant in response to the SCN issued by them. The Government opines that the delay in submission of proof does not negate the fact of realisation of export proceeds itself and therefore finds that the export proceeds, in the instant case, were realised within due time.

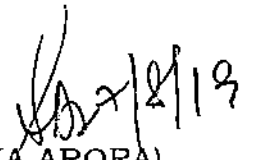
12. The Government observes that the applicant, in fact, have realised the export proceeds covered under the subject shipping bills well within the time limit stipulated under the Foreign Exchange Management Act, 1999 and the regulations made thereunder. As such, the fact that the substantive requirement viz. realization of export proceeds within the time limit prescribed by FEMA 1999 stands fulfilled by the applicant while the procedural requirement viz. the production of proof for the same was only delayed ought to have allowed appeals of the applicant in terms of decision of Hon'ble Apex Court reported in case of M/s Mangalore Chemicals & Fertilizers Ltd. v. Dy. Commissioner 1991 (55) ELT 437 (SC) wherein Hon'ble Supreme Court has drawn a distinction between substantive, mandatory conditions and procedural ones and held that procedural infractions shall not come in the way of granting substantial benefits. In the instant case, the applicant has indeed received the export proceeds covered in the subject shipping bills, well within time limit prescribed fulfilling the substantial obligation cast on them. Hence, the ratio of the decision of the Hon'ble Supreme Court in case of M/s Nutan Gems & Anr 1989 (39) ELT 503 (S.C) where the Apex Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. Therefore, it is crystal clear that the exporters have realised the export proceeds within the statutory limit.

13. The Government finds that in the instant case export proceeds were realised on 01.08.2005 for goods exported under Shipping Bills 11627 dated 24.06.2005 and 11979 dated 30.06.2005 i.e. well within stipulated period of six months and further the applicant have also submitted the copies of the same to the department on 10.01.2012 i.e. within reasonable period from the issuance of show cause notice.

14. In view of discussions and finding elaborated above, the Government holds that the applicant have discharged their lawful duties by submitting the BRCs in respect of shipping bills as mentioned above. Hence the demand in respect of drawback sanctioned to the applicant and the imposition of penalty thereof is unjust and unlawful.

15. In view of the above, Government sets aside the impugned Order in Appeal No. CMB-CEX-000-APP-376-13 dated 12.12.2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore.

16. The Revision Application is disposed off in terms of above.
17. So, ordered.


(SEEMA ARORA)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

To

M/s B.S. International,
580, K.R. Thottam, Masiyanur Road,
Erode, Tamilnadu- 638 011

Copy to :

1. The Commissioner of Customs, Central Excise & Service Tax (now Goods & Service Tax), 6/7, A.T.D. Street, Race Course Road, Coimbatore- 641 018.
2. The Commissioner of Customs, Central Excise & Service Tax (Appeals), 6/7, A.T.D. Street, Race Course Road, Coimbatore- 641 018.
3. The Assistant Commissioner of Customs, Inland Container Depot, SF No. 129, Poondi Ring Road, Chettipalayam, Tirupur - 641 652.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare copy.