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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.373/139/DBK/15-RA (103)

Date of Issue: 10.10.2022

ORDER NO. 03 /2022-CUS (SZ)/ASRA/MUMBAI DATED 05.01.2022
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. Modern Knitting Company.

Respondent: Pr. Commissioner of Customs, Coimbatore.

Subject : Revision Application filed under Section 129DD of the Customs
Act, 1962 against the Order-in-Appeal No. CMB-CEX-000-APP-061-15 dated
04.03.2015 passed by the Commissioner (Appeals-I), Customs, Central
Excise, and Service Tax, Coimbatore.

ORDER

This Revision Application is filed by the M/s. Modern Knitting Company, No.240/1, Karaipudur, Veerapandi Post, Chinnakarai, Tirupur, Tamilnadu - 641405 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CMB-CEX-000-APP-061-15 dated 04.03.2015 passed by the Commissioner (Appeals-I), Customs, Central Excise, and Service Tax, Coimbatore.

2. Brief facts of the case are that the Applicant was granted drawback amount of Rs.1,05,651/- for the exports done by them vide Shipping Bill No. 35362/27.11.2004 and 35363/27.11.2004. As the applicant failed to produce evidence for realization of export proceeds in respect of said exports within the period allowed under the Foreign Exchange Management Act, 1999 including any extension of such period granted by the Reserve Bank India, a show cause notice was issued on 21.12.2005 and after due process of law the adjudicating authority, viz. Dy. Commissioner of Central Excise, Customs & Service Tax, Coimbatore-IV Division, ordered recovery of Rs.1,05,651/- under Section 75(1) of the Customs Act,1962 readwith Rule 16A(1) of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 alongwith appropriate interest under Section 75A(2) of the Customs Act,1962 vide Order-in-Original No.65/2014 dated 25.11.2014. Aggrieved, the Applicant filed an appeal. However, the Commissioner (Appeals) vide Order-in-Appeal No. CMB-CEX-000-APP-061-15 dated 04.03.2015 rejected the appeal.

3. Hence the Applicant has filed the impugned Revision Application mainly on the following grounds:

- i. It is submitted that, as required under Regulation 9(1) of the Foreign Exchange Management (Export of Goods and services) Regulations 2000 read with Foreign Exchange Management Act, 1999, the amount representing the full export value of goods has been realized

and repatriated to India, with in the stipulated time of six months. From BRC it can be seen that the date of realization of export proceeds in col.15 is 22-12-2004 i.e, well within the stipulated period of six months from the shipping Bill date ie, 27-11-2004. However, oversightedly, the BRC could not be submitted to the Dept. The consequent SCN also somehow not came to our notice.

- ii. Further it is submitted that we received the PH intimation letter F. No. VIII/10/387/2014 dt 05-11-2014 from the Deputy Commissioner of Customs, Central Excise IV Division, Coimbatore, asking us to attend PH on any one of the dates i) 11-11-2014 or 12-11-2014 or 13-11-2014. However only on 13-11-2014, on which date the final date of PH was fixed, we received the PH intimation. therefore we could not attend the PH. However, after the receipt of the PH intimation, we traced out the file and submitted the negative statement to the department on 27-11-2014 vide our letter dt 27-11-2014 which was duly received.
- iii. From the above it can be observed that the PH opportunity could not be utilized by us because of the late receipt of PH intimation ie on the PH date. Therefore, we lost the opportunity of being heard and to furnish required documents. This is against the principles of natural justice and therefore we prayed to the Commissioner (Appeals) to remand back the case to the adjudicating authority for reconsideration. However, the Commissioner (Appeals) did not give any findings on this submission.

In the light of the above submissions, the applicant prayed to set aside the impugned order.

4. Personal hearing in the case was fixed for 06.10.2021. Shri Manickam, Advocate attended the online hearing on behalf of the Applicant and he reiterated the earlier submissions. He stated that evidence of proof of export has been submitted now. It could not be submitted to Original

authority as no PH was granted to them. He requested for dropping the proceedings.

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

6. Government observes from the impugned Order-in-Original that the rebate claim was rejected on the following ground:

The exporter had failed to comply with the requirements under Section 75 of the Customs Act, 1962 read with the Drawback Rules since he had failed to furnish evidence for receipt of export proceeds in full thereby rendered himself liable for recovery of Drawback with interest under Rule 16A of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995.

7. Government observes that the applicant has submitted two 'Bank Certificate for Export and Realisation' alongwith their impugned Revision Application. Both certificates are issued by Karnataka Bank Ltd., Foreign Exchange dept., Tirupur-641604. Government further observes from these certificates that the sale proceeds in respect of impugned shipping Bills have been received within the stipulated time as detailed in the following table:-

Sl. No.	Shipping Bill Number	Date	Amount of Drawback (Rs.)	FOB Value realised	Date of Realization of Export Proceeds
1.	35363	27.11.2004	53,787/-	USD 11,164.40 INR 4,88,443/-	22.12.2004
2.	35362	27.11.2004	51,864/-	USD 10,765.40 INR 4,70,986/-	22.12.2004
		Total	1,05,651/-		

8. On examination of Rule 16/16A of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995, the Government finds that during the material period viz. Nov'04, drawback amount was recoverable

only if the proceeds for export of the goods in foreign currency had not been realized within six months from the date of export of the goods. But in the instant matter, it is evident that export sale proceeds against the impugned shipping bills have been received/realized within the stipulated period.

9. In view of the above discussion and findings Government sets aside Orders in Appeal No. CMB-CEX-000-APP-061-15 dated 04.03.2015 passed by the Commissioner (Appeals-I), Customs, Central Excise, and Service Tax, Coimbatore and allows the Revision Application filed by the applicant.

10. The Revision Application is disposed of on the above terms.


5/1/22
(SHRAWAN KUMAR)

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

ORDER No. ~~02~~ 03 /2022-CUS (SZ)/ASRA/Mumbai DATED 05.01.2022

To,
M/s. Modern Knitting Company,
No.240/1, Karaipudur,
Veerapandi Post, Chinnakarai,
Tirupur, Tamilnadu - 641405.

Copy to:

1. Pr. Commissioner of Customs,
No.6/7, ATD Street, Race Course Road,
Coimbatore - 641 018.
2. Sr. P.S. to AS (RA), Mumbai
- ~~3. Guard file~~
4. Notice Board.