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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.373/35/DBK/15-RA / 2025

Date of Issue: 18.01.22

ORDER NO. 06 /2022-CUS (SZ)/ASRA/MUMBAI DATED 14.01.2022
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. Sona Enterprises.

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-255-14 dated
12.12.2014 passed by the Commissioner (Appeals-I), Customs, Central
Excise, and Service Tax, Coimbatore.

ORDER

This Revision Application is filed by the M/s. Sona Enterprises, 201, Hammersmith Industrial Estate, Sitladevi Temple Road, Mahim, Mumbai - 400 016 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CMB-CEX-000-APP-255-14 dated 12.12.2014 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 totalling to Rs. 10,96,404/- for the exports done by them during the period Nov'07 to Feb'09. 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 15.12.2011 and after due process of law the adjudicating authority ordered recovery of Rs. 10,96,404/- alongwith appropriate interest under Section 75A(2) and penalty of Rs.1,000/- under Section 117 of the Customs Act,1962 vide Order-in-Original No.1270/2014-AC-BRC Cell dated 23.06.2014. Aggrieved, the Applicant filed an appeal. However, the Commissioner (Appeals) vide Order-in-Appeal No. CMB-CEX-000-APP-255-14 dated 12.12.2014 rejected the appeal due to non-compliance of Section 129E of the Customs Act,1962, viz. deposit of 7.5% of duty/penalty amount in dispute.

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

- i. The Applicant has realised the export proceeds well within one year from the date of export as stipulated in Rule16A of the Customs, Central Excise and Service Tax Drawback Rules, 1995. The details of realization are as follows:

S.No	S/Bi11	S/Bi11 Date	LEO Date	Date of realisation of export proceeds
1.	21839	23.11.2007	23.11.2007	29.01.2008
2.	22466	5.12.2007	06.12.2007	09.01.2008
3.	22983	12.12.2007	13.12.2007	09.01.2008
4.	23607	20.12.2007	20.12.2007	16.01.2008
5.	23986	27.12.2007	27.12.2007	22.01.2008
6.	244	03.01.2008	10.01.2008	05.02.2008
7.	715	10.01.2008	10.01.2008	05.02.2008
8.	1228	17.01.2008	18.01.2008	14.02.2008
9.	1530	23.01.2008	24.01.2008	14.02.2008
10.	1531	23.01.2008	24.01.2008	14.02.2008
11.	1609	24.01.2008	24.01.2008	14.02.2008
12.	2025	31.01.2008	03.02.2008	25.02.2008
13.	2447	06.02.2008	07.02.2008	22.02.2008
14.	3357	20.02.2008	29.02.2008	24.03.2008
15.	1188	02.02.2009	02.02.2009	26.02.2009
16.	1386	09.02.2009	10.02.2009	18.03.2009

- ii. The Bank Realization Certificates were submitted before the Assistant Commissioner of Customs/ Deputy Commissioner of Customs, Tirupur on 12.11.2009, 15.01.2012, 14.08.2014. Further, the Applicants have also submitted the Chartered Accountant's certificates for the period from 1.4.2004 to 30.6.2010 to the Department vide letter date 27.9.2010 in proof of realization of export proceeds. All the exports and proof of realization of the 16 BRC's have taken place within this period itself.
- iii. Further, out of the 16 shipping bills covered, Shipping bill Numbers 21839, 22466, 22983, 23607 and 23986 relating to drawback amount of Rs.3,57,604/- have already been covered in Order in Original Sl. No. 1363/2014-AC-BRC-Ce11 dated 26.06.2014, wherein the proceedings were dropped. This proves that all the BRC's were duly submitted by the applicants to the Department, and the impugned order dt. 23.06.2014, signed by the same officer is per se incorrect and contradictory to the order dt. 26.06.2014 and is therefore unsustainable in law
- iv. Furthermore, in response to Letter C. No. DBK CLAIM NO. 2810/2009 from the ICD, Tirupur, dt. 16.08.2011, the Bankers of the applicants vide letter 12.09.2011 had also confirmed the

authenticity of two of the BRCs viz., S/ Bill No. 1386 dated 09.02.2009 and 1188 dated 02.02.2009 covered (DBK amounting to Rs. 60,710.00) in the impugned order. This further proves that the adjudicating authority had received the proof of realization of export proceeds and hence cannot state that they have not received the same.

- v. The appeal was dismissed for non-compliance of pre-deposit. Section 129E of the Customs Act, 1962 is a relatively new provision. It is a question of interpretation. Lot of representations have been made to the Government seeking clarifications on this aspect. Finally, the CBEC vide Circular No. 993/17/2014-CX dated 05.01.2015 has clarified that mandatory pre-deposit is also applicable for drawback demands. This clarification has come only now in January 2015, whereas our case was heard in December 2014, hence the applicants were not obliged to pay the pre deposit at that time due to the lack of clarity on the issue before 05.01.2015. Therefore, the applicants have not paid the pre-deposit on the bona fide belief that it was not applicable at that time.

4. Personal hearing in the case was fixed for 08.10.2021. Shri S. Durairaj, Advocate attended the online hearing on behalf of the Applicant and he reiterated the earlier submissions. He stated that BRC's are available and the same have been submitted alongwith RA. They could not submit the BRC's before the Original authority as they did not get an opportunity. He requested to close the matter.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-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 and penalty u/ s 117 ibid. read with Rule 16A of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995.

7. Government observes that the applicant has claimed that they had filed BRCs in respect of the impugned Shipping Bills pertaining to the period from November 2007 to February 2009 vide letters dated 12.11.2009, 15.01.2012 and 14.08.2014 with Assistant/Deputy Commissioner of Customs, Tirupur.

8. Government observes that as per Rule 16/16A of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995, during the material period viz. Nov'07 to Feb'09, drawback amount was recoverable only if the foreign proceeds for export of the goods had not been realized within six months from the date of export of the goods.

9. Government observes from the BRCs submitted by the applicant that they are issued by Central Bank of India, Mumbai Main office and the sale proceeds in respect of impugned shipping Bills have been received within the stipulated time as can be seen from the following table:

Sl. No.	Shipping Bill Number	Shipping Bill Date	Amount of Drawback (Rs)	Date of Realization of Export Proceeds
1.	21839	23.11.2007	114920	29.01.2008
2.	22466	5.12.2007	122318	09.01.2008
3.	22983	12.12.2007	9419	09.01.2008
4.	23607	20.12.2007	12222	16.01.2008
5.	23986	27.12.2007	98725	22.01.2008
6.	244	03.01.2008	6939	05.02.2008
7.	715	10.01.2008	19339	05.02.2008
8.	1228	17.01.2008	123401	14.02.2008
9.	1530	23.01.2008	103332	14.02.2008
10.	1531	23.01.2008	117718	14.02.2008
11.	1609	24.01.2008	18476	14.02.2008
12.	2025	31.01.2008	62977	25.02.2008
13.	2447	06.02.2008	183515	22.02.2008

14	3357	20.02.2008	42393	24.03.2008
15	1188	02.02.2009	36178	26.02.2009
16	1386	09.02.2009	24532	18.03.2009
		Total	10,96,404	

10. In view of the above discussion and findings Government sets aside Orders in Appeal No. CMB-CEX-000-APP-255-14 dated 12.12.2014 passed by the Commissioner (Appeals-I), Customs, Central Excise, and Service Tax, Coimbatore and allows the Revision Application filed by the applicant.

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

Shrawan
14/11/22

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

ORDER No. 06 /2022-CUS (SZ)/ASRA/Mumbai DATED 14.01.2022

To,
M/s. Sona Enterprises,
201, Hammersmith Industrial Estate,
Sitladevi Temple Road, Mahim,
Mumbai - 400 016.

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.