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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.373/15/DBK/15-RA / 243

Date of Issue: 19.01.22

ORDER NO. 08 /2022-CUS (SZ)/ASRA/MUMBAI DATED 18.01.2022
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. Mode Exports Private Limited.

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-183-14 dated
16.10.2014 passed by the Commissioner (Appeals-I), Customs, Central
Excise, and Service Tax, Coimbatore.

ORDER

This Revision Application is filed by the M/s. Mode Exports Private Limited, 22(1), Bombay Cotton Mills Compound, Dattaram Lad Path, Kalachowky, Mumbai - 400 033. (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CMB-CEX-000-APP-183-14 dated 16.10.2014 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.1,44,516/- for the exports done by them during the period Aug'05 to Oct'05. 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 13.06.2006 and after due process of law the adjudicating authority, Assistant Commissioner of Customs, BRC Cell, Coimbatore, ordered recovery of Rs.1,44,516/- alongwith appropriate interest under Section 75A(2) of the Customs Act,1962 vide Order-in-Original No. 455/2014-AC-BRC Cell dated 26.02.2014. Aggrieved, the Applicant filed an appeal. However, the Commissioner (Appeals) vide Order-in-Appeal No. CMB-CEX-000-APP-183-14 dated 16.10.2014 rejected the appeal.

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

- i. The Order-in-Appeal has been passed in mechanical manner without taking note of the submission that the export proceeds had been realized well in time and as the old Bank Realization Certificate were not available, new certificates showing the realization of the sale proceeds well in time had been produced before the Commissioner (Appeals).

- ii. The exports effected by the applicant in respect of which the Show Cause Notice dated 13.6.2006 had been issued are detailed below along with the date of realization of the sale proceeds in foreign exchange:

S. No.	Export Invoice No: and date		Invoice amount		Bank Realization Date	Shipping Bill No. & date	Drawback Amt.(Rs.)
	Invoice No:	Date	Foreign Currency	INR (Rs.)			
1.	MODE/0506/06	30.07.2005	5402.59 SFR	1,85,038.70	9.8.2005	022505 8.8.2005	10,810/-
2.	MODE/0506/08	30.07.2005	2471.80 SFR	84,659.15	9.8.2005	022506 8.8.2005	4,946/-
3.	MODE/0506/10	02.08.2005	10278 Euro	5,49,599.00	9.8.2005	022507 8.8.2005	32,160/-
4.	MODE/0506/12	26.10.2005	30637.40 Euro	16,39,541.00	9.8.2005	022505 8.8.2005	10,810/-
		Total in Rs.					1,44,516/-

- iii. As would be clear from the table reproduced above, in all the four exports, the sale proceeds were realized well in time. Therefore, the demand raised in Show Cause Notice dated 13.6.2006 needs to be dropped.
- iv. Photocopies of the export documents including the Bank Realization Certificates were enclosed in support of their contention that the sale proceeds were realized well in time. As original Bank Realization Certificates were not readily available, new Bank Realization Certificates had been procured showing the actual date of realization of the sale proceeds which may please be taken note.

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

4. Personal hearing in the case was fixed for 08.10.2021. Ms. Surbhi Sinha, Advocate attended the online hearing on behalf of the Applicant and reiterated the earlier submissions. She stated that BRC's are available and the same have been submitted alongwith RA. She further submitted that they could not submit the BRC's before the Original authority as they were

not given any opportunity. She requested to close the matter by allowing the application.

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 under Rule 16A of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995.

7. Government observes from the BRC submitted by the applicant that it is issued by Bank of Maharashtra, Overseas branch, Nariman Point, Mumbai 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.	22505	08.08.2005	10,810/-	09.08.2005
2.	22506	08.08.2005	4,946/-	09.08.2005
3.	22507	08.08.2005	32,160/-	09.08.2005
4.	29255	26.10.2005	96,600/-	07.11.2005
		Total	1,44,516/-	

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. Aug'05 to Oct'05, 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. 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 Order-in-Appeal No. CMB-CEX-000-APP-183-14 dated 16.10.2014 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.


(SHRAWAN KUMAR)

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

ORDER No. 08/2022-CUS (SZ)/ASRA/Mumbai dated 18.01.2022

To,
M/s. Mode Exports Private Limited,
22(1), Bombay Cotton Mills Compound,
Dattaram Lad Path, Kalachowky,
Mumbai - 400 033.

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.