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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.373/241/DBK/15-RA / 203
F.No.373/218/DBK/15-RA

Date of Issue: 01.02.2022

ORDER NO. 9-10 /2022-CUS (SZ) /ASRA/MUMBAI DATED 27.01.2022
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 Merry Knitting Co,
No 10B, Sengunathapuram,
Mangalam Road,
Tirupur 638604

Respondent: The Pr. 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-
082-15 and No. CMB-CEX-000-APP-083-15 both dated
20.04.2015 passed by the Commissioner, Customs, Central
Excise & Service Tax (Appeals-I), Coimbatore

ORDER

This Revision Applications has been filed by M/s Merry Knitting Co, No 10B, Sengunathapuram, Mangalam Road, Tirupur 638604 (hereinafter referred to as the 'applicant') against the combined Order-in-Appeal No. CMB-CEX-000-APP-082-15 and No. CMB-CEX-000-APP-083-15 both dated 20.04.2015 passed by the Commissioner, Customs, Central Excise & Service Tax (Appeals-I), Coimbatore.

2. Brief facts of the case are that the applicant was granted drawback of Rs.11,62,003/- and Rs. 1,13,306/- under Section 75 of the Customs Act, 1962 read with Customs, Central Excise Duties and Service Tax Drawback Rules,1995 for exports made against various shipping bills. As the applicant failed to produce evidence regarding realisation of export proceeds in respect to the goods exported, within the period allowed under FEMA, 1999, including any extension of such period granted by the Reserve Bank of India two separate show cause notices dated 13.01.2006 and 19.06.2006 proposing to recover the drawback amounts paid to them.

3. The adjudicating authority following the due process of the law, vide impugned orders in original Nos 66/2014 and 67/2014 both dated 24.11.2014, confirmed recovery of Rs 11,62,003/- and Rs. 1,13,306/- under second proviso to Section 75(1) of the Customs Act, 1962 read with Rule 16A(1) of the Customs, Central Excise and Service Tax Drawback Rules, 1995 alongwith interest under Section 75A(2) of the Customs Act, 1962.

4. Aggrieved by the order in original, the applicant preferred an appeal with the Commissioner (Appeals), Coimbatore. The Appellate authority vide Order-in-Appeal No. combined Order-in-Appeal No. CMB-CEX-000-APP-082-15 and No. CMB-CEX-000-APP-083-15 both dated 20.04.2015 rejected the

appeal and upheld the order of recovery of drawback demand. The Appellate Authority made the following observations.

- i) In the instant case the appellants have not submitted the BRCS. The drawback is given to the exporter immediately on export and the exporters are under obligation to produce the BRCS to the department within the prescribed time. Failure of production of BRCS within the prescribed time would lead to the recovery of sanctioned drawback. The appellants had exported the goods during the year 2004 and 2005. The appellants had failed to submit the BRCS within the prescribed time.
 - ii) The provisions of Rule 16(A) (5) of Drawback Rules (inserted w.e.f. from 11.04.2011) is not applicable to the appellant as no evidence as prescribed above was produced before adjudicator
 - iii) Section 75 (A) (2) (inserted by Finance Act, 2007) provides that where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under Customs Act 1962 /Rules made thereunder, the claimant shall within a period of 2 months from the date of demand, pay in addition to the said. amount of drawback, interest at the rate fixed under Section 28AB of Customs Act. In the case in hand the drawback is recoverable with interest.
 - iv) The appellants have neither replied to the show cause notices nor produced evidence of realization of sale proceeds of exported goods or attended to the personal hearings granted. Hence, the contention of the appellant for violation of natural justice is not accepted.
5. 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 orders of the lower authorities were flawed by incurable defects, inasmuch as the said orders were passed without proper application of mind and proper application of settled position of law and thus are liable to be set aside in limine.
- ii) The Appellate Authority ought to have appreciated the simple fact that the the export proceeds covered under the subject shipping bills well were realised through their Authorised Dealer Bank, within the time limit stipulated under the Foreign Exchange Management Act, 1999 and the Regulations made there under as evidenced by the Negative Statements duly verified and signed by the Chartered Accountant of the applicants.
- iii) Under the second proviso to Section 75 (1), being the one referred in the Order-in-Original, only when the sale proceeds are not realised within the time limit stipulated under the Foreign Exchange Management Act, 1999, action for recovery of such drawback sanctioned could be initiated. However, in the subject case, even after duly realising the foreign exchange involved in the subject shipping bills, the notice was issued and Order-in-Original passed confirming the demand of drawback, without adhering to principles of Natural Justice. In view of the same, the subject Order-in-Original passed by the Adjudicating Authority goes against the letter and spirit of the said provision, thereby rendering the said order liable to be set aside.
- iv) The fact that about the realisation of export proceeds and that the drawback sanctioned to them in respect of the impugned Shipping bills are in order would have come to light of the Adjudicating Authority had the due process of law followed as per Rule 16(2) of the Customs, Central Excise & Service Tax Drawback Rules, 1995, read with CBEC Circular No.3/97-Cus dated 04/02/1997 as amended by Circular No.30/97-Cus dated 12/08/1997.

- v) The applicant submits that they have not received the Show Cause notice for which the said Personal hearing intimation was communicated to them. However, since they have realized the entire export proceeds in respect of all their exports during the material period, they have intimated the fact together with copies of negative statements issued by Chartered Accountant to the Adjudicating authority vide their letter dated 01/12/2014.
- vi) While the appellants had received no Show Cause notice, nor the list of shipping bills on which the drawbacks were sanctioned were sought to be recovered, the appellants were put to serious prejudice from bringing out proof for repatriation of export proceeds, thereby vitiating the entire proceedings and thus, the order is liable to be set aside in limine.
- vii) The provisions relevant to recovery of drawback on account of non-realization of export proceeds under Rule 16A prior to 15.02.2006 required the exporters to furnish proof for realization of export proceeds and the show cause notice was to be issued only on receipt of relevant information from the Reserve Bank of India. When this being the case, there is nothing recorded in the Order-in-Original as to whether any verification was made with reference to the information from the Reserve bank of India, viz., the Export Outstanding Statements (XOS) statements as mandatorily required to be undertaken under the said Rule, prior to issuing any Show Cause notice for recovery. In the absence of any such verification, the Show Cause notice and the Order-in-Original impugned are bad in law, inasmuch as substantial requirements on the part of the Department were not complied with and thus, vitiating the entire proceedings.
- viii) The applicant has relied on the following case laws

UOI vs Suksha International and Nutan Gems 1989 (39) E.L.T. 503 (S.C.)
UOI vs. A.V. Narasimhalu, 1983 (13) E.L.T. 1534 (S.C.)
2011 (268) E.L.T. 125 (G.O.I.)
1998 (99) E.L.T. 387 (Trib.),
1996 (86) E.L.T. 600 (Tr),
1993 (66) E.L.T. 497 (Trib.),
1998 (103) E.L.T. 270 (Trib.),
Ikea Trading India Ltd., 2003 (157) E.L.T. 359 (GOI)

6. Personal hearing was scheduled in this case was held on 14.10.2021. Shri S.Periasamy appeared online before the Revision Authority and reiterated his earlier submissions. He submitted his that they were not given time to produce evidence of realisation. He further submitted that they could produce evidence of realisations to the satisfaction of JAC for subsequent cases. He requested for remanding back the matter for verification by adjudicating authority.

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

7.1 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.

7.2 Government notes that the applicant has stated that the show cause notice issued 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, were not received by them and they could not reply to the same.

7.3 Government also notes that Circular No 05/2009-Cus dated 02.02.2009, for 'Systems Alert for monitoring Realisation of Export Proceeds in EDI' has been issued under which the procedure for monitoring of

realisation of export proceeds has been issued. The Government further notes that the applicant has stated that submission of negative statement issued by the Chartered Accountant containing details of the shipments which remain outstanding beyond the prescribed time limit, including extended time, has been done by them, admittedly belatedly. The procedure prescribed by the said circular requires that *“such certificates shall be furnished by the exporters on a 6 monthly basis before the 7th day of January and July in respect of exports which have become due for realization in the previous 6 months.”* The government notes that the submission of the negative statements on 01.12.2014, have been made after the issue of the impugned order in original by the adjudicating authority and for the period from 2005 to 2012, but before commencements of the proceedings before the Appellate Authority.

7.4 Government notes that despite the non receipt of the show cause notice and as a result the list of shipping bills on which drawback was sought to be recovered not being known and also the submission of the negative statements issued by the chartered accountant of the applicant in terms of Circular No 05/2009 dated 02.02.2009, being the grounds of appeal, the same have not been discussed in the impugned order-in-appeal in the impugned order, the appeal was rejected for non submission of BRC's were not submitted within six months from the date of export that took place in June 2006.

7.5 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”.*

7.6 In view of the above observations, Government sets aside the impugned combined Order-in-Appeal No. CMB-CEX-000-APP-082-15 and No. CMB-

CEX-000-APP-083-15 both dated 20.04.2015 passed by the Commissioner, Customs, Central Excise & Service Tax (Appeals-I), Coimbatore and remands the case back to the original authority for causing verification as stated in foregoing paras. The applicant shall submit evidences of receipt of the export proceeds 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 KUMAR)

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

ORDER NO. 970/2022-CX (SZ) /ASRA/MUMBAI DATED 27.01.2022

To,

M/s Merry Knitting Co,
No 10B, Sengunathapuram,
Mangalam Road,
Tirupur 638604

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.