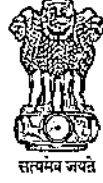


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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F.No. 373/409/DBK/14-RA | 2353

Date of Issue 12.12.2018

ORDER NO. ¹⁰³⁴ /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 16.11.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : M/S.Jansons Industries Limited.

Respondent: Commissioner of Customs, No.1, Williams Road, Tiruchirapalli-620001.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in- Appeal No.TCP-CUS-000-APP-037/2014 dated 22.08.2014 passed by the Commissioner of Customs Central Excise and Service Tax (Appeals), Tirucharapalli.



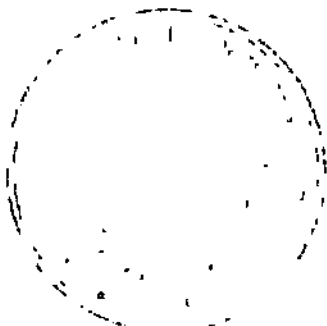
ORDER

The Revision Application is filed by M/S. Janson Industries Limited, 129, SND Road, Tiruchengode-637211 against the Order in Appeal No. TCP-CUS-000-APP-037/2014 dated 22.08.2014 passed by Commissioner of Customs, Central Excise and Service Tax (Appeals), Tirucharpalli in respect of Order in Original No.33/2013 dated 28.11.2013 passed by the Assistant Commissioner of Customs, Customs Division, Trichy.

2. Brief facts of the case are that M/s. Janson Industries Limited, 129, SND Road, Tiruchengode-637211 have exported goods against Shipping bill No.6425144 dated 28.11.2011 and availed Drawback amount of Rs.3,33,359 (Rupees Three Lakh Thirty Three Thousand Three Hundred and Fifty Nine). On verification, it was noticed by the department that remittances in respect of the above mentioned exports, were not realized and a demand notice was issued to the exporter under Rule 16 A of Drawback Rules read with Section 75 of the Customs Act, 1962 towards recovery of Drawback amount in the event of non-submission of proof towards repatriation of export proceeds. The Demand cum Show cause Notice was confirmed by the original authority on grounds that date of realization of export proceeds by bank is 30.03.2013, which is beyond stipulated period of one year from the date of export as specified under Rule 16 A of the Drawback Rules, 1995 and also imposed a penalty of Rs. 15,000 (Rupees Fifteen Thousands) on the exporter under Section 117 of the Customs Act, 1962. Aggrieved by the order in original, the exporter M/s. Janson Industries Limited filed appeal before the Commissioner (Appeal) and the said appeal was rejected without considering exporter's submission that realisation date i.e. 30.03.2013 mentioned in the bank certificate was incorrect and the actual realisation date is 28.11.2011.

3. Exporters filed the instant Revision Application against the Order-in-Appeal with the following submissions:

- i) the export proceeds of Rs.51, 91,454 (Rupees Fifty One Lakh Ninety One Thousand Four Hundred Fifty Four) against the



Shipping Bill No.6425144 dated 28.11.2011 were actually realised on 29.12.2012 and the same is reflected in the statement of their Axis Bank account.

ii) the DGFT Bank Realization certificate inadvertently mentions the Realisation date as 30.03.2013 and however, the same has been rectified as 29.12.2011 and the said copy is enclosed as Annexure A for perusal.

iii) the original adjudicating authorities refused to grant any time for the applicants to rectify the mistake in the DGFT certificate and passed the impugned Order.

iv) the Commissioner Appeal while acknowledging the actual realisation date turned down their appeal on grounds of non-submission of BRC with in the stipulated time. Delay in submission of the BRC is due to incorrect date of realisation in the BRC certificate issued by DGFT.

v) the imposition of penalty of Rs.15, 000 (Rupees Fifteen Thousands) under section 117 of the customs Act, 1962 is unwarranted.

3. Personal Hearing was held on 31.10.2018 and Shri.M.Saravanan, Consultant appeared on behalf of the applicant and reiterated the submissions made in Revision Application and pleaded for allowing the Revision Application.

4. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the applicant's submissions.

5. The issue involved in the instant application is non-submission of proof towards realisation of foreign remittance against exports made by the applicant with in the stipulated time. In terms of the provisions of Section 75 (1) of the Customs Act, 1962 read with sub-rule 16A (1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, where an



amount of drawback has been paid to an exporter but the sale proceeds in respect of such export goods have not been realized within the time allowed under the Foreign Exchange Management Act (FEMA), 1999, such drawback amount is to be recovered. Sub-rule 16A (2) stipulates that if the exporter fails to produce evidence in respect of realization of export proceeds within the period allowed under the FEMA, 1999 or as extended by the Reserve Bank of India (RBI), the Assistant/Deputy Commissioner of Customs shall issue a notice to the exporter for production of evidence of realization of export proceeds, failing which an order shall be passed to recover the amount of drawback paid to the claimant.

6. The Government finds that CBEC Circular 5/2009 dated 02.02.2009 prescribes mechanism for monitoring realisation of export proceeds. Para 5(c) of the said circular states that:

The exporter shall submit a certificate from the Authorized Dealer(s) in respect of whom declaration has been filed containing details of the shipments which remain outstanding beyond the prescribed time limit, including the extended time, if any, allowed by AD/RBI. Such a certificate can also be provided by a Chartered accountant in his capacity as a statutory auditor of the exporter's account. A proforma for furnishing such negative statement is enclosed as Annexure. Further, the exporters also have the option of giving a BRC from the concerned authorized dealer(s)

As per the Board circular a periodic six monthly statement has to be furnished by the exporters at the end of every six months for the exports made during the preceding period.

7. The Government finds that the exporters have submitted copies of bank realisation certificates along with the revision application and on perusal of the same, it appears that the exporters have also realised the export proceeds within the stipulated period.



8. The Government further finds that the inadvertent mistake of date of realisation in the BRC certificate issued by DGFT is not owing to the exporter's mistake and the said certificate has been rectified by DGFT by mentioning the date of realisation of money by bank as 29.12.2011. Therefore, the realisation of proceeds is well within the stipulated period of one year from the date of export as specified under Rule 16 A of the Drawback Rules, 1995. The Government also holds that the recovery of drawback, initiated by the department against the applicants, is also liable to be set aside. The Government finds no reason for imposition of penalty on the exporter under Section 117 of the Custom Act, 1962 and the same is liable to be set aside.

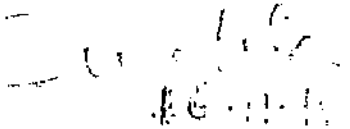
9. In view of the above discussion and findings, the Government sets aside the recovery of Rs. Rs.3, 33,359 (Rupees Three Lakh Thirty Three Thousand Three Hundred and Fifty Nine) towards drawback amount and imposition of penalty of RS.15,000(Rupees Fifteen Thousands) on the applicant. Accordingly, Order in Appeal No.TCP-CUS-000-APP-037/2014 dated 22.08.2014 passed by Commissioner of Customs, Central Excise and Service Tax (Appeals), Tirucharapalli in respect of Order in Original No.33/2013 dated 28.11.2013 passed by the Assistant Commissioner of Customs, Customs Division, Trichy is set aside.

10. Revision Application is allowed on above terms.

11. So ordered.

ATTESTED


S.R. HIRULKAR
Assistant Commissioner (R.A.)


(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ¹⁰²⁴ /2018-CUS (SZ) /ASRA/MUMBAI

DATED 16.11.2018



To,

M/S.Janson Industries Limited
129, SND Road, 401, Tiruchengode-637211,
Namakkal District.

Copy to:

1. The Commissioner of Customs, No.1, Williams Road, Cantonment, Tiruchirapalli-620001.
2. The Commissioner of Customs (Appeals), No.1 Williams Road, Tiruchirapalli-620001.
3. Assistant Commissioner of Customs, Customs Division, Williams Road, TiruchiraPalli-620001.
4. Sr. P.S. to AS (RA), Mumbai
- ✓ 5. Guard File.
6. Spare Copy.

01/11/2014

