REGISTERED 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. 371/99/DBK/13-RA /2730 Date of Issue: - ~~03.2021~~ 12.04.2021

ORDER NO. 103/2021-CUS(WZ)/ASRA/MUMBAI DATED 31.03.2021 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 Finesse,
5, Neelganga, 28th Road,
Bandra, Mumbai – 400 050.

Respondents : Commissioner of Customs, Mumbai.

Subject : Revision applications filed under Section 129DD of the Customs Act, 1962, against the Order in Appeal No. 247 & 248/MUMBAI III/2013 dated 10.05.2013 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This Revision application is filed by M/s Finesse, 5, Neelganga, 28th Road, Bandra, Mumbai – 400 050 (hereinafter referred to as the 'applicant') against the Orders-In-Appeal MUM-CUSTM-AXP-APP-1154/2019-20 dated 20.01.2020 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. The Brief facts of the case are that a duty drawback amounting to Rs. 2,85,203/- (Rupees Two Lakh Eighty Five Thousand Two Hundred Three Only) was sanctioned to the applicant under Section 75 of the Customs Act, for the export made under various shipping bills having LEO date from 01.04.2004 to 31.12.2008 . The applicant had not furnished the proof of realisation of foreign exchange for the goods exported under the said Shipping Bills in terms of CBEC Circular No. 5/2009-Cus dated 02.02.209 & Public Notice No. 5/2009 dated 07.03.2009. Since the applicant had failed to realise the foreign exchange, the Asstt. Commissioner (Drawback), Customs, ACC, Mumbai issued Demand-cum-SCN dated 002.07.2010 proposing recovery of drawback amount already disbursed to the applicant alongwith the interest as per Rule 16(A) Sub-Rule (1) & (2) of Customs, Central Excise Duties and Service Tax Drawback Rules 1995.

3. The adjudicating authority vide Order in Original No. S/3-MISC/DBK(XOS)125//2010-11 ACC dated 21.12.2012 confirmed the demand along with interest at applicable rate under Rule 16(a) of the Drawback Rules,1995.

4. Aggrieved by the Order in Original, the applicant filed an appeal before the Commissioner of Customs (Appeals), Mumbai Zone- III. The appellate authority, vide Order in Appeal No. 247 & 248/MUMBAI III/2013 dated 10.05.2013, dismissed the appeal filed by the applicant as they failed to submit the BRCs within stipulated time in spite of being given ample opportunities to present their case by the department.

5. Being aggrieved by the impugned Order in Appeal, the applicant has filed instant Revision Application on the following grounds.

5.1 The impugned order had been passed without giving due consideration to the document on records and facts of the case.

5.2 In spite of the best effort, they were unable to submit the BRCs for impugned drawback shipping bills, received from the authorised dealers.

5.3 In view of above situation, department ought to have accepted the evidence produced by them in the form of BRCs for all the shipping bills. In the peculiar circumstances of the present case, recourse could have been taken to Rule 5(1)(b)(c) of the Customs (Appeals) Rules, 1982 for admitting the evidence produced by the applicant.

5.4 The entire sales proceeds for all the impugned shipping bills had been realised by the applicant well in time, which was evidenced by the respective BRCs received by the applicant.

6. A Personal Hearing was held in matter on 08.01.2021, 15.01.2021, 22.01.2021 and 11.02.2021. No one attended the personal hearing on any of the dates. Since, sufficient opportunity to present the case has been given to the applicant, the case is taken up for decision based on the documents available on record.

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

8. On perusal of records, Government observes that the applicant was granted the duty drawback with regard to exports made by them and demand of drawback already sanctioned was confirmed on the ground that they failed to submit Bank Realisation Certificate as evidence of remittance within stipulated

period. The appeal filed by the applicant against the Order in Original was dismissed by the appellate for their failure to produce the BRCs within stipulated time.

9. The Government notes that the following submissions made by the applicant in their Revision Application.

a) The applicant had submitted that the they received the intimation of personal hearing dated 07.12.2012 and through the same also learnt about Show Cause Notice issued by the department asking the applicant to submit BRC / negative statement / certificates etc for all the shipping bills.

b) The applicant had tried to submit the BRCs along with letter 13.12.2012 for all the shipping bills. However, the same could not be submitted due to non issuance of gate pass to enter the Customs, ACC on 13.12.2012. '

c) Hence they sent their representative on next day i.e. 14.12.2012 to the Customs, ACC with authority letter. However, once again the gate pass was not issued to enter the premises.

d) Thereafter, the representative again went to the office of the Customs, ACC to submit the BRCs, but was informed that the Adjudication Order is in process and the same shall be received by him in due course.

From the submissions of as above by the applicant, the Government finds that there is reason to believe that the applicant had made an attempt to submit requisite BRCs. However, they could not submit the same due to reasons stated as above.

10. The Government notes that it is a statutory requirement under Section 75 (1) of Customs Act, 1962 & Rule 16A(1) of Customs, Central Excise & Service Tax Drawback Rules, 1995, read with Section 8 of FEMA 199 read with regulations 9 of Foreign Exchange Management (Export of goods & services Regulations 2000 & para 2.41 of EXIM Policy 2005-2009 that export proceeds need to be realised within the time limit provided thereunder viz within six

months in this case subject to any extension allowed by RBI. If the applicants failed to comply with their statutory obligations, the drawback claim becomes recoverable along with interest under the statutory provisions stipulated under the Rule 16of Customs, Central Excise & Service Tax Duty Drawback Rules, 1995 and the Section 75A (2) of the Customs Act, 1962.

10.1 The Government, further, notes that the above provisions are prescribed for recovery of drawback where the export proceeds are not realised within the period allowed under Foreign Exchange Management Act, 199 including any extension of such period granted by the Reserve Bank of India. In the instant case, the Government noted that the applicant had attempted to submit the BRCs to the department but due to some difficulties could not furnish them. The Government finds that the applicant have submitted the copies of BRCs along with the Revision Application stating that they have realised the export proceeds within prescribed time. It is opined that the BRCs are required to be verified to determine its authenticity, validity and as to whether the export proceeds were received within stipulated period including any extensions granted by RBI to the applicant. Being beneficiary of the export incentive scheme i.e. drawback, it was the responsibility of the applicant to submit the evidence of receipt of sale proceeds immediately upon receipt which they admittedly failed to do. However, in the interest of justice, the applicant will now submit the relevant BRCs in original to enable verification of the same to the original authority for consideration in accordance with provisions of law and passing orders. As such, the case needs to be remanded for fresh consideration.

11. In view of above circumstances, Government sets aside impugned order and remands the case back to the original authority for fresh consideration in the light of above observation after giving reasonable opportunity of hearing to the applicant within 8 weeks of this order. The applicant is also directed to furnish the relevant documents for verification.

12. Revision Application is disposed off in above terms.

31/3/21

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

ORDER NO. 103 /2021-CUS(WZ)/ASRA/MUMBAI DATED 31.03.2021

To,
M/s Finesse,
5, Neelganga, 28th Road,
Bandra, Mumbai – 400 050.

Copy to :

1. The Commissioner of Customs (Export), Air Cargo Complex, Sahar, Andheri (East), Mumbai – 400 099.
2. The Commissioner of Customs (Appeals), Mumbai Zone – III, Awas Corporate Point, 5th floor, Makwana Lane, Behind S.M. Centre, Andheri- Kurla Road, Marol, Mumbai- 400 059.
3. The Assistant Commissioner of Customs, DBK (XOS) Section, Air Cargo Complex Sahar, Andheri (East), Mumbai – 400 099.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare copy.