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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.373/298/DBK/14-RA/1037

Date of Issue: 16.03.2022

ORDER NO. 108/2022-CUS (SZ) /ASRA/MUMBAI DATED 09.03.2022
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 Empire Exports,
52, Kamatchaiamman, Koli Street,
Kumaranathapuram,
Tirupur-641602

Respondent: The 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-066-14 dated 05.06.2014 passed by the
Commissioner (Appeals), Coimbatore

ORDER

This Revision Application has been filed by M/s Empire Exports, 52, Kamatchaiamman, Koli Street, Kumaranathapuram, Tirupur-641602, (hereinafter referred to as the 'applicant') against the Order-in-Appeal No. CMB-CEX-000-APP-066-14 dated 05.06.2014 passed by the Commissioner (Appeals), Coimbatore.

2. Brief facts of the case are that the applicant was granted drawback amount of Rs. 29,865/- for the exports made by them. As the applicant failed to produce evidence for realization of export proceeds in respect of the said export goods within the period allowed under the Foreign Exchange Management Act, 1999, including any extension of such period granted by the Reserve Bank of India, a show cause notice dated 18.12.2006 was issued for recovery of drawback amount of Rs. 29,865/-. After following the due process of law, the adjudicating authority ordered recovery of Rs. 29,865/- along with appropriate interest under Rule 16A of Customs, Central Excise and Service Tax Drawback Rules 1995 read with Section 75A(2) of the Customs Act, 1962 and also imposed a penalty of Rs.10,000/- under Section 117 of the Customs Act, 1962.

3. Aggrieved by the order in original, the applicant preferred an appeal with the Commissioner (Appeals), Coimbatore on the following grounds.

- i. That they had submitted the BRC through their CHA and had not received the show cause notice.
- ii. That they could not attend the personal hearing as the proprietor was unwell during the period and that the adjudication proceedings have been initiated and completed in haste and in a pre-concluded manner.
- iii. That they had submitted the negative certificate issued by the Chartered Accountant as stipulated in Circular No.5/2009-Cus dated 02.02.2009 along with the appeal.

4. The Appellate authority vide Order-in-Appeal No. CMB-CEX-000-APP-066-14 dated 05.06.2014 rejected the appeal and upheld the order of recovery of drawback demand by the adjudicating authority and the imposition of penalty. The Appellate Authority made the following observations

4.1 As per sub rule 4 of Rule 16A of the Drawback Rules, 1995, where sale proceeds are realised by the exporter after the amount of drawback has been realised within one year from the date of such recovery, the amount of drawback so recovered shall be repaid by the Assistant Commissioner. This meant that where the amount of drawback has already been recovered from an exporter for non production of evidence relating to realization of export proceeds, on production of such evidence, the amount recovered has to be repaid to the exporter.

4.2 The appellants had exported the goods during July 2002 and August 2003. The BRC should have been submitted to the department within six months as per the provisions prevalent during relevant period but the applicant had not submitted the same in time.

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) That the orders of the lower authorities were flawed by incurable defects, inasmuch as the principles of natural justice were not adhered to.
- ii) That the order of recovery pertains to the period of July 2002 and August 2003 in respect of exports made under 2 shipping Bills but the applicant had filed the required proof for having realised the foreign exchange within the time limit to the customs authorities of ACC, Peelamedu through their CHA who had facilitated the clearance of cargo of the subject shipping bills.
- iii) That the applicant had not received any show cause notice at all despite the fact that the documents were filed within the time limit and the sale proceeds were received within the time limit. The

relevant order-in-original had been passed after 8 years after the date of the show cause notice and the authority ought to have verified the records office of the learned Adjudicating Authority to confirm whether the required documents were filed by them earlier.

- iv) That though the applicant was issued with the personal hearing notice, they could not attend the same due to the fact that the proprietor was unwell during the period. On visiting the office subsequently, they were informed that the issue had since been decided and the only option was to go on appeal. The applicant submitted that the entire adjudication proceedings had been initiated and completed in haste and in a pre-concluded manner
- v) That the applicant was under the genuine impression that the issue had since been closed and they were not able to locate or trace the old records. However, they had approached the bankers and on the basis of their certification of having realised the foreign exchange in respect of all the exports during 2002 and 2003, 'Negative Certificates' was duly issued by their Chartered Accountant certifying that no amount was pending realisation during the half years ending 31.12.2012 and 31.12.2013, is being submitted.

6. Personal hearing was scheduled in this case for 03.04.2018, 15.10.2019, 25.02.2020, 09.02.2021, 23.02.2021, 17.03.2021, 24.03.2021, 20.04.2021, 27.04.2021, 06.07.2021 and 20.07.2021. However, no one appeared before the Revision Authority for personal hearing on any of the dates fixed for hearing. Since sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the available records.

7. Government has carefully gone through the relevant case records and perused the impugned Order-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 applicant has submitted that they had submitted the realization of export proceeds within the time limit to the customs authorities of ACC, Peelamedu through their CHA and also submitted the negative certificate issued by the Chartered Accountant certifying that no amount is pending realisation during the half years ending 31.12.2002 and 31.12.2003, as prescribed in Circular No.5/2009 Cus. dated 02.02.2009

7.4 In the impugned order, the appeal was rejected as the BRC's were not submitted within six months from the date of export that took place in July 2002 and August 2003. Government notes that in view of the applicant having submitted the BRC's and also the 'Negative Certificates' issued by the Chartered Accountant certifying that no amount is pending realization of the shipments made during the relevant period, the decision of the Appellate Authority on this count does not hold.

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"*.

8. In view of the above observations, Government sets aside the impugned Order-in-Appeal No. CMB-CEX-000-APP-066-14 dated 05.06.2014 passed by the Commissioner (Appeals), Coimbatore and remands the case back to the original authority for causing verification as stated in foregoing paras. The applicant shall submit the BRC's 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.

9. The Revision Application is disposed off on the above terms


(SHRAWAN KUMAR)

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

ORDER NO. 108/2022-CUS (SZ) /ASRA/MUMBAI DATED 09.03.2022

To,

M/s Empire Exports,
52, Kamatchajamman, Koli Street,
Kumaranathapuram,
Tirupur-641602

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.