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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F.No.373/36/DBK/14-RA/5546

Date of Issue 21.07.2020

ORDER NO. 117/2020-CUS (SZ) / ASRA / MUMBAI/ DATED 31.07.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS, 1962.

Applicant : M/s A.K. R. Garments,
S. F. No. 186, Velrayan Thottam,
Nallur, Vijayapuram,
Tirupur- 641 602

Respondent : The Commissioner of Customs, Coimbatore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1944 against the Order-in-Appeal No.CMB-CEX-000-APP-365-13 dated 25.11.2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore.

ORDER

The Revision Application is filed by M/s A.K. R. Garments, S. F. No. 186, Velrayan Thottam, Nallur, Vijayapuram, Tirupur- 641 602 (herein after referred to as 'the applicant') against the Order in Appeal No.CMB-CEX-000-APP-365-13 dated 25.11.2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore, in respect of Order in Original No. 1308/2013-Asst. Commissioner dated 30.05.2013 passed by the Assistant Commissioner of Customs, ICD, BRC Cell, Tirupur- 641018.

2. Brief facts of the case are that the applicant are engaged in manufacture and export of Knitted Garments. The applicant have been availing the benefit of Duty Drawback for the export effected by them. The applicant were sanctioned the duty drawback of Rs. 1,12,663/- (Rupees One Lakh Twelve Thousand Six Hundred Sixty Three only) for export of goods made under Shipping Bill Nos. 10275/ 18.05.2007, 11360/ 01.06.2007, 13574/ 29.06.2007, 12416/ 15.06.2007 and 12994/ 22.06.2007. However the applicant failed to produce the evidence of realisation of export proceeds in respect of the said export goods covered under the above mentioned shipping bills within the period allowed under the Foreign Exchange Management Act, 1999, including any extension of such period granted by the Reserve Bank of India, read with Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback, Rules 1995. The Adjudicating Authority confirmed the demand of Rs. 1,12,663/- with applicable interest and penalty of Rs. 1000/- under Section 117 of Customs Act, 1962.

3. Aggrieved by the said order, the Applicant filed appeals before Commissioner (Appeal) on the ground that the show cause notice was not served upon them and they were not given the opportunity to present the BRCs before the adjudicating authority. The Appellate Authority vide impugned Order in Appeal rejected the appeal and upheld the Order in Original.

4. Being aggrieved by the impugned Order in Appeal, the applicant filed the instant Revision Application on following grounds :-

4.1 All the export proceeds related to the shipping bill for which the order in original was issued have been realised by them.

4.2 Under the second proviso to Section 75(1) only when the sale proceeds are not realised within time limit stipulated under the Foreign Exchange Management Act, 1999, action for recovery of such drawback could be initiated.

4.3 They were subjected to a grave hardship in as much as they have never received the Show Cause Notice and Personal Hearing intimations, despite the fact of availability of appellant's clear postal address with the learned Adjudicating Authority.

4.3 They have received the export proceeds covered in the subject shipping bills, well within time limit and hence the restricting the scope of beneficial provision is to be avoided in view of decision in 1989(39)ELT 503(SC)

4.4 The Apex court in the case of UOI Bs. A.V. Narasimhu, 1983(13) ELT) 1534(SC) observed that the administrative authorities instead of relying on technicalities, act in a manner consistent with the broader concept of justice.

4.5 The procedural infraction of Notifications, Circulars etc. are to be condoned if exports have really take place.

5. Personal Hearing was held on 23.05.2018, 08.01.2020 and 14.01.2020. No one attended the personal hearing on behalf of the applicant or department. As such, the instant Revision Applicant is taken up for decision on the basis of documents and submissions available on record.

6. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the submissions from both sides.

7. Government observes that the applicant were initially granted drawback for exports made by them. Subsequently, a show cause notice was issued to the applicant for recovery of already sanctioned drawback on the ground that the applicant failed to produce evidence of realisation of export proceeds in respect of impugned exported goods for which they were allowed drawback within the period allowed under FEMA, 1999 including any extension is such

period granted by the Reserve Bank of India. Therefore, the original authority vide the impugned Order-in-Original confirmed the demand of already sanctioned drawback and also imposed penalty. The Appellate Authority upheld the impugned Order-in-Original. Now, the applicant has filed this Revision Application on grounds mentioned in para (4) above.

8. 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 1999 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. Since the applicants have failed to comply with their statutory obligations, the drawback claim becomes recoverable along with interest under the statutory provisions stipulated under the Rule 16 of Customs, Central Excise & Service Tax Duty Drawback Rules, 1995 and the Section 75A(2) of the Customs Act, 1962.

9. 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, 1999 including any extension of such period granted by the Reserve Bank of India. In the instant case, the applicant have claimed that export proceeds were received by them through their bank within stipulated period and they could not submit the same to the Adjudicating Authority since they did not received the Show cause Notice as well as the personal hearing notices. Under such circumstances, Government finds 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. The applicant have also taken the plea before the Revision Authority that the non-submission of BRC in reply to the SCN was not wanton because they had no knowledge of the issuance of SCN. The case is required to be remanded for fresh consideration. 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

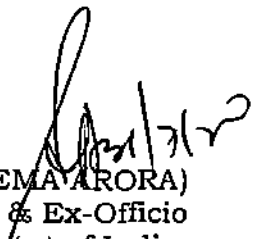
will now submit the relevant BRCs in original to enable verification of the same by the original authority for consideration in accordance with provisions of law and passing orders.

9.2 The penalty in terms of Section 117 of Customs Act, 1962 will also be re-determined accordingly by the original authority, subject to outcome of the verification.

10. In view of above circumstances, Government sets aside impugned Order in Appeal and remands the case back to the original authority for denovo adjudication for a limited purpose of verification of Bank Realisation Certificates pertaining to the drawback claims and to pass a well-reasoned order after following the principles of natural justice. The applicant is also directed to submit all the original copies of BRCs for verification. The original authority will complete the requisite verification expeditiously and pass a speaking order within eight weeks of receipt of said documents from the applicant.

11. The Revision application is disposed off in above terms.

12. So, ordered.


(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 117/2020-CUS(SZ) /ASRA/

DATED 31.07.2020

To,
M/s A.K. R. Garments,
S. F. No. 186, Velrayan Thottam,
Nallur, Vijayapuram,
Tirupur- 641 602

Copy to:

1. The Commissioner Of Customs, No.1, Williams Road, Cantonment, Tiruchirapalli- 620 001
2. The Commissioner of Customs, Central Excise & Service Tax (Appeals), 6/7, A.T.D., Race Course Road, Coimbatore- 641 018.
3. The Assistant / Deputy Commissioner of Customs, Inland Container Depot, BRC Cell, Rakkiapalayam, Tirupur.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard File.
6. Spare Copy.