

REGISTEREDSPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No.373/180/DBK/14-RA/5330 Date of Issue ~~06.2020~~ 11.09.20 20

ORDER NO.119/2020-CUS (SZ) / ASRA / MUMBAI/ DATED 10.07.2020
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 Sakthi Creations,
No. 19, J.G. Nagar, 3rd Street,
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-005-14 dated
31.01.2014 passed by the Commissioner of
Customs, Central Excise & Service Tax (Appeals),
Coimbatore.



ORDER

The Revision Application is filed by M/s Sakhti Creations, No. 19, J.G. Nagar, 3rd Street, Tirupur- 641 603 (herein after referred to as 'the applicant') against the Order in Appeal No.CMB-CEX-000-APP-005-14 dated 31.01.2014 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore, in respect of Order in Original No.61/2013 (BRC) dated 31.10.2013 passed by the Assistant Commissioner of Customs, ICD, Tirupur- 641652.

2. Brief facts of the case are that the applicant are engaged in manufacture and export of Hosiery Garments falling under Chapter 61 of the Central Excise Tariff Act, 1985. 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. 27,762/- (Rupees Twenty Seven Thousand Seven Hundred Sixty Two Only) for export of goods made under Shipping Bill Nos. 21007/12.10.2006, 22402/06.11.2006 and 23531/24.11.2006. 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. 27,762/- with applicable interest and penalty of Rs. 100/- under Section 117 of Customs Act, 1962.

3. Aggrieved by the said order, the Applicant filed appeals before Commissioner (Appeal) on the ground that they had no knowledge of the SCN issued in the year 2007 and hence they could not submit the BRC in proof of the realisation of export proceeds. 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. There is no export proceeds pending for realisation in their company.



4.2 The Negative Certificate issued by the bankers in proof of realisation related to the shipping bills for which the order in original was issued are enclosed for perusal.

4.3 They could not reply to the SCN as the same was not brought to their knowledge by the staff who dealt with the documentation department.

4.4 The non-submission of BRC in reply to the SCN is not wanton.

5. Personal Hearing was held on 19.05.2018, 15.10.2019 and 22.01.2020.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 observe 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 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. 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 has claimed that export proceeds were received by their bank within stipulated period and they have submitted the copies of Bank Realisation Certificates (BRCs) to the Appellate Authority but the same were not taken into consideration. The submission of the BRCs was taken note of by the Appellate Authority in the impugned Order-in-Appeal. However, as the copies of the same are not placed on record, it is not ascertained whether the same BRCs were submitted to the department. 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 has 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 to 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, 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 being offered



to the applicant. The applicant is also directed to furnish the relevant documents for verification.

11. 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. 119/2020-CUS(SZ) /ASRA/

DATED 10.07.2020

To,
M/s Sakthi Creations,
No. 19, J.G. Nagar, 3rd Street,
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, SF.No.129, ThirumuruganPoondi Ring Road, Near A.V.C. School, Chettipalayam, Tirupur -641 652.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard File.
6. Spare Copy.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

