

REGISTERED
SPEED POST



F.No.373/102/DBK/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 18/6/15

ORDER NO. 12 / 2015 - CUS DATED 17.06.2015 OF THE GOVERNMENT OF
INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE
GOVERNMENT OF INDIA UNDER SECTION 129 DD OF THE CUSTOMS ACT, 1962.

Subject : Revision application filed under Section 129 DD of the Customs
Act, 1962 against the Orders-in-Appeal No. CMB-CEX-000-APP-
233-13 dated 25.07.2013 passed by the Commissioner of
Customs, Coimbatore.

Applicant : M/s. Roots Multiclean Ltd.

Respondent : Commissioner of Customs, Coimbatore.

ORDER

This revision application is filed by M/s. Roots Multiclean Ltd. against the Order-in-Appeal No. CMB-CEX-000-APP-233-13 dated 25.07.2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore with respect to Order-in-Original No. SL.No.51/2013-(ACC) dated 25.02.2013 passed by the Assistant Commissioner of Customs, (Air Cargo), Coimbatore.

2. Brief facts of the case are that the applicants were granted drawback of Rs. 89,688/- for the exports made by them in the year 2002. The applicants have not submitted Bank Realization Certificate for realization of export proceeds in respect of the shipping bills. As the applicants failed to produce evidence for realization of export proceeds in respect of the said export goods within the period allowed under Section 8 of the Foreign Exchange Management Act, 1999 read with regulations 2000 & para 2.41 of Export Import Policy 2004-2009 and Section 75 of Customs Act, 1962 including any extension of such period granted by the Reserve Bank of India, a Show Cause Notice was issued on 08.01.2007. The Original adjudicating authority vide impugned Order-in-Original ordered recovery of Rs. 89,688/- along with appropriate interest under Rule 16A(2) and (3) of Customs, Central Excise and Service Tax Drawback Rules, 1995 read with Section 75 of the Customs Act, 1962 and imposed a penalty of Rs. 500/- under section 117 of the Customs Act, 1962.

3. Being aggrieved by the impugned Order-in-Original, the applicant filed appeal before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 129 DD of the Customs Act, 1962 before Government on following grounds:

4.1 It is submitted that on a careful perusal of their records the Applicant ascertained that the Show Cause Notice in C.No.VIII/23/590/2006ACC(BRC) dated 8.1.07 was not served on them. To be abundantly cautious, the

Applicant sent a letter dated 20.03.2013 to the Respondent asking for copies of the following documents:

1. SCN C.No.VIII/23/590/2006ACC(BRC) dated 8.1.07
2. PH intimation letter
3. Envelope which was returned as "left"
4. Copy of PH intimation displayed in the notice board.

Only two documents viz., photocopy of the above Show Cause Notice and photocopy of the PH intimation, were handed over to the Applicant. But the copies of the other documents were not furnished to the Applicant till date by the Respondent.

4.2 It is submitted that the Order-in-Original claimed that the PH intimation sent to the Applicant was returned as "left". It is highly improbable because the Applicant is very much carrying on their business in the very same address and is dealing with the department from the very same address for the past 28 years. Further, without properly serving the Show Cause Notice and the PH intimation as contemplated in the Customs Act 1962, the Adjudicating Authority has passed the impugned order in haste, which is not sustainable in law as the same has been passed in violation of principles of natural justice. Though this defence has been recorded in para 2 of the impugned order, for the reasons best known to him, the lower Appellate Authority has not discussed about the said defence and has not given findings to the said defence and has simply passed the impugned order ignoring the very defence. Hence, the impugned order suffers from legal infirmity and is not sustainable in law.

4.3 It is submitted that the export proceeds have been realised in full from the respective buyers for the export shipments covered under the shipping bills mentioned in the Show Cause Notice. The Appellant had produced the Certificate dated 10.05.2013 issued by the Chartered Accountant confirming that there is no exports pending realization. In the impugned order the lower Appellate Authority has confirmed the receipt of the said certificate. As per the

CBEC Circular No. 5/2009-Cus dated 2.2.2009, either BRC or the Chartered Accountant's Certificate is sufficient proof for realization of the export proceeds. But without considering the clarification issued by the CBEC vide the above circular, the lower Appellate Authority has passed the impugned order as if BRC is the only proof realization of export proceeds and thus clearly overruled the CBEC Circular, which is not permissible in law. As the export proceeds have been realized, the impugned order is not sustainable in law.

4.4 It is submitted that in the impugned order, the lower Appellate Authority has relied on 2 case laws which are totally irrelevant to the case on hand. Those are pertaining to non realization of export proceeds. Whereas in the case on hand, the export proceeds have been realised which has duly been certified by the Chartered Accountant, which is a sufficient proof for realization of export proceeds.

5. Personal hearing was scheduled in this case on 24.03.2015, 15.04.2015, and 07.05.2015. Nobody attended the hearing. The applicant vide their letter dated 13.04.2015 requested to decide the case on merits by waiving personal hearing.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Orders-in-Appeal.

7. Government observes that the applicant was initially granted drawback for exports made by them in the year 2002. Subsequently, show cause notice was issued to the applicant for recovery of already sanctioned drawback on the ground that applicant failed to produce the evidence for realization of export proceeds in respect of impugned exported goods for which they were allowed drawback within the period allowed under Foreign Exchange Management Act, 1999 read with regulations 2000 and para 2.41 of export import policy 2004-2009 including any extensions of such period granted by the Reserve Bank of India. Later on, the original authority vide impugned Order-in-Original confirmed the demand for recovery of already sanctioned drawback along with interest payable under Rule 16 (A) sub rule (2) & (3) of Customs, Central Excise Duties and Service Tax Drawback

Rules 1995 read with Section 75 of the Customs Act, 1962. A penalty of Rs. 500/- was also imposed on the applicant in terms of section 117 of the said Act, Commissioner (Appeals) upheld the impugned Order-In-Original. Now, the applicant has filed this Revision Application on grounds mentioned in para (4) above.

8. Government notes that in this case the demand of already availed drawback was confirmed since the applicant failed to submit proof of realization of foreign exchange (Bank Realization Certificates) within the stipulated time limit. The applicant contended that they have submitted the Chartered Accountant Certificate which duly certify that export proceeds in impugned cases have been received and the same is in accordance with the CBEC circular No. 5/2009-Cus. Dated 02.02.2009. In view of rival contention, Government now proceeds to examine the issue in the context of submission of the applicant vis-a-vis the statutory position.

8.1 The original authority confirmed the demand of drawback availed by the applicant on the ground that the applicant failed to produce proof of realization within stipulated time limit. On the contrary, the applicant has stated that they have submitted Chartered Accountant Certificate dated 10.05.2013 wherein it has been certified that export proceeds in impugned cases has been realized and the same is in accordance with CBEC's Circular No. 5/2009- Cus. dated 02.02.2009. The relevant paras of the said circular are reproduced as under:-

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2. *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.*



3. *Hitherto, the action to recover drawback was being taken on the basis of Export Outstanding Statement (XOS) received from RBI. The XOS is a consolidated half-yearly Statement giving details of all export Bills outstanding beyond the period prescribed for realization within 15 days from the close of the half year i.e. June / December. However, following the issuance of RBI Circular No. 61 dated 31.1.2004 dispensing with submission of declarations for export of goods of value not exceeding US\$ 25,000, it is observed that a large number of the export consignments presently fall outside the purview of monitoring mechanism through XOS inasmuch as the shipment tails of goods valued upto \$ 25,000 are no longer reported through this statement.*

4. *In view of this change, particularly considering that under the statute, the drawback payment is ultimately linked to the realization of export proceeds, it has become necessary for the Department to put in place an in-house monitoring mechanism to monitor the realization of such proceeds for exports made under the Drawback Scheme. Extensive consultations were held with field formations and trade & industry in this regard, and subsequently, the matter was examined by the Board. For monitoring the realization of export proceeds for drawback purposes, the Board has decided that the exporters will submit a certificate from the authorized dealer (s) or chartered accountant providing details of shipment which remain outstanding beyond the prescribed time limit including the extended time, if any, allowed by the authorized dealer/RBI on a 6 monthly basis. Such certificate shall be furnished by the exporter, authorized dealer wise for each port. In order to put the exporters on notice at the time of export itself, an endorsement on the exporter's copy of shipping bill would be made specifying the due date for realization of export proceeds.*

8.2 From perusal of above circular, Government notes that exporter is required to submit a certificate from authorized dealer or chartered accountant providing details of shipments which remain outstanding beyond the prescribed limit including the extended time, if any, allowed by the authorized dealer/RBI on a 6 monthly basis. Such certificates are to be forwarded before 7th day of January & July in respect of exports, which become due for realization in the previous 6 months in terms of para 5 (d) of the above circular. The said circular in terms of para 7 has been applied retrospectively only in respect of all the drawback shipping bills having LEO dates from 1.1.2004 to 31.12.2007 (separately for each month) period & was required to be submitted within 4 months from issue of the circular. In the present case, Government finds that the goods were exported in year 2002, while Chartered Accountant's Certificate dated 10.5.2013 pertains to year 2013 i.e. after almost 11 years. Moreover, the Certificate fails to give the date of receipt of such remittances.


As such, the applicant failed to comply with requirements of said circular which in any case is found to be inapplicable for exports prior to 01.01.2004. Further, the said circular does not give dispensation from production of Bank Realization Certificates as proof of receipt of export proceeds. In this case, the applicant failed to produce Bank Realization Certificates even after 11 years from the date of exports. Under such Circumstances, the drawback availed by the applicant is liable for recovery in absence of submission of proof of foreign exchange realization, within the stipulated time limit.

8.3 Government further notes that it is a statutory requirement under Section 75 (1) of Customs Act, 1962 & Rule 16 A (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 realized within the time limit provided there under viz six months in this case subject to any extension allowed by RBI. As discussed above, the applicant has clearly failed to comply with their statutory obligations. Therefore, the order for recovery of drawback claim along with interest & penalty cannot be faulted with.


9. In view of above position, Government finds no infirmity in the impugned Order-in-Original and hence, upholds the same.

10. The revision application is therefore, rejected being devoid of merit.

11. So, ordered.


(RIMJHIM PRASAD)
Joint Secretary to the Govt. of India

M/s. Roots Multiclean Ltd.
RKG Industrial Estate, Ganapathy,
Coimbatore-641006.


(भागवत शर्मा/Bhagwat Sharma)

GOI ORDER NO. 12 / 2015 - CUS DATED 17.06.2015

Copy to:

1. The Commissioner of Central Excise, Coimbatore.
2. The Commissioner of Customs, (Appeals), 6/7 A.T.D. Street, Race Course Road, Coimbatore-641018
3. The Asst. Commissioner of Customs, (Air Cargo) Peelamedu Coimbatore.
4. ✓ Guard File.
5. PA to JS (RA)
6. Spare Copy

ATTESTED



(B.P.SHARMA)

OSD (REVISION APPLICATION)