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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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F.No.373/72/DBK/15-RA	2894	Date of Issue	02.06.2021
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ORDER NO. 22/2021-CUS (SZ) / ASRA / MUMBAI/ DATED 11.05.2021
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 Rammu Creations,
No.1(1), IVth Street, T.S.K. Maragathm Layout,
Dharapuram Road, Tirupur- 641 608.

Respondent : The Commissioner of Customs, Tiruchirapalli.

Subject : Revision Application filed, under Section 129DD of
the Customs Act, 1962 against the Order-in-
Appeal No. CMB-CEX-000-APP-002/2015 dated
01.01.2015 passed by the Commissioner of
Customs (Appeals), Coimbatore.

ORDER

The Revision Application is filed by M/s Rammu Creations, No.1(1), IVth Street, T.S.K. Maragathm Layout, Dharapuram Road, Tirupur- 641 608 (herein after referred to as 'the applicant) against the Order in Appeal No.CMB-CEX-000-APP-002-2015 dated 01.01.2015 passed by the Commissioner of Customs (Appeals), Coimbatore.

2. Brief facts of the case are that the applicant had exported the goods under 3 shipping bills and received the drawback of Rs. 89,558/- (Rupees Eighty Nine Thousand Five Hundred Fifty Eight Only). The applicant did not furnish the BRCs for realisation of export proceeds in respect of export of 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. The adjudicating authority vide Order in Original No. 506/2014-Customs (BRC) dated 25.02.2014 directed the applicant to pay a sum of Rs. 89,558/- together with interest at the prescribed rate and also imposed the penalty of Rs. 1000/- thereof.

3. Aggrieved by the said order, the Applicant filed appeal before Commissioner of Customs, Central Excise & Service Tax (Appeals-I), Coimbatore. The Appellate Authority vide impugned order in appeal rejected the appeal and upheld the Order in Original. The Appellate Authority while passing the impugned Order in Appeal observed that :-

3.1 The applicant had not submitted the BRC on time.

3.2 The provision under Rule 16(A)(5) of Drawback Rules (inserted w.e.f. 11.04.2011) is not applicable to the applicant as no evidence as prescribed therein was produced by the applicant.

4. The applicant contested the impugned Order in Appeal passed by the Appellate Authority in the instant Revision Application on following grounds :-

4.1 The export proceeds related to the shipping bills for which the order in original was issued had been realised by them. There are no export proceed pending for realisation in their firm.

4.2 They had submitted the BRCs on 30.12.2011 and the copy of the acknowledgement letter was also produced before the appellate authority.

4.3 The receipt of the SCN or PH letter was missed out to their knowledge and thus they could not comply with the demand thereto.

4.4 They could not reply to SCN as it was not brought to their notice as the staff who dealt with the issue had left the firm all of a sudden without any notice and did not hand over the documents properly.

5. Personal Hearing was held online on 10.04.2021. Shri S. Ramesh Kumar, Proprietor attended the same. He appeared online and reiterated his earlier submissions. He stated that BRC is available and same was submitted to the Adjudicating Authority. He stated that a copy of BRC has been mailed to Revisionary Authority on that day. He requested to set aside the Order in Appeal.

6. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the grounds of filing the revision application.

7. 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 there under viz within six months in this case subject to any extension allowed by RBI.

8. In the instant case, the Government finds that the applicant had exported goods vide 3 shipping bills and claimed to have submitted the copies of Bank Realisation Certificates on 30.12.2011. Shri Ramesh Kumar, Proprietor during personal hearing submitted that the copy of the BRC had been sent through email to the Revision Authority on that day.

9. The Government finds that whole issue relates to submission of the copies of BRC related to the drawback shipping bills. 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 claim to have done on 30.12.2011. Justice requires that in order to remove ambiguity, applicant is given an opportunity to again submit the BRC or evidence of realisation of sale proceeds. In view of above, the Government holds that the recovery of the drawback amount for Rs. 89,558/- along with interest and imposition of penalty thereof by the adjudicating authority vide its Order in Original No. 506/2014 Customs (BRC) dated 25.02.2014 was not justified.

10. The Government sets aside the impugned Order-in-Appeal and remands the matter to original authority for verification.

11. Revision Application is disposed off in above terms.

Shrawan
11/05/21

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

ORDER No. \22/2021-CUS (SZ) /ASRA/

DATED \ \ .05.2021

To,

M/s Rammu Creations,
No.1(1), IVth Street, T.S.K. Maragathm Layout,
Dharapuram Road, Tirupur- 641 608.

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 Commissioner of Customs, CFS, s.f. No. 129, Poondi Ring Road, Chettipalayam, Tirupur- 641 652, Tamil Nadu.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. ~~Spare Copy.~~