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SPEED POST**



F.No. 371/86/DBK/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue.. 19/5/14

ORDER NO. 144/14-Cus DATED 19.05.2014 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI D.P.SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER
SECTION 129 DD OF THE CUSTOM ACT, 1962.

Subject : Revision application filed, under Section 129 DD of the
Custom Act, 1962 against the order-in-appeal No. MUM-
CUST-APP-80 & 81/13-14 dated 20.06.13 passed by
Commissioner of Customs (Appeals) Mumbai Zone-III

Applicant : M/s Fusion Clothing Company, 207, Kalbadevi Road,
Mumbai

Respondent : Commissioner of Customs (Export), Mumbai

ORDER

This revision application is filed by M/s Fusion Clothing Company, 207, Kalbadevi Road, Mumbai, against the order-in-appeal No. MUM-CUST-APP-80 & 81/13-14 dated 20.06.13 passed by Commissioner of Customs (Appeals) Mumbai Zone-III.

2. Brief facts of the case are that a demand of Rs.29,50,966/- of drawback claim availed by the applicant was confirmed by the lower authority vide order-in-original No. AC/45/2012/ACC dated 07.01.2013 as applicant had not produced evidence in respect of realization of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999 and as per rule 16(A) sub rule (1) & (2) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Section 75 A(2) of Customs Act, 1962.

3. Being aggrieved with the said order-in-original, applicant filed appeal before Commissioner of Customs (Appeals) who after considering all the submissions rejected the appeal.

4. Being aggrieved with the said order-in-appeal, applicant has filed revision application before Central Government under section 129 DD of Customs Act, 1962 on the following grounds :

4.1 The applicant M/s Fusion Clothing, Mumbai (hereinafter 'the exporter') have exported goods through Mumbai Airport valued at Rs.63650266/- under 177 shipping bills during the period January 2004 to January 2006. The goods were exported under drawback scheme at All Industry Rates under section 75 of the Customs Act, 1962. The Exporter was sanctioned and paid admissible drawback amounting to Rs.29,50,966/- in respect of the 177 shipping bills.

4.2 The entire 100% sale proceeds in respect of above goods exported under 166 shipping bills have been received by the exporter in India within the time allowed under the Foreign Exchange Management Act, 1999. Hence drawback allowed to the exporter

is admissible and satisfy the second Proviso to Section 75(1) of the Act. The export proceeds for Rs.2230826/- had not been realized and drawback along with interest for Rs.2,91,726/- already deposited for 11 Nos. shipping bills. The drawback of Rs.27,85,759/- out of total drawback of Rs.29,50,966/- is admissible for the fact that foreign remittances were received within stipulated time.

4.3 Because of order has been passed ex-parte in gross violation of the principles of natural justice as the respondent has passed the same without considering the facts that the Assistant Commissioner has passed the order No. AC/145/2012/ACC dated 04.01.2013 without affording any opportunity to the applicant to present its case and without considering the documents and facts available on record with the office of the respondent.

4.4 Because the impugned order is vitiated as the respondent has passed the impugned order without calling for and perusing the records of exports and realization. The applicant submits that in the interest of justice the respondent ought to have considered the matter based on the records of realization of export proceeds available with the applicant before embarking on adjudication proceedings and upholding the order of lower authority for making drawback ineligible with recovery of drawback amount along with interest and imposing of whopping penalty.

4.5 Because the finding of the lower authority and upheld by the respondent that the applicant has violated the Second proviso of Section 75(1) of the Customs Act, Section 8 of the Foreign Exchange Management Act, 1999 (42 of 1999), Drawback Rules 16 A, Section 75 A(2) of the Act is patently wrong as the applicant has received the entire 100% foreign exchange towards export proceeds of above referred 166 Nos. shipping bills and that too within the prescribed period.

4.6 The amount of drawback has been paid to applicant is eligible drawback on realization of full sale proceeds in respect of such export within the period allowed under the Foreign Exchange Management Act, 1999, including any extension of such period. The applicant has also produced evidence in respect of realization of export

proceeds before the respondent. The applicant default to produce evidence to show that the sale proceeds (Foreign Exchange) in respect of the goods exported have realized within the time limit prescribed under the Foreign Exchange Management Act, 1999 is just a procedural lapse. The applicant could not come to know about the SCN at management level otherwise could have submitted the proof of realization.

4.7 The submission of BRCs considered late by the respondent is not justified and contrary to the provisions of Customs Act and FEMA. The respondent is wrong in not accepting BRCs on the ground of late submission for adhering the procedure to update in EDI system ignoring the fact of realization of sales proceeds within the prescribed time by the applicant.

4.8 Drawback Rule 16 A regarding recovery of amount of drawback where export proceeds not realized even also further has relaxed provision under Rule 16 A(4) to repay the amount of drawback recovered if the exporter produces evidences about such realization within 1 year from the date of recovery of the amount of drawback. The Commissioner (Appeals) has ignored the provisions of section 75 read with Rule 16 A and 16 A(4) and not right in rejecting the drawback when the exporter has produced the evidence about realization of export proceeds.

4.9 Applicant requested to accept the BRCs, set aside impugned order-in-appeal and allow their revision application.

5. Personal hearing held in this case on 9.5.14 was attended by Shri N.K. Chopra, Advocate Consultant on behalf of applicant who reiterated the grounds of revision application. He further stated that out of total 177 shipping bills, they have realized foreign remittances toward export sale proceeds in case of 166 shipping bills within 6 months of export of goods as is evident from the Bank Realization Certificates. In case of remaining 11 shipping bills, where export sale proceeds were not received, they have deposited Rs.2,93,657/- (Rs.120207 drawback claim plus Rs.175450 – interest) on 10.10.2013 vide TR-6 challan in Government account.

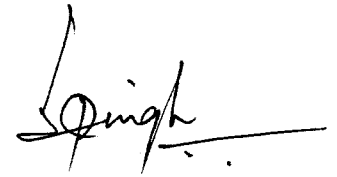
6. Government has carefully gone through the relevant case records, oral and written submissions and perused the impugned order-in-original and order-in-appeal.

7. Government observes that in this impugned case, the original authority confirmed the demand of already availed drawback of Rs.2950966/- on the ground that the applicant failed to realize the foreign remittances for said export sale proceeds. Commissioner (Appeals) rejected applicant's appeal. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. In this case applicant has claimed that foreign remittances for export sale proceeds in respect of 166 the shipping bills was received in time by them and submitted the photocopies of all the relevant BRCs in respect of 166 shipping bills evidencing receipt of export sale proceeds in time. In the remaining 11 shipping bills, they have deposited the drawback claim amount alongwith interest. Government notes that demand of already sanctioned drawback claim can be confirmed only if export sale proceeds are not received in time. In this case, the copies of BRCs submitted reveal that sale proceeds were in fact received within stipulated time period. As such demand is liable to be dropped if the said BRCs are found valid on verification.

9. Government therefore sets aside the impugned orders and remands the case back to original authority to consider afresh in the light of above observations. Applicant is directed to submit the BRCs and other requisite document before original authority with 2 weeks of receipt of this order. A reasonable opportunity of hearing will be afforded the parties.

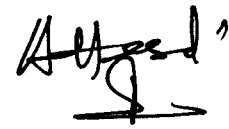
10. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

M/s Fusion Clothing Company,
207, Kalbadevi Road,
Mumbai – 400 002



(भगवत शर्मा/Bhagwat Sharma)
आयुक्त आयुक्त (Revision Application)
मिनिस्टर ऑफ फाइनेंस (विभाग)
Ministry of Finance (Dept. of Rev.)
भारत सरकार (Govt. of India)
नई दिल्ली / New Delhi

Order No. 144/2014-Cus dated 19.05.2014

Copy to:

1. Commissioner of Customs (Export), Air Cargo Complex, Sahar, Andheri (East) Mumbai-400099
2. Commissioner of Customs (Appeals), Mumbai Zone-III, Awas Corporate Point, Makwana Lane Behind S.M.Centre, Andheri Kurla Road, Marol, Mumbai-400059
3. The Assistant Commissioner of Customs DBK(XOS), Air Cargo Complex, Sahar, Andheri (East), Mumbai-400099
4. Shri N.K. Chopra, Advocate, C-73, Preet Vihar, Delhi - 110092
5. PS to JS(RA)
6. Guard File
7. Spare Copy

ATTESTED

(B.P.Sharma)

OSD (Revision Application)