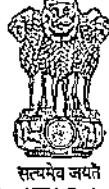


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
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Mumbai- 400 005

F.No. 373/179/DBK/2014-RA/१३०७

Date of Issue: ०१.०७.२०२१

ORDER NO. 150 /2021-CUS (SZ)/ASRA/MUMBAI DATED 29. 6. 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.

Subject : Revision Application filed, under Section 129DD of the Customs
Act, 1962 against the Order-in-Appeal No. CMB-CEX-000-APP-
012-14 dated 04.02.2014-passed by the Commissioner of
Customs, Central Excise & Service Tax (Appeals), Coimbatore.

Applicant : M/s S.P. Apparel India

Respondent : Commissioner of Central Excise & Service Tax (Appeals),
Coimbatore.

ORDER

This Revision Application is filed by the M/s S.P. Apparel India, 5/1493, 1st floor, T.S. Krishna Nagar, Mugappair East, Chennai 600 037 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CMB-CEX-000-APP-012-14 dated 04.02.2014 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore.

2. Brief facts of the case are that the Applicant having IE Code: 0401001474 was granted Rs.1,96,166,- (Rupees One Lakh Ninety Six Thousand One hundred and Sixty Six Only) as drawback under Section 75 of the Customs Act, 1962 read with the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 for the export(s) made through ICD Tirupur. It was noticed that the Applicant had failed to produce/ submit the evidence of realization of export proceeds in respect of the said export of goods within the period allowed under the Foreign Exchange Management Act, 1999 read with Regulations, 2000 and Para 2.41 of Export & Import Policy 2009-14 and Section 75 of Customs Act, 1962 evidencing the realization of sale proceeds in respect of Shipping Bills under which the goods had been exported. Hence, a Show Cause Notice No.688/2011 dated 10.2011 and a reminder letter dated 01.03.2018 were issued to the Applicant calling upon to show cause as to why the drawback amount of Rs. 1,96,166/- already paid to them should not be recovered from them. The details are given below:

Sl.No.	SCN Ref.No.	S/B No. & Date	Drawback Amount (Rs)
1	C.No.V111/23/6568/2011- ICD-TPR (SCN No. 688/2011 dt. 10.2011)	13211/29.09.2008	8,386
		15450/25.11.2008	85,134
		15451/25.11.2008	1,02,644
		Total	1,96,166

After due process of law,—the adjudicating authority Assistant Commissioner of Customs, ICD Tripur (BRC Cell), Rakkiapalayam, Coimbatore vide Order-in-Original No. 1172/2013-Asst. Commissioner dated 26.05.2013 confirmed the demand of Rs. 1,96,166/- along with appropriate interest under Rule 16A(2) and (3) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Section 75 of the Customs Act, 1962. Further a penalty of Rs. 1,500/- was imposed under Section 117 of the Customs Act, 1962. Aggrieved, the Applicant then filed appeal with the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore. The Commissioner(Appeals) vide Order-in-Appeal No. CMB-CEX-000-APP-012-14 dated 04.02.2014 rejected their appeal on merit as well as on limitation as time barred and upheld the Order-in-Original dated 26.05.2013.

3. Being aggrieved, the Applicant then filed the current Revision Application on the following grounds:

- (i) The export proceeds related to the shipping bill for which the Order-in-Original was issued was not pertaining to the Applicant. They had not effected any export shipments through ICD, Rakkiapalayam, Tirupur.
- (ii) Having not exported through the above said ICD, Tirupur and the shipping bills were not pertaining to the Applicant, the question of production of BRC to the proof of realization of export proceeds does not arise.
- (iii) The Applicant had very well-replied to the Show Cause Notice by registered post and thus the penalty imposed and demand for the duty drawback amount shall not be sustainable. They had clearly mentioned in their reply to the SCN and also in the appeal and additional submission that they had not received the duty drawback as they had not effected the export under the relevant shipping bills

and they are unable to produce the Bank Realization Certificate (BRC) for the drawback which they had not received.

- (iv) The Applicant had not effected any of the shipments at any point of time under the relevant shipping bills through the PORT- ICD Rakiapalayam Tirupur and thus the sanction of drawback unequivocally denied. It was certain that the drawback amount of Rs.1,96,166/- had not been sanctioned and they had never received or realized the said amount of Drawback from the Customs.
- (v) The Commissioner(Appeals) had failed to consider the above averments made out in their appeal and rejected their appeal contending that they had not disputed the sanction of the drawback.
- (vi) It is clear and evident from the copy documents of Shipping Bills which bear the numbers 13211/29.09.2008, 15450/25.11.2008 and 15451/25.11.2008 were pertaining to the shipments made from ICD, Rakiapalayam, Tirupur by one M/s S P Apparels, Avinashi holding IEC No. 0489019498. If that was the case, the question of effecting export shipments under the same shipping bills was ruled out.
- (vii) Thus it is evident that two different companies/ firm cannot effect export of the garments simultaneously under one and the same shipping bill numbers and the same port.
- (viii) After taking extra effort to elucidate the departmental work load, the Applicant could somehow managed to get the copy shipping bills from the concerned company for which the drawback amount had been sanctioned which was of a different entity/company and the Applicant had nothing to do with that company and they had not been paid with the drawback amount for which the Department of Customs made a wrong claim and passed Order-in-Original without looking into the reply submitted to SCN.
- (ix) Despite showing the evidence by producing the copy of shipping bills, the appellate authority did not appreciate the mistake done by the

department nor bothered to verify the original documents in the department of Customs where from the shipment had been effected and made wrong claim on the Applicant. They had replied the SCN on 05.01.2012 explaining the above facts by sending a registered reply letter to the Assistant Commissioner, ICD, Rakkiapalayam, Tirupur. - vide cover letter copy with postal receipt.

- (x) The Applicant had not received any personal hearing letter and they do not know the reason as to how the PH letter sent by the Office of Assistant Commissioner, ICD. Rakkiapalayam had been returned unsaved.
- (xi) It will not possible for the Applicant to submit the BRC for the export shipments effected by some other exporter. They had also clearly mentioned in their reply letter to the SCN that there is a possibility of those shipments having been effected by another company situated at Avinashi with the similar name called "S.P.APPARELS LTD".
- (xii) As the Applicant had not effected the shipment, if they are provided with the copy of shipping bills, they will be able to know the details of exports so as to reply with authenticity.
- (xiii) They are neither negligent nor careless in replying the SCN. Having not received any letter for Personal Hearing, the Applicant did not appear before the authority and submit their contentions before the authority. They have a prima face case. The balance of convenience is highly in their favour.
- (xiv) Hence they requested to take on record the submission made in this revision application, drop the demand of Duty Drawback Amount of Rs 1,96,166/- with interest and also the penalty of Rs 1,500/-, annul the Order-in-Original.

4. A personal hearing in the case was held on 25.02.2020, and 03.03.2020 but no appeared for the hearing. In view of a change in the Revisionary Authority, the final hearing in the matter was granted on

05.02.2021, 19.02.2021 and 03.03.2021. On 03.03.2021, Shri K Ananthanarayanan, Authorized Signatory appeared on behalf of the Applicant. He reiterated points made in the revision application. He submitted that shipping bills in dispute do not belong to them and they have neither exported from ICD Tirupur nor received any drawback. He requested to withdraw the demand of drawback. He stated that confusion seems to be due to similar names.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of the records, Government observes that the Applicant, manufacturer and exporter of Hosiery Garments falling under ITC sub-heading 6103, 6106 and 6105 and have been availing the benefit of Duty Drawback for the exports being effected from time to time. The Applicant had exported Cotton Knitted Garments under Shipping Bill No. 21007 dated 12.10.2006, 22402 dated 06.11.2006 and 23531 dated 24.11.2006 to Europe through the Inland Container Depot, SF No. 129, Poondi Ring Road, Chittipalayam, Tirupur and had availed Duty Drawback to the tune of Rs. 27,762/-. The Applicant was issued Show Cause Notice No.688/2011 dated 10.2011 by the Assistant Commissioner of Customs, Tirupur, as they had failed to produce/ submit the evidence of realization of export BRC proceeds in respect of the below mentioned Shipping Bills within the period allowed:

Sl.No.	S/B No. & Date	Drawback Amount (Rs)
1	13211/29.09.2008	8,386
2	15450/25.11.2008	85,134
3	15451/25.11.2008	1,02,644
Total		1,96,166

The original authority confirmed the demand of already sanctioned drawback under Rule 16A of the Drawback Rules, 1995 read with proviso to Section 75 of the Customs Act, 1962 on the grounds that the Applicant failed to realize the sale proceeds in respect of the impugned goods. The

Commissioner(Appeals) rejected their appeal on merit as well as on limitation as time bared and upheld the impugned Order-in-Original. Now the Application has filed this Revision Application on the grounds mentioned in Para 3 above.

8. Government observes that the Applicant have submitted that

"1. We submit that we have not effected any exports as contended in the SCN or in the order in original. The Shipping Bills referred in the SCN and also in the order in original are not pertaining to our Company. We have not effected any Shipments through ICD Rakkiapalayam, Tirupur and so we have also not received any such Duty Drawback amount of Rs. 196166/- as contended in the order in original.

2.....

3. It is clear and evident from the copy documents of S/bills which bear the numbers 13211/29.09.2008, 15450/25.11.2008 and 15451/25.11.2008 were pertaining to the shipments made from ICD, Rakiapalayam, Tirupur by one M/s S P Apparels, Avinashi holding IEC No. 0489019498. If that was the case, the question of effecting export shipments under the same S/bills was ruled out.

4. Thus it is evident that two different companies/ firm cannot effect export of the garments simultaneously under one and the same S/ bill Numbers and the same port.

5. After taking extra effort to elucidate the departmental work load, we could some how managed to get the copy shipping bills from the concerned company for which the drawback amount had been sanctioned which is of a different entity/company and we have nothing to do with that company and we have not been paid with the drawback amount for which the Department of Customs made a wrong claim and passed Order-in-Original without looking into the reply submitted to SCN.

6. Despite showing the evidence by producing the copy of shipping bills, the appellate authority did not appreciate the mistake done by the department nor bothered to verify the original documents in the department of Customs where from the shipment had been effected and made wrong claim on us."

7. We further submit that we have replied the SCN on 05.01.2012 explaining the above facts by sending a registered reply letter to the Assistant Commissioner, ICD, Rakkiapalayam, Tirupur vide cover letter copy with postal receipt.

8. *We have not received any Personal Hearing Letter and we do not know the reason as to how the PH letter sent by the Office of Assistant Commissioner, ICD, Rakkiapalayam had been returned unserved*

9. *We humble submit that it will not possible for us to submit the BRC for the export shipments effected by some other exporter. We had also clearly mentioned in our reply letter to the SCN that there is a possibility of those shipments having been effected by another company situated at Avinashi with the similar name called "S.P.APPARELS LTD". "*

9. Government finds that the Applicant in their appeal as evidence had submitted the copies of Shipping Bills which bear the numbers 13211 dated 29.09.2008, 15450 dated 25.11.2008 and 15451 dated 25.11.2008 which were pertaining to the shipments made from ICD, Rakiapalayam, Tirupur by one M/s S P Apparels, Avinashi holding IEC No. 0489019498. Further, the Applicant i.e. M/s S P Apparel India is holding IEC No. 0401001474 and had exported Shipping Bill No. 21007 dated 12.10.2006, 22402 dated 06.11.2006 and 23531 dated 24.11.2006 though the ICD, Chittipalayam, Tirupur and had availed Duty Drawback to the tune of Rs. 27,762/-. Thus it is clear that both are two different companies and both of them cannot export simultaneously under one and the same Shipping Bill Numbers and the same port.

10. Government finds that in such a situation, when the Applicant have not received the drawback amount, it is not fair on the part of the Department to ask the Applicant to refund the amount which is not received by them. It is for the Department to adduce evidence to prove the same The fact that they had not received the drawback can be easily verified by calling for the cheque details of the impugned shipping bills by the jurisdictional Original Authority who should check with the department's Drawback Cheque Disbursement Register maintained at ICD, Rakkiapalayam, Tirupur and confirm as to which company the Shipping Bills mentioned at Para 7 above are pertaining to. Therefore, the Government is of the view the same requires verification from the Original Authority.

11. In view of the above, Government-set aside the impugned Order-in-Appeal No. CMB-CEX-000-APP-012-14 dated 04.02.2014 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore and remands the matter to original authority for doing the needful and in accordance with law after giving proper opportunity within eight weeks from receipt of this order.

12. The Revision Application filed by the Applicant is decided on above terms.

Shrawan
29/06/21
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 150/2021-CUS (SZ)/ASRA/Mumbai Dated 29.6.2021

To,
M/s S.P. Apparel India,
Plot No. 1076/O, 44th Street,
T.V.S. Colony, Annangar West Extension
Chennai 600 101.

Copy to:

- 1) The Commissioner of Customs, 6/7 ATD Street, Race Course Road, Coimbatore - 641 018.
- 2) Sr. P.S. to AS (RA), Mumbai
- ~~3) Guard file~~
- 4) Spare Copy.