

REGISTERED SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

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F.No. 373/351/DBK/14-RA

DATE OF ISSUE:

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ORDER NO. 152/2020-CUS(SZ)/ASRA/MUMBAI DATED 31.08.2020 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 ACT, 1962.

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**Subject** : Revision applications filed under section 129DD of the Customs Act,  
1962 against the Order in Appeal C.Cus No. 1113/2014 dated  
30.06.2014 passed by the Commissioner of Customs (Appeals),  
Chennai.

**Applicant** : M/s Win (India) Exports, Chennai.

**Respondent** : Commissioner of Customs, (Exports), Customs House, Chennai-1.

**ORDER**

This revision application has been filed by M/s Win (India) Exports, Chennai (hereinafter referred to as "the applicant") against Order in Appeal C.Cus No. 1113/2014 dated 30.06.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. The Brief facts of the case are that the applicant had exported ready made garments and availed DEPB (4 shipping bills ) and drawback (6 shipping bills) through Chennai Port. Subsequently, it was found out on investigation, that the applicant had supplied the fabrics required for manufacturing ready made garments for job work to M/s. BNT connections Impex Limited, Ambattur, Chennai which was their related concern and an 100% EOU and that ready made garments received back were exported under DEPB Scheme / under claim for Drawback. It was also found that the applicant had not revealed the fact that the goods were manufactured at an EOU Unit and M/s. BNT Connections Impex did not seek permission from the concerned jurisdictional Customs Authorities to carry out the job work of a DTA Unit. Accordingly, two Show Cause Notices were issued to the applicant, vide (1) F.No. S.Misc./93/2006-DBK dated 28.09.2011 (proposing recovery of drawback sanctioned alongwith interest, confiscation of the goods, imposition of penalty, etc.) and (2) F.No.S. Misc./245/2011-EDC dated 03.11.2011 (proposing recovery of wrongly claimed and availed DEPB along with interest, confiscation of the goods, imposition of penalty, etc.). The adjudicating authority, viz., Additional Commissioner of Customs (Exports), Chennai, vide Order in Original No. 20572/2013-EDC-SEA dated 29.03.2013 confirmed the demand of Rs.3,63,711/- availed as DEPB credit under Section 28 (1) (b) of the Customs Act, 1962 alongwith applicable interest under Section 28AA ibid from the date of issue of the DEPB Scrip; the goods totally valued at Rs. 24,48,266/- (FOB) in respect of 4 shipping bills were held liable for confiscation under Section 113 (i) of the Customs Act, 1962; the goods totally valued at Rs. 48,32,492/- FOB covered by six shipping bills were also held liable for confiscation under Section 113 (i) and (ii) ibid; the demand for Rs. 5,07,413/- sanctioned as drawback was confirmed under Rule 16 of Customs, Central Excise and (Service Tax) Drawback Rules, 1995 alongwith applicable interest under Section 75 A ibid from the date of sanction of the drawback.

3. Being aggrieved by the aforesaid Order in Original, the applicant filed appeal before Commissioner of Customs (Appeals), Chennai.

4. Commissioner of Customs (Appeals), Chennai vide Order in Appeal C.Cus No. 1113/2014 dated 30.06.2014 (impugned order) rejected the appeal filed by the applicant and upheld the Order in original No. 20572/2013-EDC-SEA dated 29.03.2013.

5. Being aggrieved with the afore stated Order in Appeal, the applicant has filed the instant Revision Application on the grounds mentioned therein.

6. A Personal Hearing was held in this case on 15.01.2020. Mr. R. Mansoor Ilahi, Advocate, appeared for the same. He made written submissions on that day. He stated that they had returned the drawback amount and DEPB Benefit. He pleaded that as the issue is settled now, the Order in Appeals be set aside and the amount paid may be refunded to them.

7. In their written submissions filed on 15.01.2020, the applicant mainly contended as under :-

- 7.1 They are manufacturers and exporters of readymade garments. During the year 2003, they have exported readymade garments vide 10 shipping bills, in which for 6 shipping bills they availed drawback and for 4 shipping bills they availed benefit under DEPB.
- 7.2. It was alleged that they did not obtain prior permission from the jurisdictional Customs authority, as they had supplied fabrics to M/s. BNT Connections Impex Limited, Ambattur, Chennai for job work. During the enquiry they paid a sum of Rs.6,13,211/- and Rs.4,69,461/- vide TR-6 Challans.
- 7.3 However, no action was initiated by the department. Therefore, they approached the Hon'ble High Court of Madras to direct the department to issue Show Cause Notice after completion of investigation. Consequently, the department after 8 years from the date of export issued Show Cause Notices dated 28.09.2011 and 03.11.2011. Subsequently, a personal hearing was held only in respect of Show Cause Notice dated 03.11.2011, for which a reply was duly submitted by them. However, personal hearing in respect of other Show Cause Notice dated 28.09.2011 was not granted. During the personal hearing, they clarified that the availment of benefit is proper and eligible. However, the adjudicating authority rejected the submissions and confirmed the proposals made in the Show Cause Notice. Aggrieved by the order, an appeal was filed which was rejected

subsequently by the Commissioner of Customs (Appeals). Aggrieved by the said order, they are before this forum.

7.4 At the outset, the Show Cause Notice has been issued on them after 8 years from the date of export. Even though there is no time limit mentioned for demand for recovery of drawback and DEPB benefits, the said delay is well beyond the ordinary time limit and is barred by limitation. Various judicial forums have taken stand on the same footing and all quashed the Show Cause Notice as barred by limitation. In this regard, they rely upon the recent judgment in the case of M/s. Madina (UZ) Impex and M/s. Maalvika Impex (India) Versus Union of India & anr., reported in 2019 (8) TMI 397 —Delhi High Court.

7.5 Without prejudice to the above, they submit that the adjudicating authority had failed to consider their contentions with reference to Show Cause Notice dated 28.09.2011 which is in gross violation of principles of natural justice. Therefore, the order is to be set aside on this preliminary ground.

7.6 Further, the impugned order holds that they failed to comply with the Circular i.e. getting permission from the jurisdictional customs authorities regarding supply of raw materials to 100% EOU for job work. In this regard, they submit that they are not related to the job worker and they themselves were not aware that the job worker is an 100% EOU. Further, the said condition is of procedural in nature and lapse of such procedure is curable. As per CBEC Circulars EOUs can do job work for others and there is no restriction with reference to grant of drawback even in such cases. In this regard, they rely upon the following case laws:

- (i) Sun Pharmaceutical Industries Ltd., 2015 (328) E.L.T. 792 (G.O.I.),
- (ii) Madina (UZ) Impex Vs UOI, 2019 (368) E.L.T. 555 (Del.),
- (iii) First Garments Manufacturing (I) P. Ltd. Versus Jt. Secretary to the G.O.I., reported in 2016 (344) E.L.T. 67 (Mad.), and
- (iv) Commissioner of Customs, Tuticorin Versus L.T. Karle & Co., reported in 2007 (207) E.L.T. 358 (Mad.)

7.7 In view of the above, the impugned Order-in-Appeal C.Cus.No.1113/2014 dated 30.06.2014 may be set aside with consequential relief.

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

9. Government observes that the applicant was issued two Show Cause Notices vide F.No. S.Misc./93/2006-DBK dated 28.09.2011 proposing to recover drawback

sanctioned alongwith interest, confiscation of the goods, imposition of penalty, and another under F.No.S. Misc./245/2011-EDC dated 03.11.2011 proposing to recover of wrongly claimed and availed DEPB along with interest, confiscation of the goods, and imposition of penalty. The adjudicating authority confirmed both the demands raised vide these two show cause notices as detailed at para 2 above.

10. The applicant has contended that both the show cause notices issued to them for recovery of Drawback and recovery of DEPB benefits were barred by limitation in terms of Section 28 of the Customs Act. The applicant has also relied on Madina (UZ) Impex Vs UOI, 2019 (368) E.L.T. 555 (Del.) in this regard.

11. Government finds it pertinent to discuss the circumstances leading to the issuance of these show cause notices to the applicant. The applicant as admitted in the Revision Application, had on being pointed out by the authorities, surrendered the export incentives by paying an amount of Rs.6,13,211/- as demanded by the authorities vide Demand Draft 331510 dated 07.04.2006 (towards wrongly availed drawback in respect of 6 Shipping Bills) and Rs 4,69,461/- vide Demand Draft No.331511 dated 07.04.2006 (towards wrongly availed DEPB benefit in respect of 4 Shipping Bills). As the authorities thereafter did not initiate any proceedings, applicant filed Writ Petition No. 5359/2010 before Hon'ble High Court, Madras on 17.03.2010 for the return of the amounts paid as stated above. The counsel for the applicant appearing before the Hon'ble High Court argued for issuing directions to the respondents (department) to issue show cause notice as to why they should not return the money, which was collected under compulsion. In response to this prayer of the applicant, the counsel for the respondent department argued that the department has already started investigating the case of the applicant, and if some reasonable time is granted after completion of the investigation, if necessary, a show cause notice will be issued to the applicant. After hearing both the sides, Hon'ble High Court, Madras, while disposing the aforesaid writ petition, vide its Order dated 07.06.2011, directed the respondent department to issue show notice to the applicant after completion of investigation, within a period of three months from the date of receipt of the copy of the said Order. Thereafter, in due compliance of the directions as aforesaid, of the Hon'ble High Court, Madras, both the show cause notices were issued to the applicant.

12. It is pertinent to note here that on the date of decision of the Hon'ble High Court, Madras, i.e on 07.06.2011, the advocate for the applicant did not argue issue of limitation before the High Court. In fact the applicant had not raised a

contention before Hon'ble High Court to the effect that issuance of show cause notices would be barred by limitation. Government therefore, is of the considered view that as the applicant himself as a petitioner had requested the Hon'ble Madras High Court to issue directions to the department to issue show cause notice and the department in compliance of the said directions issued the show cause notices, all contentions of the applicant about limitation are not tenable. Besides, facts in Madina (UZ) Impex Vs UOI, 2019 (368) E.L.T. 555 (Del.), relied upon by the applicant are different from facts of the impugned case and hence ratio of that judgment is also not applicable.

13. Government observes that the issue relates in this revision application is related to wrongly availed DEPB benefit in 4 Shipping Bills as well as wrongly availed drawback in 6 shipping bills . It is also on record that two different show cause notices were issued to the applicant as under :-

1) F.No. S.Misc./93/2006-DBK dated 28.09.2011 proposing to recover drawback sanctioned alongwith interest, confiscation of the goods, imposition of penalty) and

2) F.No.S. Misc./245/2011-EDC dated 03.11.2011 proposing to recover of wrongly claimed and availed DEPB

14. Whereas, as per first proviso to Section 129A read with Section 129DD of Customs Act, 1962, a revision application can be filed before the Government against the order-in-appeal if it relates to the issue of baggage, drawback of duty and short landing of the goods. Therefore, the Government does not have jurisdiction to deal with the order-in-appeal so far as it relates to issue relating to DEPB Scheme. Therefore, Revision Application to the extent it relates to wrong availment of DEPB benefit is not maintainable before the Government.

15. As regards show cause notice F.No. S.Misc./93/2006-DBK dated 28.09.2011 (proposing to recover drawback sanctioned alongwith interest, confiscation of the goods, imposition of penalty) the applicant has contended that the adjudicating authority proceeded to pass an Order in Original No. 20572/2013 dated 29.03.2013 for both the show cause notices - one dated 28.09.2011 (Drawback) as well as the other Notice dated 03.11.2011(DEPB). However, the adjudicating authority heard them on 10.01.2013 only for the Notice dated 03.11.2011 (DEPB) and he did not afford opportunity of hearing to them at any point of time, as far as

the notice dated 28.09.2011(Drawback) was concerned and therefore, adjudicating authority had failed to consider their contentions with reference to Show Cause Notice dated 28.09.2011 which is in gross violation of principles of natural justice

16. Government finds that the *Principle of Audi Alteram Partem* is the basic concept of Principle of Natural Justice i.e. the person must be given opportunity to defend himself. Section 122A of the Customs Act, 1962 also requires that the adjudicating authority to adhere to the principles of natural justice. The Rules of natural justice require that the person likely to be adversely affected or against whom an action is proposed to be taken should have adequate opportunity to put forward his say as to why such an action should not be taken and the authority must give reasons for the actions after considering the representation of the person likely to be affected. In view of the above, the Government opines that the applicant was denied the right of being heard by the Original authority without cogent ground. Consequently, the impugned Order in Appeal suffers from the vice of breach principles of natural justice.

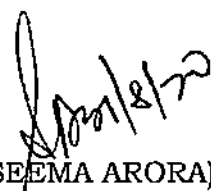
17. In view of above discussions and findings, Government sets aside Order in Appeal C. Cus No. 1113/2014 dated 30.06.2014 passed by the Commissioner of Customs (Appeals), Chennai relating to upholding Order in Original No. 20572/2013 dated 29.03.2013 wherein the goods totally valued at Rs. 48,32,492/- (FOB) covered by six shipping bills were held liable for confiscation under Section 113 (i) and (ii) of Customs Act, 1962; the demand for Rs. 5,07,413/- sanctioned as drawback was confirmed under Rule 16 of Customs, Central Excise and (Service Tax) Drawback Rules, 1995 alongwith applicable interest under Section 75 A ibid from the date of sanction of the drawback and imposed of penalty of Rs.2,11,548/- on the applicant, Rs. 1,00,000/- on the manufacturer, M/s BNT Connections Impex Limited under Section 114 of the Customs Act, 1962 and appropriating the amount already paid by the exporter. The matter is remanded back to the original adjudicating authority to decide Show Cause Notice F.No. S.Misc./93/2006-DBK dated 28.09.2011 afresh after giving proper opportunity to the applicant and following the principles of natural justice.

18. As regards Order in Appeal C.Cus No. 1113/2014 dated 30.06.2014 passed by the Commissioner of Customs (Appeals), Chennai so far as it relates to upholding Order in Original No. 20572/2013 dated 29.03.2013 which confirmed the demand of Rs.3,63,711/- availed as DEPB credit under Section 28 (1) (b) of the

Customs Act, 1962 alongwith applicable interest under Section 28AA ibid from the date of issue of the DEPB Scrip; the goods totally valued at Rs. 24,48,266/- (FOB) in respect of 4 shipping bills were held liable for confiscation under Section 113 (i) of the Customs Act, 1962; Government has no jurisdiction to decide the Revision Application filed against this part of the order passed by Commissioner (Appeals). However the applicant is at liberty to approach the appropriate forum in accordance with law against this part of the order.

19. Revision application is disposed of in the above terms.

20. So ordered.



(SEEMA ARORA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No 152 /2020-CUS(SZ) /ASRA/Mumbai DATED 31.08.2020 .

To

M/s Win (India) Exports,  
New No.18, Race Course Road,  
Guindy, Chennai-600 032,  
Tamilnadu.

Copy to :

1. The Commissioner of Customs, Chennai VIII - Seaport Commissionerate, Custom House, 60, Rajaji Salai, Chennai-600001.
2. The Commissioner of Customs, Chennai-X, Appeals-II (Sea) Commissionerate, 60 Rajaji Salai, Custom House, Chennai-600 001.
3. The Additional Commissioner, Chennai VIII - Seaport Commissionerate, Custom House, 60, Rajaji Salai, Chennai-600001
4. Sr.P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare copy.