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SPEED POST



F.No. 373/410/DBK/14-RA

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue. 26/6/15

ORDER NO. 16/2015-Cus DATED 26.06.2015 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129 DD OF THE CUSTOM ACT, 1962.

Subject : Revision application filed under Section 129 DD of the Custom Act, 1962 against the Order-in-Appeal No.CMB-CEX-000-APP-114/2014 dated 5.08.2014 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore

Applicant : M/s Gartex Exports (India) Ltd.,
C/o Swamy Associates

Respondent : Commissioner of Customs, Central Excise & Service Tax, Coimbatore,

ORDER

This revision application is filed by M/s. Gartex Exports (India) Ltd., (herein after referred to as the applicant) against the Order-in-Appeal No. CMB-CEX-000-APP-114/2014 dated 5.08.2014 passed by the Commissioner of Customs, Central Excise & service Tax (Appeals), Coimbatore with respect to Order-in-Original passed by the Asst. Commissioner of Customs, Coimbatore.

2. Brief facts of the case are that the applicant was granted drawback for exports made by them. 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 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 of already sanctioned drawback.

3. Being aggrieved by the said Order-in-Original, 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 Central Government on the following grounds:

4.1 The impugned exparte Order passed by the lower Adjudicating Authority is in violation of principles of natural justice in as much as the applicant has not been served with the impugned Show Cause Notice and notice of personal hearing at all, especially when the impugned Order in Original has been served on them. On this ground alone, the impugned order merits to be set aside. The lower Appellate Authority has not considered this plea at all and has not recorded any finding in this regard.

4.2 They have realized the export proceeds within the time limit of 6 months but had only failed to submit proof of the same to the Customs Department which

is to be treated only as a procedural lapse on their part. The applicant had submitted the copies of the Bank Realization Certificate (herein after referred to as BRC) in support of realization of the export proceeds in respect of export consignments in question before the lower Appellate Authority. A perusal of said Bank Realization Certificates would show that value shown therein and the values shown in the export invoices and Shipping Bills are matching and therefore it would be clear that, export proceeds made by the applicant for the relevant period has been realized. Further, it is also relevant to note that the export proceeds have been realized within the time limit of 6 months prescribed by the RBI and the Bank Realization Certificates also obtained immediately thereafter.

4.3 In para No.4 and 5 of the Order in Appeal, the Commissioner (Appeals) has observed that sub rule of Rule 16A of the Drawback Rules, 1995 states that where the sale proceeds are realized by the exporter after the amount of drawback has been recovered from the exporter and exporter produces the evidence about such realization within one year from the date of such recovery of the amount of drawback, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs to the claimant. Further he had observed that appellants had not submitted the Bank Realization Certificate on time and failure of production of the Bank Realization Certificate to the Department in time would lead to the recovery of sanctioned drawback. The appellants had exported the goods from February 2007 to September 2007 and they should have submitted the Bank Realization Certificates within one year which they failed to do.

4.4 In terms of Rule 16A (4) of the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, even if the drawback has been recovered for non realization of export proceeds, and if the export proceeds are realized subsequently, then the drawback recovered is required to be repaid to the exporter. In the instant case, the applicant had already realized the export proceeds within the stipulated time limit but had only failed to submit proof of the same to the Customs Department. The applicants pleaded that the procedural lapse on their part may please be condoned and the demands confirmed in the

impugned Orders may be set aside.

5. Personal hearing was scheduled in this case on 24.03.2015/ 16.04.15 Personal hearing was attended by Shri M.Kartikeyan, Advocate on behalf of the applicant, who reiterated the grounds of revision application.

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

7. Government observes that the applicant was initially granted drawback for exports made by them. 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 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) of Customs, Central Excise Duties and Service Tax Drawback Rules 1995. Commissioner (Appeals) upheld impugned Order-in-Original. Now, the applicants have filed this Revision Application on ground mentioned in para (4) above.

8. Government observes that the provisions of recovery of already sanctioned drawback have been prescribed under Section 75 of the Customs Act, 1962 and Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The relevant provisions are reproduced as under:

"SECTION 75. Drawback on imported materials used in the manufacture of goods which are exported. - (1) Where it appears to the Central Government that in respect of goods of any class or description manufactured, processed or on which any operation has been carried out in India , being goods which have been entered for export and in respect of which an order permitting the clearance and loading thereof for exportation has been made under section 51 by the proper officer, or being

goods entered for export by post under section 82 and in respect of which an order permitting clearance for exportation has been made by the proper officer, a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the manufacture or processing of such goods or carrying out any operation on such goods, the Central Government may, by notification in the Official Gazette, direct that drawback shall be allowed in respect of such goods in accordance with, and subject to, the rules made under sub-section (2).

Provided that no drawback shall be allowed under this sub-section in respect of any of the aforesaid goods which the Central Government may, by rules made under sub-section (2), specify, if the export value of such goods or class of goods is less than the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf :

Provided further that where any drawback has been allowed on any goods under this sub-section and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), such drawback shall except under such circumstances or such conditions as the Central Government may, by rule, specify be deemed never to have been allowed and the Central Government may, by rules made under sub-section (2), specify the procedure for the recovery or adjustment of the amount of such drawback.

Rule 16A. Recovery of amount of Drawback where export proceeds not realised. –

*(1) Where an amount of drawback has been paid to an exporter or a person authorised by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under **the Foreign Exchange Management Act, 1999 (42 of 1999)**, including any extension of such period, such drawback shall be recovered in the manner specified below.*



Provided that the time-limit referred to in this sub-rule shall not be applicable to the goods exported from the Domestic Tariff Area to a special economic zone.

(2) If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be or Deputy Commissioner of Customs shall cause notice to be issued to the exporter for production of evidence of realisation of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be or Deputy Commissioner of Customs shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within) thirty days of the receipt of the said order:

(In rule 16A, in sub-rule (2) has been substituted vide Notification No. 10/2006 - Customs (N.T.) dated 15/02/2006)

Provided that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds.

(3) Where the exporter fails to repay the amount under sub-rule (2) within said period of thirty days referred to in sub-rule (2), it shall be recovered in the manner laid down in rule 16.

(4) Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or sub-rule (3) and the exporter produces evidence about such realisation within one year from the date of such recovery of the amount of drawback, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs or Deputy Commissioner of Customs to the claimant.

8.1 The above provisions provide for recovery of drawback where the export proceeds are not realized within the period allowed under Foreign Exchange Management Act, 1999 including any extension of such period granted by the Reserve Bank of India. In the impugned case, the applicant has claimed that sale proceeds were received by them within the stipulated period and that they have submitted the evidence of foreign currency payments received against the exports in the form of copies of Bank Realization Certificate before the Commissioner (Appeals) and the Revisionary Authority. Under such circumstances, Government

finds that the Bank Realization Certificates are required to be verified to determine its authenticity, validity etc. and as to whether the export proceeds were received within the stipulated period as claimed by the applicant. As such, the case is required to be remanded for fresh consideration. It was the responsibility of the applicant to submit evidence of receipt of sale proceeds immediately upon receipt which they admittedly failed to do instead of waiting for the recovery proceedings to be initiated. However, in the interest of justice, the applicant will submit these Bank Realization Certificates within 4 weeks of the receipt of this Order before the Original Adjudicating Authority for consideration in accordance with provisions of law and passing suitable orders.

9. Government, therefore, sets aside impugned Orders and remands the case back to Original Adjudicating Authority for fresh consideration in the light of above observation. Reasonable opportunity of hearing is to be afforded to the concerned.

10. The Revision Application is disposed of in above terms.

11. So, ordered.




(RIMJHIM PRASAD)

Joint Secretary to the Government of India

M/s Gartex Exports (India) Ltd.
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Attested

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(सहायक सचिव/Assistant Secretary)
सहसंचालक (अनुसंधान एवं प्रशासन) / Joint Director (Research & Administration)
C B E C - 40 S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev)
भारत सरकार/Govt of India
नई दिल्ली / New Delhi

GOI ORDER NO. 16/2015-Cus DATED 26.06.2015

Copy to:

1. The Commissioner of Customs, Central Excise & Service Tax, Coimbatore.
2. The Commissioner of Customs, Central Excise & Service Tax (Appeals), 6/7 A.T.D. Street, Race Course Road, Coimbatore-641018
3. The Deputy Commissioner of Customs, Inland Container Depot, Rakkiapalayam, Coimbatore-641014
4. Swamy Associates, New No. 18, Rama Flats, Ashoka Avenue, Director's Colony, Kodambakkam, Chennai-600024
- ✓ 5. Guard File.
6. PA to JS (RA)
7. Spare Copy

ATTESTED



(B.P. Sharma)
OSD (Revision Application)