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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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No. 373/261/DBK/2014-RA/3610

Date of Issue: 12.07.2021

ORDER NO. 162/2021-CUS (SZ)/ASRA/MUMBAI DATED 09.07.2021
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-
026-14 dated 24.03.2014 passed by the Commissioner of
Customs, Central Excise & Service Tax (Appeals), Coimbatore.

Applicant : Shri K.B. Padmanabhan, Proprietor of M/s KBN Impex,
Coimbatore

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

ORDER

This Revision Application is filed by Shri K.B. Padmanabhan, Proprietor of M/s KBN Impex, 71, Narayana Guru Goad, Saibaba Colony, Coimbatore 641 011 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CMB-CEX-000-APP-026-14 dated 24.03.2014 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore.

2. Brief facts of the case are that the Applicant was granted Rs. 51,045/- (Rupees Fifty One Thousand and Forty Five 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 Air Cargo, Coimbatore. 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 dated 30.12.2006 was issued to the Applicant calling upon to show cause as to why the drawback amount of Rs. 51,045/- 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	VIII/23/358/2006 ACC dated 30.12.2006	4921 dt 17.12.05	626
		629 dt 15.02.05	1,806
		898 dt 01.03.05	12,180
		1757 dt 28.04.05	6,930
		4339 dt 03.11.05	23,113
		4624 dt 24.11.05	647
		4999 dt 23.12.05	4,399

		5041 dt 30.12.05	1,344
		Total	51,045

After due process of law, the adjudicating authority Assistant Commissioner of Customs, Air Cargo, Coimbatore vide Order-in-Original No. 324/2013-Customs (BRC) dated 24.12.2013 confirmed the demand of Rs. 51,045/- along with appropriate interest under Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Section 75A(2) of the Customs Act, 1962. Further a penalty of Rs. 10,000/- 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-026-14 dated 24.03.2014 rejected their appeal on merit as well as on limitation as time barred and upheld the Order-in-Original dated 24.12.2013.

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

- (i) The impugned Order-in-Appeal had been passed without appreciating the factual position in the proper perspective and the same is liable to be set aside on this ground alone.
- (ii) None of the 08 shipping Bills mentioned in the Order-in-Original dated 24.12.2013 was related to the Applicant or his company/s KBN Impex nor have the Applicant made any exports through the said 08 Shipping Bills.
- (iii) They have not received Rs. 51,045 as DBK and this can be easily cross checked by verifying the cheque payment and realization details.
- (iv) The Applicant was not served with the Show Cause Notice from C.No. VIII/23/358/2006 ACC(BRC). Hence the principles of natural justice was not followed in this case.

- (v) It is clear from the findings of the Commissioner(Appeals) at Para 5 of the Order-in-Appeal that the factual position of whether the goods mentioned in the Order-in-Original was export by the applicant or not was not verified by the Commissioner(Appeals). If the Air Cargo Complex department did not reply to the letter addressed by the Commissioner(Appeals), then how the Applicant was expected to prove that the Applicant had exported and received drawback for the same. It is for the Department to adduce evidence to prove the same. The Applicant do not know what evidence should they give to prove that they had not exported vide the impugned shipping bills and not received the drawback.
- (vi) When they 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. The fact that they had not received the drawback can be easily verified by the Revisionary Authority by calling for the cheque details of the impugned shipping bills.
- (vii) Since the said exports vide the impugned shipping bills were not at all made by the Applicant company and no money had been received by them, hence the Order-in-Appeal is liable to be set aside.
- (viii) The Applicant prayed that
- (a) the impugned Order-in-Appeal be set aside and their application be allowed with full relief;
 - (b) Set aside the demand for recovery of Rs. 51,045 under Rule 16A of Drawback Rules, 1995 read with Section 75(2) of the Customs Act, 1962 and set aside the penalty of Rs. 10,000/- imposed under Section 117 of Customs Act, 1962.

4. The Assistant Commissioner of Customs, Air Cargo Complex, Coimbatore Airport, Coimbatore vide C.No. VIII/23/358/2006 ACC (BRC) dated 04.09.2015 submitted the following:

- (i) On verification of the records, it is seen that the Shipping Bills mentioned in the Order-in-Original No. 324/2013 Customs (BRC) dated 24.12.2013 do not pertain to Applicant. The exports were made during 2005, ten years back, the original shipping bills filled with drawback claims could not be traced even thorough searches were made to trace the same.
- (ii) The shipping bills mentioned in the above Order-in-Original, pertain to M/s KG Denim Ltd. Coimbatore, and they do not relate to the Applicant. It is seen from the drawback cheque Disbursement Register, the shipping bills are pertaining to M/s KG Denim Ltd., Coimbatore only and not to the Applicant.
- (iii) The Order-in-Original 324/2013 Customs (BRC) dated 24.12.2013 issued to the Applicant mentioning the 08 Shipping Bills are not pertaining to the Applicant.
- (iv) In the Drawback Disbursement Register, the drawback of Rs, 51,045/- was granted to M/s KG Denim Ltd., Coimbatore only.
- (v) The principles of natural justice is followed by way of issuing Show Cause Notice vide C.No.VIII/23/358/2006 ACC-BRC dated 30.12.2006 and granting personal hearing on 18.11.2013, 20.11.2013 and 23.11.2013 vide the office letter of even No. dated 31.10.2013.
- (vi) In view of the facts, the grounds of Appeal filed by the Applicant may be accepted. The shipping Bills mentioned in the Order-in-Original does not pertain to the Applicant.

4. Personal hearing in the case was fixed on 23.03.2015 and 13.04.2015. The Applicant vide letter dated 20.03.2015 (received on 24.03.2015) submitted that since he is suffering from cardio problem for last 06 years and only because of that we could not continue his export business. Now his health condition does not permit him to travel and not in a position to attend the personal hearing. Hence his submission may be

taken on records. In view of a change in the Revisionary Authority, the final hearing in the matter was granted on 16.01.2020, 22.01.2020, 25.02.2020 09.02.2021, 23.02.2021, 18.03.2021 and 25.03.2021. However, none appeared for the hearing. Hence the case is taken up for decision based on records on merits.

5. 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.

6. On perusal of the records, Government observes that the Applicant was issued a Show Cause Notice dated 30.12.2006 calling upon to show cause as to why the drawback amount of Rs. 51,045/- already paid to them should not be recovered from them. After due process of law, the adjudicating authority Assistant Commissioner of Customs, Air Cargo, Coimbatore vide Order-in-Original No. 324/2013-Customs (BRC) dated 24.12.2013 confirmed the demand of Rs. 51,045/- along with appropriate interest under Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Section 75A(2) of the Customs Act, 1962. Further a penalty of Rs. 10,000/- 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-026-14 dated 24.03.2014 rejected their appeal on merit as well as on limitation as time barred and upheld the Order-in-Original dated 24.12.2013.

7. Government observes that the Applicant has submitted that they were not served with the Show Cause Notice dated 30.12.2006 and had not exported the goods nor availed drawback with respect to which demand of recovery has been confirmed.

8. Government observes that the Assistant Commissioner of Customs, Air Cargo Complex, Coimbatore Airport, Coimbatore vide C.No. VIII/23/358/2006 ACC (BRC) dated 04.09.2015 has submitted that

"On verification of the records, it is seen that the Shipping Bills mentioned in the OIO No. 324/2013 Customs (BRC) dated 24.12.2013, do not pertain to M/s K.B.N. Impex, Coimbatore. The exports were made during 2005, ten years back, the original shipping bills filled with drawback claims could not be traced even thorough searches were made to trace the same.

The Shipping bills mentioned in the above O-I-O, pertain to M/s KG Denim Ltd. Coimbatore, and they do not relate to M/s K.B.N. Impex, Coimbatore. It is seen from the drawback cheque Disbursement Register (enclosed for reference) the shipping Bills are pertaining to M/s KG Denim Ltd., Coimbatore only and not to M/s K.B.N. Impex, Coimbatore.

(b) The Order-in-Original issued to M/s K.B.N. Impex, Cbe, mentioning the 08 Shipping Bills in the Order-in-Original No. 324/2013 Customs (BRC) dated 24.12.2013 are not pertaining to M/s K.B.N. Impex .

(c) In the Drawback Disbursement Register, the Drawback of Rs, 51,045/- was granted to M/s K.G Denim Ltd., Coimbatore only.

(d)

In view of the facts, the grounds of Appeal filed by the Applicant may be accepted. The shipping Bills mentioned in the POI does not pertain to M/s K.B.N. Impex. Coimbatore."

9. In view of the aforesaid clarification received from the Assistant Commissioner of Customs, Air Cargo Complex, Coimbatore Airport, the recovery of drawback amount of Rs. 51,045/- from the applicant is unjustified/illegal and therefore, the Order-in-Original No. 324/2013-Customs (BRC) dated 24.12.2013 as well as impugned Order-in-Appeal No. CMB-CEX-000-APP-026-14 dated 24.03.2014 are required to be set aside forthwith.

11. In view of the above, Government set asides the impugned Order-in-Appeal No. CMB-CEX-000-APP-026-14 dated 24.03.2014 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore.

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

SHRAWAN
9/7/21
(SHRAWAN KUMAR)

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

ORDER No. 162/2021-CUS (SZ)/ASRA/Mumbai Dated 09.07.2021

To,
Shri K.B. Padmanabhan,
Proprietor of M/s KBN Impex,
71, Narayana Guru Goad,
Saibaba Colony,
Coimbatore 641 011.

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.