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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No.373/418/DBK/14-RA Date of Issue / 5842 09.10.2020
2020

ORDER NO. 179/2020-CUS (SZ)/ASRA/MUMBAI/ DATED 02.09.2020
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.

Applicant: M/s Idumban Knitters,
S.F.No.440-443, State Bank of India Colony,
Gandhi Nagar (PO), Tirupur- 641 603.

Respondent : The Commissioner of Customs, Coimbatore.

Subject : Revision Application filed, under Section 129DD of
the Customs Act, 1962 against the Order-in-
Appeal No.CMB-CEX-000-APP-151/14 dated
17.09.2014 passed by the Commissioner of
Customs (Appeals), Coimbatore.

ORDER

The Revision Application is filed by M/s Idumban Knitters, Tirupur (herein after referred to as 'the applicant) against the Order in Appeal No.CMB-CEX-000-APP-151-14 dated 17.09.2014 passed by the Commissioner of Customs (Appeals), Coimbatore.

2. Brief facts of the case are that the applicant had exported the goods under the 21 shipping bills and received the drawback of Rs. 18,86,989/- (Rupees Eighteen Lakh Eighty Six Thousand Nine Hundred Eighty Nine Only) during the period from February 2005 to October 2005. The applicant did not furnish the BRCs for realisation of export proceeds in respect of export of goods within the period allowed under the Foreign Exchange Management Act, 1999 including any extension of such period granted by the Reserve Bank of India. The adjudicating authority vide Order in Original No. 62-64/2014-Customs (BRC)dated 20.01.2014 directed the applicant to pay a sum of Rs. 18,86,989/- together with interest at the prescribed rate.

3. Aggrieved by the said order, the Applicant filed appeal before Commissioner (Appeal) on the following grounds :-

3.1 The applicant had received only one show cause notice and other two show cause notices were not received by them.

3.2 They had submitted 14 out of 21 BRCs prior to the dates on which the show cause notices were issued.

4. The Appellate Authority vide impugned order in appeal rejected the appeal and upheld the Order in Original. The Appellate Authority while passing the impugned Order in Appeal observed that :-

4.1 The applicant had not submitted the BRC on time.

4.2 The provision under Rule 16(A)(5) of Drawback Rules (inserted w.e.f. 11.04.2011) is not applicable to the applicant as no evidence as prescribed therein was produced by the applicant.

5. The applicant contested the impugned Order in Appeal passed by the Appellate Authority in the instant Revision Application on following grounds :-

5.1 They have realised the export proceeds covered under the subject shipping bills within the time limit stipulated under the FEMA, Act, 1999 and Regulations made thereunder.

5.2 As per the provisions under Section 75 of the Customs Act, 1962 read with Rule 16(2) of the Drawback Rules, 1995, the recovery of drawback could be done only when the export proceeds are not received within the time limit prescribed and not for mere non-furnishing the proof of realisation of export proceeds.

5.3 While the applicant were served with only one Show Cause Notice viz. C. No. VIII/48/05/2005/ICD/TPR dated 06.02.2006, for a demand of drawback amounting to Rs.4,97,684/-, the Order-in-Original demands a sum of Rs.18,86,989/- which includes two show cause notices viz. C. No. VIII/48/05/2005/ICD/TPR dated 13.01.2006 for Rs. 9,55,707/- and C. No. VIII / 48 / 05 / 2005 / ICD /TPR dated 13.06.2006 for Rs. 4,33,598/- which were never served upon them.

5.4 The applicant had furnished 14 out of 21 BRCS, prior to date of issuance of Show Cause Notices, which were duly acknowledged by the Customs Officers. Hence issuance of SCNs in respect of these shipping bills was unwarranted.

5.5 They had received export proceeds in respect of all 21 shipping bills well within time limit and had enclosed the same with memorandum of appeal submitted before the Appellate Authority.

5.6 Catena of decisions were rendered by Hon'ble Tribunals and Government of India wherein it has been held that procedural infringements / violations shall not come in the way of substantial benefits available to the assessee.

6. Personal Hearing was granted on 28.05.2018, 05.12.2019 and 12.12.2019. Shri M. Rajendran, Manager of the applicant company attended the personal hearing held on 12.12.2019. He submitted that the BRCs have been received and the delay was inadvertent. He also reiterated the grounds of Revision Application. No one attended the personal hearing on behalf of the department.

7. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the grounds of filing the revision application.

8. The Government notes that it is a statutory requirement under Section 75 (1) of Customs Act, 1962 & Rule 16A(1) of Customs, Central Excise & Service Tax Drawback Rules, 1995, read with Section 8 of FEMA 1999 read with regulations 9 of Foreign Exchange Management (Export of goods & services Regulations 2000 & para 2.41 of EXIM Policy 2005-2009 that **export proceeds need to be realised within the time limit** provided there under viz within six months in this case subject to any extension allowed by RBI.

9. In the instant case, the Government finds that the applicant had exported goods vide 21 shipping bills and claimed to have submitted the copies of Bank Realisation Certificates to the Jurisdictional Customs Office vide their letters dated 02.01.2006, 24.05.2006 and 29.03.2006 in respect of 14 out of these 21 shipping bills which were duly acknowledged by the Customs Officers i.e. prior to issuance of show cause notices for the same. The applicant had submitted the Bank Realisation Certificates in respect of 14 shipping bills vide their letter 14.05.2010 duly acknowledged by the department on 28.05.2010. The

allusion of submission of these BRCs is also found in the impugned Order in Appeal. In view of the compliance made by the applicant by submission of these BRCs, the Government holds that the show cause notices for recovery of drawback sanctioned for these 14 shipping bills were not warranted in the instant case.

10. Further, on perusal of Form No. C.A-1 i.e. Form of Appeal to the Commissioner (Appeals) under Section 128 of the Customs Act, 1962 filed by the applicant, it is observed that the applicant had affirmed that the export proceeds in respect of all 21 shipping bills had been realised within the time limit prescribed under the Foreign Exchange Management Act, 1999 and had enclosed copies of the same with the memorandum of appeal. However, the appellate authority did not take note of realisation of export proceeds under 21 shipping bills in question and submission of same with appeal memorandum in the impugned Order in Appeal. It is observed that the appellate authority decided the case on the only ground that the applicant failed to submit the impugned BRCs within time limit to the appropriate authority. Since the curative action on the part of applicant was not taken note of by the appellate authority at the time of passing order in appeal, Government feels that the same is not just and proper.

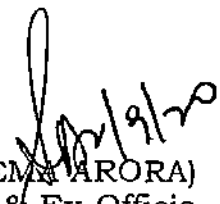
11. In view of the above discussion, the Government holds that the provisions as briefed in para 8 above are prescribed for recovery of drawback where the export proceeds are not realised within the period allowed under Foreign Exchange Management Act, 1999 including any extension of such period granted by the Reserve Bank of India. In the instant case, the applicant have claimed that export proceeds had been realised within stipulated period and they have submitted the copies of Bank Realisation Certificates (BRCs) to the department as discussed above.

12. The Government finds that the applicant have enclosed the copies of the 21 BRCs in respect of impugned shipping bills along with the instant Revision Application. At this instant, Government observes that the copies of the BRCs submitted by the applicant are not self-attested. Under such circumstances, it is opined that the BRCs are required to be verified to determine its authenticity, validity and as to whether the export proceeds were received within stipulated period including any extensions granted by RBI to the applicant. As such, the case needs to be remanded for fresh consideration. Therefore, the applicant are directed to submit the relevant BRCs in original to enable verification of the same within 4 weeks of the receipt of this Order before the Original Authority for consideration in accordance with provisions of law and passing orders.

13. In view of above discussion, Government sets aside impugned order and remands the case back to the original authority for fresh consideration in the light of above observations after giving reasonable opportunity of hearing being offered to the applicant. The applicant is also directed to furnish the original BRCs for verification.

14. Revision Application is disposed off in above terms.

15. So ordered.


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

ORDER No. 179/2020-CUS (SZ) /ASRA/

DATED 02.09.2020

To,
M/s Idumban Knitters,
S.F.No.440-443, State Bank of India Colony,
Gandhi Nagar (PO), Tirupur- 641 603

Copy to:

1. The Commissioner Of Customs, No.1, Williams Road, Cantonment, Tiruchirapalli- 620 001.
2. The Commissioner of Customs, Central Excise & Service Tax (Appeals), 6/7, A.T.D., Race Course Road, Coimbatore- 641 018.
3. The Assistant Commissioner of Customs, CFS, s.f. No. 129, Poondi Ring Road, Chettipalayam, Tirupur- 641 652, Tamil Nadu.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.