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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.371/89-A/DBK/13-RA /2663 Date of Issue: 27.06.2022

ORDER NO. 186./2022-CUS (WZ)/ASRA/MUMBAI DATED 22.6.2022 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.

Applicant : M/s. Best Corporation Limited

Respondent : Commissioner of Customs, Export, Mumbai

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-AXP-APP-46&47-13-14 dated 06.06.2013 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This Revision Application is filed by M/s. Best Corporation Limited, 89/02, Best Industrial Estate, Padmavathipuram, Avanashi Road, Tirupur – 641 603, (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. MUM-CUSTM-AXP-APP-46&47-13-14 dated 06.06.2013 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Brief facts of the case are that the Applicant had obtained a drawback amounting to Rs.6,30,730/- in respect of an export done by them. As the applicant failed to produce evidence for realization of export proceeds in respect of the concerned export, a show cause notice was issued on 10.05.2010 and after due process of law the adjudicating authority, Assistant Commissioner of Customs, BRC Cell, Coimbatore, ordered recovery of demand amount of Rs.6,30,730/- alongwith appropriate interest under Section 75A(2) of the Customs Act,1962 vide Order-in-Original No. AC/MM/2505/2012/ADJ/ ACC dated 31.08.2012. Aggrieved, the Applicant filed an appeal. However, the Commissioner (Appeals) vide Order-in-Appeal No. MUM-CUSTM-AXP-APP-46&47-13-14 dated 06.06.2013 rejected the appeal.

3. Hence the Applicant has filed the impugned Revision Application mainly on the following grounds:

i. The Commissioner (Appeals) has not appreciated that the Applicant never received any SCN issued for the recovery of the sanctioned drawback amount. In spite of repeated requests for the copy of SCN, the adjudicating authority did not supply the SCN to the Applicant. The Commissioner (Appeals) has not inquired into the basic fact of service of the show cause notice to Applicant as contemplated under section 153 of the Customs Act, 1962. She has merely relied upon the observation of the adjudicating authority that the SCN was sent to the exporter, without verifying if it was duly served on the Applicant.

ii. In spite of the communication at the time of each of the two opportunities, the Assistant Commissioner has observed in the impugned order that the Applicant did not appear for personal hearing on 02.01.2012 and 15.05.2012. However, he has not taken note of the fax, documents sent through speed post, registered post on both the occasions.

iii. The Assistant Commissioner / Commissioner (Appeals) have ignored the available documents filed by the Applicant before them, viz. copies of the Bank Realisation Statement and Chartered Accountant's Certificates (Half Yearly Negative Statements). Apparently the confirmed demand is related with the following shipping bills:

	SB No.	SB Date	FOB Value (USD	FOB Value Realised (Rs.)	DBK Amount (Rs.)	Date of Realisation of Export Proceeds
(1)	6359740	14.05.2007	23804.76	9,75,995/-	98,671/-	12.06.2007
(2)	6359741	14.05.2007	38507.70	15,78,816/-	3,72,444/-	12.06.2007
(3)	6359742	14.05.2007	89853.75	36,84,004/-	1,59,615/-	12.06.2007
				Total DBK (Rs.)	6,30,730/-	

iv. Commissioner (Appeals) has not disputed the proof of export realization placed before her. However, she has brushed away the evidence and Applicant's submissions by quoting Sub-Rule (1) of Rule 5 of Customs (Appeals) Rules, 1982.

v. The Commissioner (Appeals) has refused to take note of the proof of export realization within the period stipulated under FEMA on the grounds that the Applicant was not faced with any exceptional circumstances preventing them from producing the proof of realization before the adjudicating authority. However, she has not appreciated that the proof of realization could not be produced by the Applicant before the adjudicating authority as they did not get a copy of the SCN in spite of the repeated requests and also did not get

sufficient opportunity to present their case in personal hearing. In the circumstances, the Commissioner (Appeals) should have appreciated that the case is squarely covered under the exceptions given in the Rule cited supra and should have given justice which the Applicant deserves.

vi. Interest is corollary with the principal and when the demand for sanctioned drawback is not sustainable, the demand for interest would not survive.

In the light of the above submissions, the applicant prayed to set aside the impugned order with consequential relief.

4. Personal hearing in the case was fixed for 09.02.2022. Shri Prashant Patankar, Advocate attended the online hearing on behalf of the Applicant and reiterated the earlier submissions. He submitted that the only ground for confirming demand is non-realisation of export proceeds. He further submitted that BRC's and negative statements have been submitted alongwith Revision Application. He requested to drop the proceedings.

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. Government observes from the impugned Order-in-Original that the rebate claim was rejected on the following ground:

The exporter failed to produce evidence to show that the sale proceeds [foreign exchange] in respect of the goods exported under the said Shipping Bills attached to the notice have been realized. Therefore, as per Rule 16[A] Sub-Rule [1] & [2] of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Section 75A [2] & Section 28A of Customs Act, 1962, the Exporter has to return the said drawback amount of Rs.6,30,730/- along with interest payable.

7. Government observes from the Bank Certificate of Export and Realisation submitted by the applicant that it is issued by Citi Bank N.A., Coimbatore and the sale proceeds in respect of Shipping Bills mentioned in the submissions of the Applicant, have been received within the stipulated time as can be seen from the following table:-

S. No.	Shipping Bill Number	Shipping Bill Date	Bill Amount (USD)	Amount realized (Rs.)	Date of Realization
1.	6359740	14.05.2007	23804.76	9,75,995/-	12.06.2007
2.	6359742	14.05.2007	38507.70	15,78,816/-	12.06.2007
3.	6359741	14.05.2007	89853.75	36,84,004/-	12.06.2007

8. On examination of Rule 16A of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995, the Government finds that during the material period viz. May'07, the period allowed under Foreign Exchange Management Act, 1999 for realization of sale proceeds in respect of goods exported was six months. Therefore, drawback amount was recoverable only if the sale proceeds for export of the goods had not been realized within six months from the date of export of the goods. But in the instant matter, it is evident that sale proceeds against the impugned shipping bills have been realized within the stipulated period.

9. In view of the above discussion and findings, the Government sets aside Order-in-Appeal No. MUM-CUSTM-AXP-APP-46&47-13-14 dated 06.06.2013 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

10. The Revision Application is disposed of on the above terms.

Shrawan 22/6/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 186/2022-CUS (WZ)/ASRA/Mumbai dated 22.6.2022

To,
M/s. Best Corporation Limited,
89/02, Best Industrial Estate,
Padmavathipuram, Avanashi Road,
Tirupur – 641 603.

Copy to:

1. Commissioner of Customs,
   Air Cargo Complex, Sahar,
   Andheri (East), Mumbai – 400 099.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.