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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.373/431/DBK/2014-RA /5948

Date of Issue: 16.10.2020

ORDER NO. 20\ /2020-CUS (WZ)/ASRA/MUMBAI DATED 15.09.2020 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 Subhalakshmi Export Corporation, Tirupur

Respondent : Commissioner of Customs (Appeals), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CMB-CEX-000-AAP-181-14 dated 16.10.2014 passed by the Commissioner of Customs (Appeals-I), Coimbatore.

## ORDER

This Revision Application is filed by the M/s Subhalakshmi Export Corporation, 13, SBI Colony, Kongunagar Extension, Tirupur-648 607 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CMB-CFX-000-AAP-181-14 dated 16.10.2014 passed by the Commissioner of Customs (Appeals-I), Customs, Central Excise & Service Tax, Coimbatore.

2. The issue in brief is that the Applicant, exporter, having IEC No. 3203001381 had obtained a drawback amount of Rs. 5,71,288/- (Rupees Five Lakhs Seventy One Thousand Two Hundred and Eighty Eight Only) as duty drawback under Section 75 of the Customs Act, 1962 read with Rule 3 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 for the export made under the following shipping bills :

Sl.No.	S/B No. & date	DBK Amt sanctioned (Rs)	Due date for the receipt of BRC	Date of receipt of BRC/negative STT
1	4804 dt 16.02.2004	33,675	15.08.2004	Not submitted
2	9258 dt 12.04.2004	37,792	11.10.2004	Not submitted
3	11147 dt 18.06.2005	22,722	17.12.2004	Not submitted
4	11147 dt 18.06.2005	30,032	17.12.2004	Not submitted
5	11181 dt 14.05.2004	29,403	13.11.2004	Not submitted
6	12512 dt 31.05.2004	20,332	30.11.2004	Not submitted
7	12513 dt 31.05.2004	21,579	30.11.2004	Not submitted
8	13361 dt 11.06.2004	1,75,700	10.12.2004	Not submitted
9	16823 dt 26.07.2004	78,427	25.01.2005	Not submitted
10	18152 dt 19.08.2004	33,372	18.02.2005	Not submitted
11	19895 dt 27.09.2004	74,254	26.03.2005	Not submitted
	Total	5,57,288		

The Applicant had not furnished the proof of realization of foreign exchange for the goods exported under the said Shipping Bills, hence, the Applicant was issued Show Cause Notice dated 25.08.2006 under Rule 16(A) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 for recovery of drawback amount Rs. 5,57,288/- paid to them under 11 Shipping Bills. The Assistant

Commissioner of Customs, Inland Container Depot, Tirupur vide Order-in-Original No. 889/2014(BRC) dated 26.06.2014 confirmed the Demand of Rs. 5,57,288/- and ordered the Applicant to return the drawback amount of Rs. 5,57,288/- along with interest applicable. Further a penalty of Rs. 5,500/- was imposed on the Applicant under Section 117 of Customs Act, 1962. Aggrieved, the Applicant filed appeal with the Commissioner of Customs (Appeals-I), Customs, Central Excise & Service Tax, Coimbatore, who vide Order-in-Appeal No. Order-in-Appeal No. CMB-CEX-000-AAP-181-14 dated 16.10.2014 rejected their appeal and upheld the Order-in-Original dated 26.06.2014 .

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

- (i) The export proceeds related to the shipping bills for which the Order-in-Original was issued had been fully realized by the Applicant and had already submitted the Bank Realization Certificates to the original authority and also to the Joint Director General of Foreign Trade, Coimbatore within the stipulated time and the details are tabulated below:

Sl. No.	S/B No. & date	Bill of lading No. & date	DBK Amt sanctioned (Rs)	Date of Realization of export proceeds	Bank letter date
1	4804 dt 16.02.2004	16.02.2004	33,675	03.03.2004	19.02.2004
2	9258 dt 12.04.2004	14.04.2004	37,792	29.04.2004	19.04.2004
3	11147 dt 18.06.2005	21.06.2005	22,722	07.07.2005	23.06.2005
4	11147 dt 18.06.2005	21.06.2005	30,032	07.07.2005	23.06.2005
5	11181 dt 14.05.2004	17.05.2004	29,403	09.06.2004	21.05.2004
6	12512 dt 31.05.2004	07.06.2004	20,332	28.06.2004	11.06.2004
7	12513 dt 31.05.2004	07.06.2004	21,579	28.06.2004	11.06.2004
8	13361 dt 11.06.2004	14.06.2004	1,75,700	09.07.2004	17.06.2004
9	16823 dt	28.07.2004	78,427	17.08.2004	30.07.2004

	26.07.2004				
10	18152 dt 19.08.2004	22.08.2004	33,372	07.09.2004	25.08.2004
11	19895 dt 27.09.2004	27.09.2004	74,254	14.10.2004	04.10.2004
	Total		5,57,288		

- (ii) The Applicant submitted that for 2004-05 matter, the show cause notice was sent after 10 years i.e. 2014 and the Applicant had not received any show cause notice nor any Personal hearing letter from the original authority and hence they could not submit the copies of the relevant BRCs and close the issue.
- (iii) The Applicant had not been in knowledge of the public notice through any of the sources such as TEA Association or the CHA who visited the Customs regularly then on their behalf.
- (iv) The Applicant had made their appeal before the Commissioner(Appeals-I), Coimbatore who had not considered the BRCs submitted by them.

4. A personal hearing in the case was held on 14.01.2020 which was attended by Shri K Ananthanarayanan, Authorized Representative on behalf of the Applicant and reiterated the written submissions filed with Revision Application. The BRC was submitted and export money had been realized.

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. 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.

7. 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 199 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.

8. In the instant case, the Government finds that the applicant had exported goods vide Shipping Bills having LEO dated from 14.04.2004 to 27.09.2004 and claimed to have realised the export proceeds through "Bank Certificate of Export and Realisation" issued by the Dhanalakshmi Bank Ltd, Tirupur. The Applicant contended that they had submitted the BRCs to the original authority and also to the Joint Director General of Foreign Trade, Coimbatore. Also, due to non receipt of the show cause notice and personal hearing letter, they could not prove the fact of realisation of export proceeds to the department in their proceedings. Further, The Applicant said to have produced the BRC certificates as proof of realisations to the Appellate Authority.

9. The Government observes that appellate authority decided the case only on the ground that applicant failed to submit impugned BRC within time limit to the appropriate authority. However, the impugned Order in Appeal was passed without any discussion / findings with regard to the contention of applicant about non receipt of the impugned show cause notice as well as personal hearing letter issued thereof. In the absence of discussion on issue pertaining to adherence of principles of natural justice by original authority, the Government opines that the impugned order in appeal cannot be attributed as just and proper.

10. Further, the Government holds that the provisions as briefed in para 7 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 the same appears to be in order as per the self attested copy of BRC enclosed by them with the instant revision application and hence the demand for recovery of the drawback amount in the instant case is not warranted.

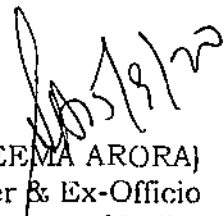
11. However, Government opines that the impugned BRC is required to be verified by the original authority to determine the authenticity and validity of the same. Hence, the case deserves to be remanded for fresh consideration.

12. The penalty in terms of Section 117 of Customs Act, 1962 will also be re-determined accordingly by the original authority, subject to outcome of the verification.

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. 201/2020-CUG(WZ)/ASRA/Mumbai DATED 15.09.2020.

To,  
M/s Subhalakshmi Export Corporation,  
13, SBI Colony, Kongunagar Extension,  
Tirupur-648 607

Copy to:

- 1) The Commissioner of Customs, No.6/7, A.T.D. Street, Race Course Road, Coimbatore-641 108.
- 2) The Assistant Commissioner of Customs, CGS, Inland Container Depot, Poondi ring Road, Chettipalayam, Tirupur-641652
- 3) Sr. P.S. to AS (RA), Mumbai
- 4) Guard file
- 5) Spare Copy.