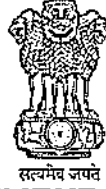


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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. 371/247/DBK/18-RA / 1003

Date of Issue: 13.02.2023

ORDER NO. 227/2023-CUS (WZ)/ASRA/MUMBAI DATED 10.02.2023
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. Ador Weilding Ltd.

Respondent: The Pr. Commissioner of Customs(E), ACC, Mumbai.

Subject : Revision Applications filed, under Section 129DD of the
Customs Act, 1962, against the Order-in-Appeal No. MUM-
CUSTM-AXP-167-8-19 dated 18.06.2018 passed by the
Commissioner of Customs(Appeals), Zone-III, Mumbai.

ORDER

This Revision Application has been filed by M/s. Ador Weilding Ltd. (hereinafter referred to as "the applicant"), against the Order-in-Appeal No. MUM-CUSTOM-AXP-167-8-19 dated 18.06.2018 passed by the Commissioner of Customs(Appeals), Zone-III, Mumbai.

2. Brief facts of the case are that the applicant filed a drawback claim of Rs. 894318/- under Section 74 of Customs Act, read with Re-export of imported goods (Drawback of Customs Duties), Rules, 1995 on 14.08.2015 vide drawback Shipping Bill No. 000768 dated 10.01.2014. The goods were re-exported on 15.01.2014 and the claim was filed after 16 months i.e. beyond the prescribed time limit of 3 months and the condonable period of further 9 months. Applicant claimed to have filed the drawback claim on 30.03.2014. The assistant Commissioner did not consider the claim dated 30.03.2014 solely on ground that such claim did not have any departmental acknowledgement. As such, the claim of drawback under Section 74 was rejected being time barred in terms of Rule 5(5) of the Re-export of imported goods (Drawback of Customs Duties), Rules, 1995. Being aggrieved by the aforesaid order-in-original the applicant filed appeal before Commissioner of Customs(Appeals), Zone-III, Mumbai, who vide Order-in-Appeal No. MUM-CUSTOM-AXP-167-8-19 dated 18.06.2018 rejected their appeal. Appellate Authority observed that there is nothing on record to suggest that the applicant made any communication to corroborate their submission that they had made drawback claim on 30th March.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application under Section 129 DD of the Customs Act, 1962 before the Government on the following grounds:

- i. duty Drawback claim was filed within the prescribed period of three months from the date of re-export.
- ii. Learned Assistant Commissioner did not consider the claim dated March 30, 2014 solely on the ground that such claim did not have any departmental acknowledgement even after acknowledging the

- presence of such claim dated March 30, 2014 in the letter dated September 15, 2015.
- iii. the Applicant's letter August 14, 2015 reclaiming such Duty Drawback as the Applicant was neither issued any deficiency memo nor the refund of Duty Drawback.
 - iv. while the Learned Assistant Commissioner acknowledge the presence of such claim dated March 30, 2014 in the letter dated September 15, 2015, no such deficiency memo was issued to the Applicant for a period of more than one year. Had there been a deficiency memo, the Applicant could have rectified such claim or filed fresh claim within the extendable period of nine months.
 - v. the Learned Commissioner Appeal uphold the Order-In- Original on the ground that Applicant could not produce any valid evidence (acknowledgement of the claim dated 30th March 2014) for their claim purportedly to have been submitted on 30th March 2014, more particularly set-out in Para 6 of the Order-In-Appeal.
 - vi. Revenue authority continued to take the same stand that they have never received their claim dated 30th March 2014 and without the acknowledged copy of the same, the Order-In-Original and the Order-In- Appeal rejected the Duty Drawback claim solely on the ground that such claim was never filed before the Revenue authority, hence barred by limitation.
 - vii. post dismissal of the Appeal, Applicant through their Advocate filed Application under RTI Act 2005 asking for the copy of the claim dated 30.3.2014 that was consistently denied to be in existence.
 - viii. the Learned CPIO, B. Loknath Reddy Dy. Commissioner Customs, RTI Cell (Export) Air Cargo Complex, Mumbai supplied the claim related documents through their letter issued from F.No S/RTI/18/EXP/2018/ACC dated 9.7.2018, that were available in the Duty Drawback Cell, where such claim was filed on 30.3.2014. The copy of such application and reply are annexed herewith marked as " Exhibit G".

- ix. It is respectfully submitted that in the absence of RTI Act 2005, it would not have been possible to demonstrate the existence of such claim dated 30th March 2014 that has been the sole ground of rejection of such genuine incentives by the Learned Adjudicating Authority and the Learned Commissioner Appeal.
 - x. the Duty claim under Section 74 of Customs Act 1962 read with Re-export of imported goods) Drawback of Customs Duties) Rules 1995 has been filed within the prescribed period of limitation and the learned Assistant Commissioner has not considered the material facts on record while rejecting the Duty Drawback claim that has been uphold by the Learned Commissioner Appeal.
 - xi. In view of above, Applicant requested to
 - i. To set aside the impugned Order-in-Appeal.
 - ii. Consider the duty drawback claim dated 30.03.2015 for the purpose of calculation of period of time limitation.
 - iii. To allow the duty drawback under Section 74 of the Customs Act, 1962.
4. Personal hearing in the case was held on 15.11.2022, the hearing was attended online by Shri Swapnendra Mishra, Advocate on behalf of the Applicant and submitted that their claim was not time barred and RTI reply dated 09.07.2018 has confirmed that applicant's drawback claim dated 30.03.2014 was in the records of the Department.
5. Government has carefully gone through the relevant case records available in case files, perused the impugned Order-in-Original, Order-in-Appeal. It is observed that the applicant is aggrieved by Order-in-Appeal No. MUM-CUSTM-AXP-167-8-19 dated 18.06.2018 wherein their appeal was rejected on ground of limitation of time and the Revision application is filed against the same. The issue to be decided in the instant case is whether the Applicant has filed the drawback claim within the time limitation period.
6. In the present case, Department has arrived at the conclusion that claims were hit by the limitation of time by considering 14.08.2015 as the date of filing of Drawback claim. While Applicant claimed to have filed the

claim on 30.03.2014. Department vide letter dated 15.09.2015 refuted this claim of the Applicant for the reason that it was not supported by the Departmental acknowledgement and denied the existence of claim dated 30.03.2014. Now, Applicant submitted that they had filed Application under RTI Act 2005 after dismissal of their Appeal, wherein they asked for the copy of the letter dated 30.03.2014. Applicant further submitted that Department vide letter F.No. S/RTI/18/EXP/2018/ACC dated 09.07.2018 provided a copy of above letters and therefore, contended to consider this date for the purpose of calculation of period of limitation. Government observes that issue in hand stems from the very fact of non existence of claim dated 30.03.2014 which Applicant averred otherwise by relying on the RTI reply issued vide F.No. S/RTI/18/EXP/2018/ACC dated 09.07.2018.

7. In view of above, Government finds that the issue needs to be re-examined by the Original authority to ascertain the date of filing of refund claims in light of the above facts, hence remands the case back to the original authority for being decided afresh. The applicant should be provided sufficient opportunity to place on record their submission in the matter.


(SHRAWAN KUMAR)

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

ORDER No. 227/2023-CUS (WZ)/ASRA/Mumbai DATED 10.02.2023

To,

1. M/s. Ador Weilding Ltd., Chichwad Plant, Chinchwad, Pune-411019.
2. The Commissioner of Customs (Exports), Air Cargo Complex, Sahar, Andheri(E), Mumbai - 400 099.

Copy to:

1. Commissioner of Customs (Appeals) Mumbai, Zone - III, 5th floor, Awas Corporate Point, Makwana Lane, Behind S.M. Centre, Andheri - Kurla Road, Marol, Mumbai - 400 059.

2. Swapnendu Mishra (Advocate), 2D-204, N.G. Suncity, Phase-I, Thakur Village, Kandivli(E)-Mumbai-400101.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file.