

REGISTERED
SPEED POST



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. 373/434/DBK/2014-RA / 1244

Date of Issue: 23.02.2021

ORDER NO. 22/2021-CUS (SZ)/ASRA/MUMBAI DATED 04.02.2021
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-
163-14 dated 18.09.2014 passed by the Commissioner of
Customs, Central Excise & Service Tax(Appeals), Coimbatore.

Applicant : M/s Maaris Clothings, Tirupur.

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



ORDER

This Revision Application is filed by the M/s Maaris Clothings, S.F. 274, Ammaniammal Layout, Perichipalayam, Dharapuram Road, Tirupur - 641 608 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CMB-CEX-000-APP-163-14 dated 18.09.2014 passed by the Commissioner of Customs, Central Excise & Service Tax(Appeals), Coimbatore.

2. The issue in brief is that the Applicant was granted drawback amount of Rs. 2,45,727/- (Rupees Two Lakhs Forty Five Thousand Seven Hundred and Twenty Seven Only) for the exports made by them. The Applicant did not produced the evidence for realization of export proceeds in respect of the shipping bills within the period allowed under the Foreign Exchange Management Act, 1999 including any extension of such period granted by the Reserve Bank of India. A Show Cause Notice dated 10.11.2006 was issued to the Applicant for recovery of drawback amount of Rs. 2,45,727/-. The Assistant Commissioner of Customs, Coimbatore vide Order-in-Original No. 419/2014-Customs(BRC) dated 19.02.2014 confirmed the duty drawback amount of Rs. 2,45,727/- to be recovered with interest under Rule 16(A)(2) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Section 75A(a) of the Customs Act, 1962 and also imposed a penalty of Rs. 1,000/- 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, who vide his Order-in-Appeal No. CMB-CEX-000-APP-163-14 dated 18.09.2014 rejected their appeal and upheld the Order-in-Original dated 19.02.2014.

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

- (i) The Applicant was at handicap, in the absence of Show Cause Notice, much less, any information as to the proceedings contemplated.



against them and ought to have ensured that the Applicant was indeed served with a copy of the Show Cause notice, before adjudicating the case ex-parte, thereby vitiating the entire proceedings on the ground of violation of Natural Justice.

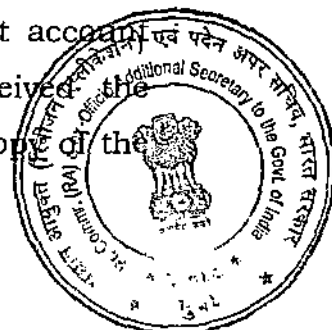
- (ii) The Show Cause notice had demanded a sum of Rs.1,67,821/- in respect of a shipping bill, that had nothing to do with the Applicant, evidenced from the fact that the Applicant on starting the firm during 2005, had issued their first ever export invoice bearing Sl.No.1 in respect of Shipping Bill No.33886 dated 19.12.2005 and never before
- (iii) They had duly realized the sale proceeds in foreign exchange in respect of the impugned Shipping Bills through their Authorized Dealer Bank, within the time-limit specified under the Foreign Exchange Management Act, 1999 and the regulations made there under in respect of the only shipping bill covered in the Order-in-Original and while the other one does not pertain to them.
- (iv) Under the second proviso to Section 75(1), being the one referred in the Order-in-Original, only when the sale proceeds are not realized within the time limit stipulated under the Foreign Exchange Management Act, 1999, action for recovery of such drawback sanctioned could be initiated. However, in the their subject case, even after duly realizing the foreign exchange involved in the subject shipping bills, the SCN was issued and the Order-in-Original passed confirming the demand of drawback, that too behind the back of the applicants, without adhering to principles of Natural Justice.
- (v) The date of realization of foreign exchange in respect of their Shipping Bill is as below:

Sl.No	S/B No	S/B date	Date on which sale proceeds realized in Foreign Exchange
1	33886	19.12.2005	24.01.2006



Thus, the fact of the matter the Applicants had indeed repatriated foreign exchange involved in the impugned Shipping bill and hence, the drawback sanctioned to them in respect of the impugned Shipping bills are in order and which would have come to light of the Adjudicating Authority, had due process of law was followed by him as per Rule 16(2) of the Customs, Central Excise & Service Tax Drawback Rules, 1995, read with CBEC Circular No.3/97-Cus dated 04.02.1997 as amended by Circular No.30/97-Cus dated 12.08.1997.

- (vi) The applicants, again were subjected to a grave handicap inasmuch as they had never received the Show Cause Notice and Personal hearing intimations, despite the fact of availability of Applicant's clear postal address with the learned Adjudicating authority, causing serious prejudice, for if the Show cause notices were made available to them, then they would have produced the copies of Bank Realization Certificate, there then itself.
- (vii) The condition for disallowing drawback as per Rule 16A(2) is not just non-production of proof for realization of export proceeds in foreign exchange but non-realization of export proceeds in foreign exchange within the time limit stipulated. In the case of the Applicant, the export proceeds are repatriated well within the time limit stipulated, which would have been submitted to the adjudicating authority had they had an opportunity to present the same. However, in the absence of Show Cause notice being served on the applicants, denied the opportunity of producing the bank realization certificates within the time limit prescribed under Rule 16(2) *ibid*, thereby causing serious prejudice to them.
- (viii) The Applicant along with their appeal memorandum before Commissioner(Appeals) had submitted copy of Shipping Bill No.33886 dated 19.12.2005, their Commercial Invoice No.MAS/001/05-2006 dated 16.12.2005 and their Bank accounts statements for the period 01.12.2005 to 30.11.2006 in respect of both their current account and Cash Credit Account, in proof of having not received the drawback amount of Rs.1,67,821/-. They also submitted copy of the



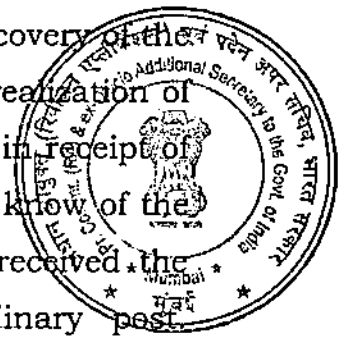
Bank Realization Certificate for the Shipping Bill No.33886 dated 19.12.2005 in proof of having realized the export proceeds well within the time limits. However, the Commissioner(Appeals) failed to appreciate the above documentary evidences submitted by the them.

- (ix) The Applicant relied on few cases law wherein it has been unequivocally held that procedural infringements/violations shall not come in the way of substantial benefits available to the assessee.
- (x) There is no contravention that could be alleged on the Applicant and the quantum of drawback demanded from them will not survive. Consequently imposed on them is also not sustainable.
- (xi) The Applicant prayed that the Order-in-Appeal and Order-in-Original be set aside with consequential relief.

4. A personal hearing in the case was held on 29.05.2018, 15.10.2019 and 25.02.2020. The Applicant vide their letter dated 14.02.2020 and received in this office on 20.02.2020 submitted that they do not wish to be heard in person, and the application may be decided on the basis of the documents submitted in proof of repatriation of foreign exchange in respect of the shipping bills covered in respect of the exports covered in the subject issue and thus, render justice.

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, had exported the goods and availed drawback amounting to Rs. 2,45,727/- and was issued Show Cause Notice dated 10.11.2006 for the recovery of the same amount as they did not produce the evidence regarding realization of export proceeds. The Applicant submitted that they were never in receipt of any Show Cause Notice or the Personal Hearing. They came to know of the fact that there was an action contemplated only when they received the Order-in-Original dated 19.02.2014 on 10.06.2014 by ordinary post. Further, they submitted that the Shipping Bill No. 33144 dated 13.12.2005



against which a drawback amount of Rs. 1,67,821/- was demanded does not pertain to them as they had issued their first export Commercial Invoice No.MAS/001/05-2006 dated 16.12.2005 in respect of Shipping Bill No. 33886 dated 19.12.2005. The realization for the only shipping bill was made on 24.01.2006, well within the time limit i.e. Bank Certificate for Export and Realization Form No. 1 dated 08.07.2014 issued to the Asstt. Commissioner of Customs by M/s Tamilnad Mercantile Bank Ltd., Tirupur. Government finds that as per BRC dated 08.07.2014, inspite of realization of export proceeds dated 24.01.2006 received by the department, the adjudicating authority had confirmed the duty drawback amount along with interest and penalty vide Order-in-Original dated 19.02.2014 which is not legal and proper.

7. Government notes that the Applicant had not received the Show Cause Notice nor the PH letter, hence the impugned Order-in-Original dated 19.02.2014 was passed without giving an opportunity of hearing to the Applicant and therefore it amounts to violation of principle of natural justice. Further, the Applicant has submitted that the Show Cause notice had demanded a sum of Rs.1,67,821/- in respect of a shipping bill which had nothing to do with the Applicant. In such a situation, the case is required to be remanded back to the original authority to consider the matter.

8. Prima facie, it appears that the Applicant have realized the remittances within the stipulated time in respect of Shipping Bill No. 33886 dated 19.12.2005 and non submission of the same can not negate the fact of realization and further that the Shipping Bill No. 33144 dated 13.12.2005 against which a drawback amount of Rs. 1,67,821/- was demanded does not belong to the Applicant. Therefore, Government is of the view that the Applicant claim of realization of proceeds within due time requires verification from the original authority.

9. Under the circumstances, for following the natural justice Government sets aside the impugned Order-in-Appeal No. CMB.CBX-000



APP-163-14 dated 18.09.2014 and Order-in-Original No. 419/2014-Customs(BRC) dated 19.02.2014 and remands back the instance case to the original authority for fresh consideration with the direction to decide the appeal on merits after giving opportunity of being heard to the Applicant within four weeks from receipt of this order.

10. The Revision Application is allowed in terms of above.

Shrawan
4/2/21

(SHRAWAN KUMAR)

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

ORDER No. 22/2021-CUS (SZ)/ASRA/Mumbai Dated 04.02.2021

To,
M/s Maaris Clothings,
S.F. 274, Ammaniammal Layout,
Perichipalayam, Dharapuram Road,
Tirupur - 641 608.

Copy to:

- 1) The Commissioner of Central Goods & Service Tax, 6/7, A.T.D. Street
Race Course Road, Coimbatore - 641 081.
- 2) Sr. P.S. to AS (RA), Mumbai
- 3) Guard file
- 4) Spare Copy.

ATTESTED

अधीक्षक
Superintendent
रिवीजन एप्लीकेशन
Revision Application
मुंबई इकाई, मुंबई
Mumbai Unit, Mumbai

