

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. 373/106/DBK/2015-RA / 6075

Date of Issue: 20/10/2021

ORDER NO. 232/2021-CUS (SZ)/ASRA/MUMBAI DATED 22.09.2021
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-
017-15 dated 02.01.2015 passed by the Commissioner of
Customs, Central Excise & Service Tax (Appeals), Coimbatore.

Applicant : M/s Vimal Color Housess

Respondent : Commissioner of Customs, Coimbatore.

ORDER

This Revision Application is filed by M/s Vimal Color Housess, 104, Poyampalayam Pirivu, Pitchampalayam Pudur, Tirupur - 641603 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CMB-CEX-000-APP-017-15 dated 02.01.2015 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore.

2. Brief facts of the case are that the Applicant was granted Rs. 5,20,609/- (Rupees Five Lakhs Twenty Thousand and Six Hundred and Nine Only) as drawback under Section 75 of the Customs Act, 1962 read with the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 for the export(s) made through Air Cargo, Coimbatore. It was noticed that the Applicant had failed to produce/ submit the evidence of realization of export proceeds in respect of the said export of goods within the period allowed under the Foreign Exchange Management Act, 1999 read with Regulations, 2000 and Para 2.41 of Export & Import Policy 2009-14 and Section 75 of Customs Act, 1962 evidencing the realization of sale proceeds in respect of Shipping Bills under which the goods had been exported. Hence, a Show Cause Notice dated 06.09.2006 was issued to the Applicant calling upon to show cause as to why the drawback amount of Rs. 5,20,609/-already paid to them should not be recovered from them. The details are given below:

Sl.No.	SCN Ref.No.	S/B No. & Date	Drawback Amount (Rs)
1	VIII/48/5/878/2005 CFS TPR dated 06.09.2006	2446 dt 24.1.04	10,964
2		9227 dt 19.5.05	83,515
3		10504 dt 9.6.05	72,663
4		11629 dt 26.6.05	67,012
5		12533 dt 8.7.05	18,600
6		13081 dt 15.7.05	9,482
7		13103 dt 7.6.04	26,337
8		13495 dt 25.7.03	7,193
9		13496 dt 25.7.03	19,057
10		13516 dt 22.7.05	19,670
11		13644 dt 14.6.04	32,460
12		13892 dt 18.6.04	21,170
13		13919 dt 29.7.05	30,119
14		13938 dt 30.7.05	29,415
15		14724 dt 11.8.03	14,276

16		14725 dt 11.8.03	14,960
17		14726 dt 11.8.03	6,837
18		14727 dt 11.8.03	11,553
19		14728 dt 11.8.03	11,929
20		14729 dt 11.8.03	13,397
		Total	5,20,609

After due process of law, the adjudicating authority Assistant Commissioner of Customs, CFS, Tirupur vide Order-in-Original No. 854/2014-BRC dated 28.06.2014 confirmed the demand of Rs. 5,20,609/- along with appropriate interest under Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Section 75A(2) of the Customs Act, 1962. And a penalty of Rs. 5,000/- was imposed 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. The Commissioner(Appeals) vide Order-in-Appeal No. CMB-CEX-000-APP-017-15 dated 02.01.2015 rejected their appeal due to non compliance of the mandatory provisions of Section 129E of the Customs Act, 1962 and upheld the Order-in-Original dated 24.12.2013.

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

- (i) The contention of the Commissioner(Appeals) is that as per Section 129E of the Customs Act, 1962, the Applicant are required to pre-deposit 7.5% of the drawback amount and that the above provisions are effective from 06.08.2014 and the subject appeal was filed on 16.09.2014. The Applicant submitted that the new provisions under Section 129E of the Customs Act, 1962 w.e.f. 06.08.2014 required to pre-deposit of 7.5% of the duty and would apply only in respect of "Duty" demanded under Customs Act, 1962. The definition as per the provision of Section 2(15) of Customs Act, 1962 is

"Duty" means a duty of Customs leviable under this Act."

Therefore, the above provisions would be applicable only for the appeals filed where the duty leviable under Customs Act, 1962. The

above provisions cannot be made applicable to the cases of drawback on which appeals are filed as the "Drawback" is not the duty leviable under Customs Act, 1962. The Commissioner(Appeals) has concluded that the demanded drawback is also duty. This argument has no legal backing.

- (ii) The Applicant had also requested the Commissioner(Appeals) to proceed with appeals without insisting the pre-deposit as the same is not mandatory in the case of Applicant being drawback cases. Further, a copy of the above representation was also sent to the Chief Commissioner, Coimbatore, Member Customs and Chairman CBEC, New Delhi requesting to issue suitable directions to the Commissioner (Appeals) to proceed with the appeals filed by the Applicant without insisting the pre-deposit as the same was not mandatory in drawback cases.
- (iii) During the course of personal hearing also it was requested not to decide the case pending receipt of clarification from the higher authorities, in case the First Appellate Authority does not agree with the contention of the Applicant. The First Appellate Authority has also not given any ruling for payment of pre-deposit on the representation of the Applicant. Hence the orders are passed without observing the principles of natural justice and without waiting for the clarifications sought for by the Applicant.
- (iv) The subject Order of Recovery pertains to the period from February, 2004 to February, 2006. The Applicant had filed the BRCs through their CHA within the stipulated time limit. The Applicant had submitted the BRCs for all the 20 shipping bills during within the stipulated time limit of one year. The learned Adjudicating Authority passed the above Order-in-Original without examining the factual position and without causing necessary verification of the records available with his own office and without observing the principles natural justice by ensuring the receipt of the show cause notice or Personal Hearing Intimations.
- (v) In this case, as per the Order-in-Original the show cause notice were issued during September, 2006. However, the Applicant had not

received any such notice at all. Further the Applicant are clue less as to why the Show Cause Notice need be issued during September, 2006 when all the BRCs have been filed before that date much ahead of the date of show cause notice itself for the respective shipping bills. The relevant Order-in-Original dated 28.06.2014 have been passed nearly after seven and half years from the date of SCN. While taking up any issue for a final decision, in all fairness, the Applicant should have been extended an opportunity to explain their stand or to file the documents if any required once again if the documents already filed are not traceable in the office of the learned Adjudicating Authority for which the Applicant cannot be held responsible.

- (vi) In this regard the Applicant came to know of the fact that there is a show cause notice pending closure only on receipt of Superintendent (DBK), ICD, Tirupur letter C. No. VIII/48/05/878/2006 CFS/TPR dated 04.06.2014 received on 12.06.2014. In reply, the Applicant vide their letter dated 13.06.2014 submitted that they had not received the subject show cause notice and requested a copy of the same besides seeking one month time to file the BRCs. In response to this representation, the Applicant was asked to appear on 27.06.2014 with BRCs as per the marginal remarks available thereon. In spite of the best and concrete efforts taken by the Applicant could not file the BRCs within 27.06.2014 and could only file on 17.07.2014 evidencing realization of sale proceeds during the material period.
- (vii) In all fairness, while passing the final orders another opportunity to appear in person should have been extended to meet the justice and to follow the principles of natural justice. It is also submitted that deciding any case without ensuring the receipt of show cause notice and without even offering sufficient chances of Personal Hearings is in gross violation of the principles of natural justice.
- (viii) The Original-in-Original dated 28.06.2014 issued by Deputy states and concludes that show cause notices were issued and personal hearing were granted but there was no response from the exporter. This is factually incorrect and the factual position is that the export did not receive the show cause notice or intimation for personal

hearings. This is all the more evident from the fact that they had received the letter dated 04.06.2014 and responded by way of representation dated 13.06.2014 in which case there was no difficulty in offering another chance to follow the principles of natural justice.

- (ix) It is also to be noted that the Original-in-Original dated 28.06.2014 sent by post was received by the Applicant on 18.08.2014 and therefore, they are clueless as to how the Show Cause Notice and intimations for PH were not received by them. It is also to be noted that that the customs department is equipped with all information with regard to the units and therefore a mere phone call would have been sufficient to receive the notice or any intimation.
- (x) The Applicant had submitted the bank details and a simple verification with the Bank would have settled the issue as the only concern of the department is the realization of sale proceeds.
- (xi) All the above irreversible factors were explained to the First Appellate Authority and also filed the negative certificates, but the First Appellate Authority rejected the appeal for alleged non-compliance of provisions of Section 129E of Customs Act, 1962. Hence they have filed the current revision application. In this they placed reliance on the judgment of the GOI Order No. 51/2012-Cus dated 08.02.2012 in the case of M/s Maestro Fashions, Tirupur Vs Commissioner of Customs and Central Excise, Coimbatore.
- (xii) The Applicant prayed that the Order-in-Appeal be set aside.

4. Personal hearing in the case was granted on 05.03.2021, 12.03.2021, 08.04.2021, 15.04.2021, 16.07.2021 and 27.07.2021. However, none appeared for the hearing. Hence the case is taken up for decision based on records.

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 was issued a Show Cause Notice dated 06.09.2006, calling upon to show

cause as to why the drawback amount of Rs. 5,20,609/-already paid to them should not be recovered from them. After due process of law, the adjudicating authority Assistant Commissioner_of Customs, CFS, Tirupur vide Order-in-Original No. 854/2014-BRC dated 28.06.2014 confirmed the demand of Rs. 5,20,609/- along with appropriate interest under Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Section 75A(2) of the Customs Act, 1962. And a penalty of Rs. 5,000/- was imposed 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. The Commissioner(Appeals) vide Order-in-Appeal No. CMB-CEX-000-APP-017-15 dated 02.01.2015 rejected their appeal due to non compliance of the mandatory provisions of Section 129E of the Customs Act, 1962 and upheld the Order-in-Original dated 24.12.2013.

7. Government observes that the Applicant has submitted that they were not served with the Show Cause Notice dated 06.09.2006 nor given personal hearing. The Applicant had received the Superintendent (DBK), ICD, Tirupur letter dated 04.06.2014 received on 12.06.2014 requesting to file BRC in respect of the shipping bills contained in the SCN. In reply, the Applicant vide their letter dated 13.06.2014 had submitted that they had not received the subject show cause notice and requested a copy of the same besides seeking one month time to file the BRCs as they have to trace out the relevant documents. The Superintendent have made a remark on said letter *"you have been given with the time of two weeks to produce BRC and to appear on 27th June with BRC/Negative statement"*. The Applicant could not file the BRCs by 27.06.2014 and vide their letter dated 16.07.2014 (received on 17.07.2014) submitted the Bank Realization Certificate and Chartered Accountant's certificate.

8. Government finds that the Applicant have submitted the Bank Realization Certificate as per the chart in respect of following Shipping Bill:

Sl.No.	S/B No. & Date	BRC
1	2446 dt 24.1.04	No
2	9227 dt 19.5.05	Yes
3	10504 dt 9.6.05	Yes
4	11629 dt 26.6.05	Yes
5	12533 dt 8.7.05	Yes
6	13081 dt 15.7.05	Yes
7	13103 dt 7.6.04	No
8	13495 dt 25.7.03	No
9	13496 dt 25.7.03	No
10	13516 dt 22.7.05	Yes
11	13644 dt 14.6.04	No
12	13892 dt 18.6.04	No
13	13919 dt 29.7.05	Yes
14	13938 dt 30.7.05	Yes
15	14724 dt 11.8.03	No-
16	14725 dt 11.8.03	No
17	14726 dt 11.8.03	No
18	14727 dt 11.8.03	No
19	14728 dt 11.8.03	No
20	14729 dt 11.8.03	No

and Chartered Accountant's Negative Certificate i.e. Annexure-II for the period 01.01.2003 to 31.12.2004.

10. Government finds that inspite of realization of export proceeds received by the department, the adjudicating authority had confirmed the duty drawback amount along with interest and penalty vide Order-in-Original dated 28.06.2014 which is not legal and proper.

11. Government notes that the Applicant had not received the Show Cause Notice nor the PH letter and further there is no mention of the Superintendent (DBK), ICD, Tirupur letter dated 04.06.2014 and the Applicant reply letter dated 13.06.2014 in the findings of the Order-in-Original. Hence Government holds that the impugned Order-in-Original dated 28.06.2014 was passed without giving an opportunity of hearing to the Applicant and therefore it amounts to violation of principle of natural justice.

12. It is evident that the Applicant has claimed that they have realized the remittances within the stipulated time in respect of drawback amounting to Rs. 5,20,609/- -and non-submission of the same cannot negate the fact of realization. Therefore, Government is of the view that the Applicant's claim of realization of proceeds within due time requires verification from the original authority.

13. Under the circumstances, considering the principles of natural justice, Government sets aside the impugned Order-in-Appeal No. CMB-CEX-000-APP-017-15 dated 02.01.2015 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore and remands back the instance case to the original authority for fresh consideration with the direction to decide the matter on merits after giving opportunity of being heard to the Applicant within eight weeks from receipt of this order.

14. The Revision Application is allowed in above terms.

Shrawan
22/9/21
(SHRAWAN KUMAR)

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

ORDER No 232/2021-CUS (SZ)/ASRA/Mumbai Dated 22.09.2021

To,
M/s Vimal Color Houses,
104, Poyampalayam Pirivu,
Pitchampalayam Pudur,
Tirupur - 641603

Copy to:

- 1) The Commissioner of Customs, 6/7 ATD Street, Race Course Road, Coimbatore - 641 018.
- 2) M/s RA Associates, Flat No. 7, III floor, Mascot, Ras Subhiksha, Behind Deepam Hospital, Opp, to Alvernia Convent, Trichy Road, Ramanathapuram, Coimbatore -641 045.
- 3) Sr. P.S. to AS (RA), Mumbai
- 4) Guard file
- 5) Spare Copy.