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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. 371/42/DBK/2015-RA | 6207

Date of Issue: 26/10/2021

ORDER NO. 267/2021-CUS (WZ)/ASRA/MUMBAI DATED 25.10.2021
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. MUM-CUSTOM-AXP-
APP-666 & 667/14-15 dated 23.02.2015 passed by the
Commissioner of Customs(Appeals), Mumbai-III.

Applicant : M/s Adnan Fashions

Respondent : Commissioner of Customs(Appeals), Mumbai-III.

ORDER

This Revision Application is filed by M/s Adnan Fashions, A-504, 5th floor, Al-Safa, Millat Nagar, Andheri (West), Mumbai 400 053 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. MUM-CUSTOM-AXP-APP-666 & 667/14-15 dated 23.02.2015 passed by the Commissioner of Customs(Appeals), Mumbai-III.

2. Brief facts of the case are that the Applicant was granted Rs. 1,24,563/- (Rupees One Lakh Twenty Four Thousand and Five Hundred and Sixty Three 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 04.02.2010 was issued to the Applicant calling upon to show cause as to why the drawback amount already paid to them should not be recovered from them. The envelope containing the SCN was returned by the postal authority with the remark "left/not know". The adjudicating authority Deputy Commissioner of Customs, DBK (XOS), Air Cargo Complex, Sahar, Mumbai vide Order-in-Original No. DC/RBP/364/ADJ/ACC dated 18.03.2010 confirmed the demand of Rs. 1,24,563/- 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 Section 28A of Customs Act, 1962. Aggrieved, the Applicant then filed appeal with the Commissioner of Customs(Appeals), Mumbai-III. The Commissioner(Appeals) vide Order-in-Appeal No. MUM-CUSTOM-AXP-APP-666 & 667/14-15 dated 23.02.2015 dismissed their appeal as time barred.

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

- (i) The Applicant had not received the Show Cause Notice dated 04.02.2010 and hence could not submit the proof of compliance of Rule 16A sub-rule (1) & (2) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.
- (ii) The Applicant vide letter dated 02.06.2012 addressed to the Adjudicating Authority informing the department about non-receipt of the impugned Order-in-Original and requested copy of the same. Along with the above letter, the Applicant had also enclosed statement of the Bank for the period 2004-005, 2005-06 & 2006-2007. The Officers of the Adjudicating Authority supplied copy of the Order-in-Original to the Applicant on 03.08.2012.
- (iii) The sale proceeds of the goods exported by the Applicant had been realized by the State Bank of India, Malad Branch, the bankers of the Applicant and the same is submitted along with the revision application. Hence the demand for recovery from the Applicant may not be confirmed.
- (iv) Without prejudice, the Applicant submitted that non-submission of the BRC in time is a technical breach and the demand of drawback amount along with interest deserves to be set aside. The Applicant placed reliance on few case laws
- (v) The Applicant prayed that the impugned Order-in-Appeal and Order-in-Original may kindly be set aside and the recovery notice may kindly be withdrawn and/or set aside.

4. Personal hearing in the case was granted on 18.09.2018, 05.03.2021, 12.03.2021, 08.04.2021, 15.04.2021, 16.07.2021 and 20.07.2021. However, none appeared for the hearing. Hence the case is taken up for decision based on records on merits.

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 04.02.2010, calling upon to show cause as to why the drawback amount of Rs. 1,24,563/- already paid to them should not be recovered from them. The adjudicating authority Deputy Commissioner of Customs, DBK (XOS), Air Cargo Complex, Sahar, Mumbai vide Order-in-Original No. DC/RBP/364/ADJ/ACC dated 18.03.2010 confirmed the demand of Rs. 1,24,563/- 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 Section 28A of Customs Act, 1962. Aggrieved, the Applicant then filed appeal with the Commissioner of Customs(Appeals), Mumbai-III. The Commissioner(Appeals) vide Order-in-Appeal No. Order-in-Appeal No. MUM-CUSTOM-AXP-APP-666 & 667/14-15 dated 23.02.2015 dismissed their appeal as time barred.
7. Government observes that the Applicant has submitted that they had not received the Show Cause Notice dated 04.02.2010 and hence vide their letter dated 02.06.2012 addressed to the Deputy Commissioner of Customs Draback STF, Air Cargo Complex, Sahara, Mumbai informed the department about non-receipt of the impugned Order-in-Original and requested copy of the same. Along with the above letter, the Applicant had also enclosed statement of the Bank for the period 2004.005, 2005-06 & 2006-2007. The Officers of the Adjudicating Authority supplied copy of the Order-in-Original to the Applicant on 03.08.2012. Government finds that due to shifting of the Applicant's office or closure of company, had not received the Show Cause Notice and the Applicant vide their letter dated 02.06.2012 (received by the department on 18.06.2012) had requested the department for a copy of the Order-in-Original and they had received the copy of the Order-in-Original on 03.08.2012 as claimed by the Applicant. The Applicant had filed appeal with the Commissioner(Appeals) on 07.08.2013. Hence the Applicant has

filed the appeal before the Commissioner within the appeal period of 60 days.

8. Government observes that the Applicant in the revision application has submitted the State Bank of India certificate dated 22.05.2013 certifying

"This is to certify that ADNAN FASHIONS has received an inward remittance totaling USD 32413.07 against invoice amount totally USD 35062.98 (a total of 92.47% of invoice value has been realized), as per table below:

SR. NO.	INV.No	INV DATE	SB NO	SB DATE	INV AMT USD	T.T.NO	REALISE D AMT	INDIAN RS.	DBK
01	AF/953/06	27/07/2006	6079632	1.8.06	4758.18	FSC/1118	4398.00	203100.00	15989
02	AF/954/06	11/08/2006	6089771	11.8.06	3737.00	4280	3722	172283.00	13583
03	AF/955/06	24/08/2006	6101573	24.8.06	16749.75	4360		838343.00	60882
04	AF/956/06	29/08/2006	6106717	29.8.06	1425.00	6360	18159.75	138284.00	5180
05	AF/957/06	16/09/2006	6125016	16.9.06	3373.62	4548	3058.65	56304.00	12183
06	AF/958/06	17/10/2006	6157464	17.10.06	1391.55	4697	1276.55	123541.14	4955
07	AF/959/06	15/01/2007	6239629	16.1.07	3627.85	014	1798.12	1531555.14	11791
					35062.98		32413.07	1531555.14	124563

9. Government finds that inspite of evidence of realization of export proceeds as above, the adjudicating authority had confirmed the duty drawback amount along with interest vide Order-in-Original dated 18.03.2010 which is not legal and proper.

10. Government notes that the Applicant had not received the Show Cause Notice nor the PH letter. Hence Government holds that the impugned Order-in-Original dated 18.03.2010 was passed without giving an opportunity of hearing to the Applicant and therefore it could not take into account the fact of realization of export proceeds.

11. It is evident that the Applicant has realized the remittances within the stipulated time in respect of drawback 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.

12. Under the circumstances, considering the principles of natural justice, Government sets aside the impugned Order-in-Appeal No. MUM-CUSTOM-AXP-APP-666 & 667/14-15 dated 23.02.2015 passed by the Commissioner of Customs(Appeals), Mumbai-III 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.

13. The Revision Application is allowed in above terms.


25/10/21
(SHRAWAN KUMAR)

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

ORDER No. 267/2021-CUS (WZ)/ASRA/Mumbai Dated 25.10.2021

To,
M/s Adnan Fashions,
A-504, 5th floor, Al-Safa,
Millat Nagar, Andheri (West),
Mumbai 400 053.

Copy to:

- 1) The Pr. Commissioner of Customs, Air Cargo Complex, Sahar, Andheri(East), Mumbai 400 099
- 2) Sr. P.S. to AS (RA), Mumbai
- 3) Guard file
- 4) Spare Copy.