

REGISTERED SPEED POST



सत्यमेव जयते

**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. 371/141/DBK/2022-RA / 4098

Date of Issue 23.09.2022

ORDER NO. 276 /2022-CUS (WZ) /ASRA/Mumbai, DATED 23.09.2022 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 Culture Clothing Pvt Ltd,
C/o B-50, Sector 88, Near Hosiery complex,
Phase II, Noida,
Gautam Budha Nagar, UP 201305**

Respondent : Commissioner of Customs (Export), Air Cargo Complex.

Subject : Revision Application filed under section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-APP-749/2019-20 dated 29.11.2019 passed by the Commissioner of Customs (Appeals) Mumbai Zone III.



ORDER

This Revision Application has been filed by M/s Culture Clothing Pvt Ltd, C/o B-50, Sector 88, Near Hosiery complex, Phase II, Noida, Gautam Budha Nagar, Utttar Pradesh-201305 (hereinafter referred to as "the applicant") against Order-in-Appeal No. MUM-CUSTOM-AXP-APP-749/2019-20 dated 29.11.2019 passed by the Commissioner of Customs (Appeals) Mumbai Zone III.

2. The brief facts of the case are that the applicant had exported readymade garments under the Deemed Export Scheme under 4 shipping Bills. As the applicant had not submitted Negative Statement/Certificates for export proceeds for the period prior to 01.04.2013 in terms of Facility Notice No. 05/2017 dated 07.06.2017 and the applicant had not submitted any document regarding realization of export proceeds against the Shipping Bills for the subject period even after a Public Notice No. 24/2017 dated 17.07.2017 has been issued extending the time limit for submission of documents not later than 31.07.2017, show cause notice dated 01.09.2017 with the list of Shipping Bills pending for realization of export proceeds, was issued to the exporter for submission of documents. After following the due process of law, the adjudicating authority vide Order-in-Original dated 27.03.2018 confirmed the demand of Rs. 2,36,568/- alongwith applicable interest under Rule 16(A) Sub-Rule (1) & (2) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Customs Circular No. 05/2009 dated 02.02.2009 and a penalty of Rs. 15,000/- was imposed on the applicant under Section 117 of the Customs Act, 1962.

3. Being aggrieved by the aforesaid Order-in-Original, the applicant filed an appeal before Commissioner of Customs (Appeals) Mumbai Zone III, who vide Order-in-Appeal No. MUM-CUSTOM-AXP-APP-749/2019-20 dated 29.11.2019 dismissed the appeal filed by the applicant as being time barred as the appeal was filed 560 days after the issue of the impugned Order-in-Original



4. Being aggrieved with the impugned order in appeal, the applicant filed this Revision Application before the Government mainly on the following grounds : -

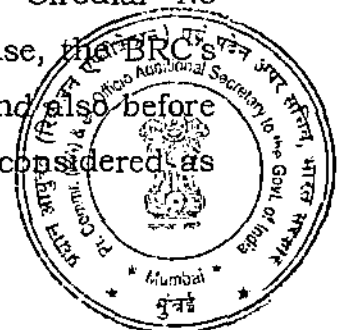
4.1 that the Appellate Authority erred in rejecting the appeal on the grounds of imitation, inasmuch as that the appeal filed was within time limit prescribed under Section 128(1) of the Customs Act 1962 inasmuch as that the certified copy of the impugned Order-in-Original dated 27.03.2018 was received by them on 03.09.2019 and the appeal against the said order was filed on 17.10.2019, within time limit of 60 days stipulated under Section 128(1) of the Customs Act 1962;

4.2 that the factory had shifted to B-50, Sector-88, Near Hosiery Complex, Phase-II Noida in the year 2016 and the documentary evidence establishing that Show Cause Notice, intimation of personal hearing and Order-in-Original were sent to the old address which was amended in the IEC on the site of DGFT and the IEC module of Customs system in 2016;

4.3 that no documentary evidence of service prescribed under Section 153 of the Customs Act was produced by the department and the impugned order was silent on modes of service;

4.4 that the Bank Realization Certificates of the bank endorsing export proceeds were submitted to the department as soon as it was received but due to passage of time, they were unable to produce acknowledged receipt of the same and xerox copies of the certificates showing remittance received were also produced before the Appellate Authority which was overlooked and the appeal was rejected on limitation;

4.5 that though non submission of BRC within the prescribed period amounts to violation of Drawback Rules 1995 read with Circular No 05/2009 and attracts demand and penalty, in the present case, the BRC's were produced to the department as soon as they received, and also before Commissioner (Appeals) and these BRC's should have been considered as



evidencing realization of sale proceeds of exports. The export and sale proceeds thereof were not under dispute, hence substantial condition of export stands complied;

4.6 that the judgments relied upon by the Commissioner (Appeals) were not relevant to the present case as they highlighted limitation period of filing appeal under the statute to be followed scrupulously, whereas, in the present case, appeal was filed within time limit of 60 days prescribed under Section 128(1) of the Customs Act 1962;

4.7 that the Appellate Authority erred by rejecting appeal on the grounds of limitation as the penalty imposed by the lower authority under Section 117 of the Customs Act 1962 was for violation of Drawback Rules and Circular. Whereas, penalty under Section 117 of the Customs Act 1962 is for contravention of any provision of the Customs Act and not for violation of Drawback Rules and hence not imposable.

5. A personal hearing in the matter was scheduled for 14.06.2022 and Shri Anil Balani, Advocate appeared on behalf of the applicant. He reiterated his earlier submissions and stated that the Order-in-Original was received on 03.09.2019 and the appeal filed before Commissioner (Appeals) was within time and that the service of the order is the relevant date. He submitted an order of the Commissioner (Appeals) where similar issues were accepted and allowed and submitted that all the BRC's were available.

6. Government has carefully gone through the relevant case records available in case files, oral submissions and perused Order-in-Original and the impugned Order-in-Appeal.

6.1 Government observes that the sanctioning authority has confirmed the demand on the grounds that the applicant has not submitted he relevant documents as proof of realisation of the export proceeds despite being granted opportunities to do so and the Appellate Authority has



rejected the appeal on the grounds of the same being filed beyond the prescribed time.

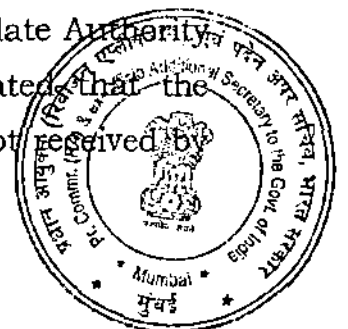
6.2 The moot point is whether the Appellate Authority has correctly rejected the appeal as being hit by limitation of time and not going into the merits of the case. The Appellate Authority has averred that there was a delay of 560 days in filing the appeal and it had no power to condone the delay as the applicant had filed the appeal after the period of 90 days as prescribed under Section 128 of the Customs Act, 1962. The applicant has on the other hand has argued that the order dated 27.03.2018 was received by them only on 03.09.2019 and as the appeal was filed on 17.10.2019, the same was filed within the prescribed time.

6.3 The applicant has also stated that the despite the department being intimated about the change of their address the principles of natural justice were not accorded to them as they could not reply to the show cause notice and attend the personal hearing. Government notes that the adjudicating authority has confirmed the demand on the grounds that the export proceeds were not realized in full despite several opportunities being given to the applicant. The applicant has in the revision application and also in the appeal before the Appellate Authority has stated that they were in possession of E-BRC's and the negative statements issued by the Authorised Bank or Chartered Accountants.

6.4 The applicant has also claimed that the Bank Realisation certificates endorsing the export proceeds were submitted to the department and the Xerox copies of the same were also submitted to the Appellate Authority but were not taken into consideration by the Appellate Authority.

6.5 Government notes that these are areas where the statements made by the department and the applicant are at variance over verifiable facts which need to be examined for correctness before arriving at a conclusion.

6.6. Government notes that since the rejection by the Appellate Authority is on the grounds of limitation and the applicant has stated that the impugned Order-in-Original and other correspondence was not received by



them despite intimation of change of address being given to the department and also the averment of the applicant that the BRC's in question were submitted to the department, it is interest of justice that the claims of the applicant be taken up for verification.

7. In view of the above observations, Government sets aside the impugned Order-in-Appeal No. MUM-CUSTOM-AXP-APP-749/2019-20 dated 29.11.2019 passed by the Commissioner of Customs (Appeals) Mumbai Zone III and remands the case back to the original authority for the purpose of causing verification of the correctness of the submissions of the applicant, as stated in foregoing paras. The original authority will complete the requisite verification expeditiously within eight weeks from the date of receipt of this order. A reasonable opportunity for hearing will be accorded to the applicant.

8. The Revision Application is disposed off on the above terms.

Shrawan Kumar
23/9/22
(SHRAWAN KUMAR)

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

ORDER No 276 /2022-CUS (WZ) /ASRA/Mumbai DATED 23.09.2022

To,

M/s Culture Clothing Pvt Ltd,
C/o B-50, Sector 88, Near Hosiery complex, Phase II, Noida, Gautam
Budha Nagar, UP 201305

Copy to:

1. The Commissioner of Customs (Export), Drawback (XOS) Section, Air Cargo Complex, Sahar, Andheri (East), Mumbai 400 099.
2. The Commissioner of Customs (Appeals), Mumbai III, Awas Corporate Point (5th Floor), Makwana Lane, Behind S.M Centre, Andheri-Kurla Road, Marol, Mumbai 400 059.
3. Sr. P.S. to AS (RA), Mumbai
4. Notice Board
5. Spare Copy.

