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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.373/132/DBK/13-RA/7816

Date of Issue: 22.12.2021

ORDER NO. 323 /2021-CUS (SZ) /ASRA/MUMBAI DATED 15.12.2021
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.

Applicant : M/s Network Industries Ltd,
17/1, Mahatma Gandhi Road,
1st Floor, Kolkata-700 007

Respondent: The Pr. Commissioner, Customs, Coimbatore

Subject : Revision Applications filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. CMB-CEX-
000-APP-328-13 dated 25.09.2013 passed by the
Commissioner (Appeals), Coimbatore



ORDER

This Revision Applications has been filed by M/s Network Industries Ltd, 17/1, Mahatma Gandhi Road, 1st Floor, Kolkata-700 007 having their factory at 58/1, Kumaranandapuram North, 2nd Street, Pitchampalayam Road, Tirupur 501 602, (hereinafter referred to as the 'applicant') against the Order-in-Appeal No. CMB-CEX-000-APP-328-13 dated 25.09.2013 passed by the Commissioner (Appeals), Coimbatore.

2. Brief facts of the case are that the applicant was granted drawback of Rs. 1,38,366/- under Section 75 of the Customs Act, 1962 read with Customs, Central Excise Duties and Service Tax Drawback Rules,1995 for exports made against Shipping Bill Nos. 13716 dated 02.06.2006, 14238 dated 09.06.2006 and 14239 dated 09.06.2006. The applicant failed to submit evidence regarding realisation of export proceeds in respect to the goods exported under the said shipping bills, within the period allowed under FEMA, 1999, including any extension of such period granted by the Reserve Bank of India.

3. A show cause notice was issued to the applicant on 17.07.2007. The adjudicating authority following the due process of the law, held in his order that Rs. 1,38,366/-was recoverable alongwith appropriate interest under Rule 16(2) and 16(3) of the Customs, Central Excise and Service Tax Drawback Rules, 1995 read with Section 75 of the Customs Act, 1962 and imposed a penalty of Rs. 1,000/- under Section 117 of the Customs Act, 1962.

4. Aggrieved by the order in original, the applicant preferred an appeal with the Commissioner (Appeals), Coimbatore. The Appellate authority vide Order-in-Appeal No. CMB-CEX-000-APP-328-13 dated 25.09.2013 rejected the appeal and upheld the order of recovery of drawback demand by the adjudicating authority and the imposition of penalty of Rs.1,000/-. The Appellate Authority made the following observations.



4.1 The applicant contended that they were unaware of the fact that the department did not receive any proof of foreign remittance in respect of the shipping bills in question and also that the show cause notice and personal hearing intimations were not received by them.

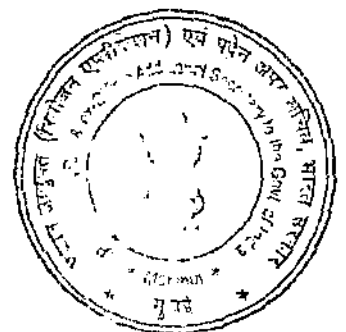
4.2 The applicant also stated that they had realised the sale proceeds in foreign exchange through their authorised dealer bank. The Appellate Authority issued a letter dated 10.09.2013 to the Assistant Commissioner, ICD, Tirupur, Coimbatore to ascertain the genuineness of the BRC's. The Appellate Authority has mentioned in the Order in Appeal that the reply was yet to be received.

4.3 As per sub rule 4 of Rule 16A of the Drawback Rules, 1995, where sale proceeds are realised by the exporter after the amount of drawback has been realised within one year from the date of such recovery, the amount of drawback so recovered shall be repaid by the Assistant Commissioner.

4.4. The goods were exported in June and the BRC's should have been submitted within six months but the applicant failed to produce the same in time which shows lack of interest of the applicant to fulfil their part of their legal obligations

5. Aggrieved by the Order in Appeal, the applicant has filed this Revision Application with the Central Government against the impugned order under Section 129DD of the Customs Act, 1962, on the following grounds:

- i) That the orders of the lower authorities were flawed by incurable defects, inasmuch as the principles of natural justice was not adhered to.
- ii) The Appellate Authority ought to have appreciated that the applicants have realized the export proceeds covered under the subject shipping bills well within the time limit stipulated under the Foreign Exchange Management Act, 1999 and the Regulations made thereunder.



- iii) The Appellate Authority ought to have appreciated the fact that the applicants were subject to serious prejudice as the opportunity to produce the proof for realization of export proceeds within 30 days of receipt of the Notice, due to non-service of the show cause notice.
- iv) The Appellate Authority ought to have appreciated the provisions of law, viz., Section 75 of the Customs Act, 1961 read with Rule 16A(2) of the Customs, Central Excise and Service tax Drawback Rules, 1995, wherein the substantive ground for initiating proceedings for recovery of drawback could be done only when the export proceeds are not received within the time limit prescribed and not for mere non furnishing the proof of realization of export proceeds.
- v) The Appellate Authority ought to have appreciated the fact that the applicants have indeed received the export proceeds covered in the subject shipping bill well within the time limit prescribed fulfilling the substantial obligation cast on the applicants
- vi) The export proceeds covered under the subject shipping bills have been realized and were duly produced to the adjudicating authority and to the appellate authority as well.

The applicant has relied upon the following case laws

- i) Union of India v. A.V. Narasimhalu, 1983 (13) E.L.T. 1534 (S.C.)
- ii) Union of India v. Suksha International and Nutan Gems 1989 (39) E.L.T. 503 (S.C.)
- iii) RA by M/s Sanket Industries 2011 (268) E.L.T. 125 (G.O.1.)

6. Personal hearing was scheduled in this case on 16.01.2020, 22.01.2020, 09.02.2021, 23.02.2021, 18.03.2021, 25.03.2021, 02.07.2021, 16.07.2021, 18.08.2021 and 25.08.2021. Shri D.V.Saroj, Advocate appeared before the Revision Authority for personal hearing on 20.08.2021 and submitted that BRC's were received and they were not given an opportunity to submit the same by the original authority and requested to allow the claim.



7. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Order-in-Appeal.

7.1 Government has meticulously considered all facets of the case and holds that whether the export proceeds were realized in time as per the RBI guidelines is central to the issue.

7.2 Government notes that the applicant has stated that the show cause notice issued to them for failure to submit the Bank Realisation Certificates as required under Section 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, were not received by them and they could not reply to the same.

7.3 Government also notes that applicant has submitted that they had evidenced realization of export proceeds to the Appellate Authority and Appellate Authority had issued a letter dated 10.09.2013 to the Assistant Commissioner, ICD Tirupur, Coimbatore to ascertain the genuineness of the BRC's but no reply was received by the Appellate Authority, till issuance of the impugned Order-in-Appeal.

7.4 In the impugned order, the appeal was rejected as the BRC's were not submitted within six months from the date of export that took place in June 2006. Government notes that in view of the applicant having submitted the BRC's, the decision of the Appellate Authority on this count does not hold.

7.5 Government further notes that sub rule 4 of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 states that *"Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or sub-rule (3) and the exporter produces evidence about such realisation within one year from the date of such recovery of the amount of drawback, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs or Deputy Commissioner of Customs to the claimant"*.



7.6 In view of the above observations, Government sets aside the impugned Order-in-Appeal No. CMB-CEX-000-APP-328-13 dated 25.09.2013 passed by the Commissioner (Appeals), Coimbatore and remands the case back to the original authority for causing verification as stated in foregoing paras. The applicant shall submit the BRC's to the adjudicating authority for consideration and acceptance in accordance with the law. The original authority will complete the requisite verification expeditiously within eight weeks from the date of receipt of this order and pass a speaking order. A reasonable opportunity for hearing will be accorded to the applicant.

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

Shrawan
15/12/21
(SHRAWAN KUMAR)

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

ORDER NO. 323/2021-CV(SZ) /ASRA/MUMBAI DATED 15.12.2021

To,

M/s Network Industries Ltd,
17/1, Mahatma Gandhi Road,
1st Floor, Kolkata-700 007

Copy to :

1. The Principal Commissioner of CGST, Coimbatore, No 6/7, A.T.D. Street, Race Course Road, Coimbatore 641 018
2. The Commissioner of CGST, (Coimbatore Appeals), No 6/7, A.T.D. Street, Race Course Road, Coimbatore 641 018
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare copy.

