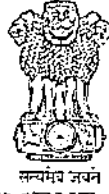


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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.373/42/DBK/15-RA / 30

Date of Issue: 05.01.2022

ORDER NO 33/2021-CUS (SZ)/ASRA/MUMBAI DATED 31.12.2021 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. Shabaree Overseas.

Respondent: Pr. Commissioner of Customs, Coimbatore.

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CMB-CEX-000-APP-220-14 dated 20.11.2014 passed by the Commissioner (Appeals-I), Customs, Central Excise, and Service Tax, Coimbatore.

ORDER

This Revision Application is filed by the M/s. Shabaree Overseas, Flat No. 101, Anbu Apartments, Bharathi Nagar, Karur - 639 002 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CMB-CEX-000-APP-220-14 dated 20.11.2014 passed by the Commissioner (Appeals-I), Customs, Central Excise, and Service Tax, Coimbatore.

2. Brief facts of the case are that the Applicant was granted drawback amount of Rs. 3,84,185/- for the exports done by them during the period Jan-Apr'06. The applicant had not produced the evidence for realisation of export proceeds in respect of the shipping bills. As the applicant failed to produce evidence for realization of export proceeds in respect of said export goods within the period allowed under the Foreign Exchange Management Act, 1999 including any extension of such period granted by the Reserve Bank India, a show cause notice was issued on 15.06.2007 and after due process of law the adjudicating authority ordered recovery of Rs.3,84,185/- alongwith appropriate interest under Section 75A(2) of the Customs Act,1962 and imposed an penalty of Rs.1000 under Section 117 of the Customs Act,1962 vide Order-in-Original No.738/2014-AC-BRC Cell dated 14.03.2014. Aggrieved, the Applicant filed an appeal. However, the Commissioner (Appeals) vide Order-in-Appeal No. CMB-CEX-000-APP-220-14 dated 20.11.2014 rejected the appeal.

3. Hence the Applicant has filed the impugned Revision Application on the following grounds:

- a) It is submitted that the applicants have realized the export proceeds well within one year from the date of export as stipulated in Rule 16A of the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995.

b) It is further submitted that due to frequent changes in staff and non-receipt of show cause notice, they were unable to place the BRC before the Adjudicating Authority; however, despite submission of the BRC before the Commissioner (Appeals), the same was not considered by the Appellate Authority. It is further submitted that the delay in submitting the certificate may be condoned since the substantial requirement of realisation of export proceed within one year was fulfilled by the appellants.

4. Personal hearing in the case was fixed for 08.10.2021. Shri S. Durairaj, Advocate attended the online hearing on behalf of the Applicant and he reiterated the earlier submissions. He stated that BRC's are available and the same have been submitted alongwith RA. They could not submit the same before the Original authority as they did not get an opportunity. He requested to give them the benefit.

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

6. Government observes from the impugned Order-in-Original that the rebate claim was rejected on the following ground:

The exporter had failed to comply with the requirements under Section 75 of the Customs Act, 1962 read with the Drawback Rules since he had failed to furnish evidence for receipt of export proceeds in full thereby rendered himself liable for recovery of Drawback with interest and penalty u/ s 117 ibid. read with Rule 16A of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995.

7. Government observes that the relevant proviso to Section 75 of the Customs Act, 1962 reads as under:

SECTION 75. Drawback on imported materials used in the manufacture of goods which are exported.

Provided further that where any drawback has been allowed on any goods under this sub-section and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the ⁸ [Foreign Exchange Management Act, 1999 (42 of 1999)], such drawback shall ⁹ [except under such circumstances or such conditions as the Central Government may, by rule, specify,] be deemed never to have been allowed and the Central Government may, by rules made under sub-section (2), specify the procedure for the recovery or adjustment of the amount of such drawback.]

7.1 Government observes that the Applicant has submitted a document titled "Bank Certificate of Export and Realisation" showing details such as Invoice No., Quantity, Amount in USD, Port, Shipping Bill No., Bill of Lading No. etc. in respect 20 exports done between 20.01.2006 to 27.04.2006. This document bears attestation of Manager, M/s. Tamilnad Mercantile Bank Ltd., Karur. The shipping bill numbers mentioned in this document match with that provided in the impugned Order-in-Original. The impugned Order-in-Appeal also has a mention about this document. Government observes that from the contents of this document, date of receipt of sale proceeds in respect of exports carried out by the applicant can also be ascertained.

8. In view of the findings recorded above, Government sets aside the impugned Order-in-Appeal No. CMB-CEX-000-APP-220-14 dated 20.11.2014 passed by the Commissioner (Appeals-I), Customs, Central Excise, and Service Tax, Coimbatore and allows the Revision Application filed by the applicant. Any amount recovered in respect of said 20 exports needs to be repaid to the applicant, subject to verification of BRC submitted by them.

9. The Revision Application is disposed of on the above terms.


31/12/21
(SHRAWAN KUMAR)

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

ORDER No. 33 \ /2021-CUS (SZ)/ASRA/Mumbai dated 31.12.2021

To,
M/s. Shabaree Overseas,
Flat No. 101, Anbu Apartments,
Bharathi Nagar, Karur – 639 002.

Copy to:

1. Pr. Commissioner of Customs,
No.6/7, ATD Street, Race Course Road,
Coimbatore-641018.
2. Sr. P.S. to AS (RA), Mumbai
- ~~3. Guard file~~
4. Notice Board.