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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

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F.No. 371/506/DBK/2019-RA

1484

Date of Issue:

15.08.2023

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ORDER NO. 349/2023-CUS/ASRA/MUMBAI DATED 13-03-2023 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 Allianz Exports.

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

Subject : Revision Application filed, under Section 129DD of the Customs  
Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-AXP-  
APP-371-2019-20 dated 31-07-2019 passed by the  
Commissioner of Customs (Appeals), Mumbai Zone-III.

**ORDER**

This Revision Application was filed by the M/s Allianz Exports (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. MUM-CUSTOM-AXP-APP-371-2019-20 dated 31-07-2019 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. The issue in brief is that the Applicant was granted drawback amount of Rs. 11,88,741/- (Rupees Eleven Lakh Eighty-eight Thousand and Seven Hundred and forty-one Only) for the exports made by them during the period 2013-14. The Applicant did not submit the evidence for realization of export proceeds in respect of the shipping bills relating to the drawback amount claimed. As they failed to produce evidence for realization of export proceeds in respect of the 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 of India, Show Cause Notice was issued to the Applicant. The Assistant Commissioner of Customs, DBK (XOS), ACC, vide his Order-in-Original Nos. AC/YK/6455/2016-17/ ADJ/ACC dated 31-03-2017 confirmed the demand and ordered recovery of Rs. 11,88,741/- along with appropriate interest and imposed penalty of Rs. 59,000/- under section 117 of the Customs Act, 1962. Aggrieved by the aforesaid Order, the Applicant then filed appeal with the Commissioner of Customs (Appeals), Mumbai Zone-III, who vide his Order-in-Appeal No. MUM-CUSTOM-AXP-APP-371-2019-20 dated 31-07-2019 rejected their appeal on the grounds that the appeal has been filed beyond the condonable period of 30 days i.e. beyond 90 days and hence not condonable under Section 128 of the Customs Act, 1962.

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

i) That the impugned order is an ex-parte order inasmuch as the Applicant was never heard on merits resulting in denial of natural justice.

ii) That the initial notice F. No. S/3- MISC/DBK (XOS) - 115(289) 15-16 ACC dated 10/03/2016 was issued based on incorrect information. It referred to Shipping Bills of September and December 2013 payment against which was realized in October 2013 and February 2014 and respective BRCs have been issued by the HSBC Bank in the same months; That they submitted the necessary BRCS to the Asstt Commissioner of Customs (DBK-XOS) ACC Mumbai on 30/03/2016 by Speed Post EU532920471IN.

iii) The full sale proceeds against the said Shipping Bills have been realized during 2013-14 itself and they had submitted E-BRCS against the relevant Shipping Bills as below:

Shipping Bill No.	Date	Amount(In FCY)	E-BRC No.	Date
1.	2.	3.	4.	5.
7359003	06-09-13	51551.10	HSBC0110002000040971	28.10.2013
7359038	06-09-13	38029.50	HSBC0110002000040972	28.10.2013
7359319	06-09-13	98125.50	HSBC0110002000040973	28.10.2013
		40.00	HSBC0110002000040974	28.10.2013
9100300	21-12-13	3696.00	HSBC0110002000048880	11.02.2014

iv) That they learnt about the adjudication order from the recovery notice sent by the Asstt Commissioner of Customs TRC (Export) ACC Mumbai, and they received the O-in-O on 25/07/2019 in response to their RTI; that the Adjudicating Authority erred in confirming the

demand of Drawback amount of Rs. 11,88,741/- to be recovered from the Applicant along with interest.

v) That the Adjudicating Authority ought to have appreciated that the Applicant had not received the adjudication order and was therefore not able to file appeal but they had informed the concerned Authority (Drawback Department) about the compliance of Rule 16[A] Sub-Rule [1] & [2] of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995; that the sale proceeds of the goods exported by the Applicant have been realized by the Applicant and the remittance has been received by the bankers of the Applicant; that they had submitted the realization certificate before the concerned authority even before the adjudication order was passed but without prejudice that the non-submission of the Bank Certificate of Export and Realisation in time is a technical breach and the demand of Drawback amount of Rs. 11,88,741/- to be recovered from the Applicant / Exporter as per the show cause notice along with interest at applicable rate deserves to be set aside. The Applicant relied on the following citations passed by various authorities:

(a) Revisional Authority (Joint Secretary) to the Govt. of India, Dept of Revenue Order in the case of LEIGHTON CONTRACTORS (INDIA) PVT. LTD. reported in 2011 (267) E.LT. 422 (G. O. 1.);

(b) The Hon'ble Supreme Court Order in the case of UNION OF INDIA VS SUKSHA INTERNATIONAL & NUTAN GEMS & ANR reported in 1989 (39) E.LT. 503 (S.C);

(c) The Hon'ble Supreme Court Order in the case of UNION OF INDIA VS AV. NARASIMHALU reported in 1983 (13) E.LT. 1534 (S.C.);

(d) The Hon'ble Supreme Court Order in the case of FORMICA INDIA DIVISION Vs COLLECTOR OF CENTRAL EXCISE reported in 1995 (77) E.LT. 511 (SC);

- (e) The Hon'ble Supreme Court Order in the case of MANGALORE CHEMICALS & FERTILIZERS LTD. VS DEPUTY COMMISSIONER reported in 1991 (55) E.L.T. 437 (S.C.);
- (f) The Hon'ble Tribunal in the case of BIRLA VXL LTD. VS COLLECTOR OF CENTRAL EXCISE, CHANDIGARH reported in 1998 (99) E.L.T. 387 (Tribunal);
- (g) The Hon'ble Tribunal Order in the case of COLLECTOR OF CENTRAL EXCISE VS T.I. CYCLES OF INDIA reported in 1993 (66) E.L.T. 497 (Tribunal);
- (h) The Hon'ble Tribunal Order in the case of ATMA TUBE PRODUCTS LTD. Vs COLLECTOR OF CENTRAL EXCISE, CHANDIGARH reported in 1998 (103) E.L.T. 270 (Tribunal);
- (i) Revisional Authority (Joint Secretary) to the Govt. of India, Dept of Revenue Order in the case of IKEA TRADING (INDIA) LTD. reported in 2003 (157) E.L.T. 359 (G. O. 1.);
- (j) The Hon'ble High Court, Gujarat Order in the case of INDIAN OIL CORPORATION LTD. VS UNION OF INDIA reported in 2012 (280) ELT. 507 (Guj).
- vi) That considering the above facts and circumstances of the case and in view of the receipt of the Certificate of the Banks confirming receipt of export proceeds, in respect of Drawback amount of Rs. 11,88,741/- as proof of compliance of Rule 16[A] Sub-Rule [1] & [2] of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, and considering that the same were submitted to the concerned authority in time therefore the demand of Drawback amount of Rs. 11,88,741/- to be recovered from the Applicant/Exporter vide show cause notice along with interest at applicable rate is not aroused/justified.

In view of the above, the applicant requested to set aside the impugned OIA No. MUM-CUSTOMS-APP-371/19-20 dated 31.07.2019 and the demand of drawback along with the interest or alternatively remand the matter to the adjudicating authority or the Appellate Authority.

4. A personal hearing in the case was fixed on 15.11.2022, 29.11.2022 and 2.12.2022. On 02.12.2022, Shri N. J. Heera, Advocate and Shri V. M. Advani, Advocate appeared for the hearing and submitted that they came to know about the OIO only when for recovery proceedings arrears demand was sent to home. They submitted that appeal was filed within time from the date OIOs were received. They further submitted that relevant remittances have been received and they have submitted the same along with RA application. They requested to allow the application.

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

6. Government notes that the Applicant had not received the Order in original as they received the same only after filing RTI, hence the impugned Order-in-Original was passed without giving an opportunity of hearing to the Applicant. Since they did not get the OIO in time they could not file the appeal against the OIO in time. Government therefore does not agree with the Commissioner Appeal's Order of holding the appeal as not maintainable due to delay in filing the appeal. In the given facts and circumstances and also in the larger interest of justice, Government would be looking into the merits of the case.

7. Government observes that it is a statutory requirement under Section 75(1) of Customs Act, 1962 & Rule 16A(1) of Customs, Central Excise & Service Tax Drawback Rules, 1995, read with Section 8 of FEMA, 1999 read with Regulations 9 of Foreign Exchange Management (Export of goods & Services) Regulations, 2000 & Para 2.41 of EXIM Policy 2005-2009 that export proceeds need to be realized within the time limit provided thereunder subject to any extension allowed by RBI.

8. Government further notes that the provisions of recovery of amount of drawback where export proceeds not realized has been stipulated Rule 16A of the Customs, Central Excise and Service Tax Duty Drawback Rules, 1995 and the relevant sub-rules (2) and (4) of the Rule 16A reads as under:

Rule 16A. Recovery of amount of Drawback where export proceeds not realised. -

*(1) Where an amount of drawback has been paid to an exporter or a person authorized by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realized by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such drawback shall be recovered in the manner specified below.*

*Provided that the time-limit referred to in this sub-rule shall not be applicable to the goods exported from the Domestic Tariff Area to a special economic zone.*

*(2) If the exporter fails to produce evidence in respect of realization of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be shall cause notice to be issued to the exporter for production of evidence of realization of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be shall pass an order to recover the amount of drawback paid to the claimant and the*

*exporter shall repay the amount so demanded within thirty days of the receipt of the said order :*

From perusal of above provision, it is evident that the drawback is recoverable, if the export proceeds are not realized within stipulated time limit or extension given by RBI, if any.

9. Government observes that the applicant has claimed that the realization of export proceeds in respect of the impugned Shipping Bills pertaining to 2013-14, were received within the prescribed time limit and the same was reported to the Customs Authorities. The applicants have enclosed the copy of the relevant Directorate General of Foreign Trade's E-BRCs along with the revision application.

10. Government observes from the copy of E-BRC for the Shipping Bills which is claimed to have been submitted by the applicant to the department earlier too, shows that the applicant has received the sale proceeds in time in respect of impugned shipping Bills which are tabulated as under:-

Sl. No	Shipping Bill Number	Date	Amount in Foreign Currency	Amount of Drawback (Rs)	Date of Realization of Export Proceeds by Bank
1.	7359003	06-09-13	51551.10	320611	13-09-2013
2.	7359038	06-09-13	38029.50	236429	13-09-2013
3.	7359319	06-09-13	98125.50 40.00	609738	13-09-2013 25-10-2013
4.	9100300	21-12-13	3696.00	21963	16-01-2014
		<b>Total</b>		<b>11,88,741/-</b>	

11. On examination of Rule 16/16A of the Drawback Rules, the Government finds that drawback amount is recoverable only if the foreign proceeds for export of the goods has not been realized within six months from the export of the goods. But in this case from the copies of the DGFT's E-BRCs enclosed, it is evident that export sale proceeds for the shipments made during the above period have been received/realized within the stipulated period as mentioned in the tables above.



12. In view of the above discussion and findings Government sets aside Order in Appeal No.CMB-CEX-000-APP-371/19-20 dated 31.07.2019 passed by Commissioner of Customs, Central Excise, & Service Tax, (Appeals) Coimbatore and allows the Revision Application filed by the applicant.

13. Revision Application is disposed off in the above terms.

  
13/3/23  
(SHRAWAN KUMAR)

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

ORDER No. 319/2023-CUS /ASRA/Mumbai

Dated 13-03-2023

To,

1. M/s Allianz Exports, A-99, Sector-65, NOIDA-201301
2. M/s Allianz Exports, C/o Advani Sachwani & Heera Advocates, Nulwala Building, Opp. G.P.O.,41, Mint Road, Fort, Mumbai-400001
3. The Commissioner of Customs (Export), Air Cargo Complex, Sahara, Andheri (East), Mumbai-400099

Copy to:

- 1) The Commissioner of Customs (Appeals), Mumbai-III, Awas Corporate Point (5<sup>th</sup> Floor), Makwana Lane, Behind S.M. Centre, Andheri-Kurla Road, Marol, Mumbai-400059.
- 2) The Assistant Commissioner of Customs (Export), Air Cargo Complex, Sahar, Andheri (East), Mumbai-400099
- 3) Advani Sachwani & Heera Advocates, Nulwala Building, Opp. G.P.O.,41, Mint Road, Fort, Mumbai-400001
- 4) Sr. P.S. to AS (RA), Mumbai
- ✓ 5) Notice Board
- 6) Spare Copy.