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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. 371/33/DBK/2019-RA

1466

Date of Issue: 15.03.2023

ORDER NO. 350/2023-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 Maurya Brothers.

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-CUSTOM-AXP-
APP-909-2018-19 dated 28-12-2018 passed by the
Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This Revision Application was filed by the M/s Maurya Brothers (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. MUM-CUSTOM-AXP-APP-909-2018-19 dated 28-12-2018 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. The issue in brief is that the Applicant was paid drawback amount of Rs. 2,42,353/- (Rupees Two Lakh Forty-two Thousand Three Hundred and fifty-three Only) for the exports made by them. 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 dated 31-08-2017, was issued to the Applicant. The Assistant Commissioner of Customs, DBK (XOS), ACC, vide his Order-in-Original Nos. AC/JD/3191/2017-18/ DBK (XOS)/ACC dated 28-03-2018 confirmed the demand and ordered recovery of Rs. 2,42,353/- along with appropriate interest and a penalty of Rs.15,000/- was imposed 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-909-2018-19 dated 28-12-2018 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 with the said Order in Appeal, the Applicant then filed the current Revision Application on the following grounds:

i) That the Commissioner Appeals has rejected the appeal as time bar ignoring the vital facts the Appellant brought the fact of realization of remittances by submitting BRC to the review authority within seven days from the date of receipt of first communication from the respondent. That they sincerely believed that the Appropriate Authority,

the Commissioner of Customs in exercise of his power under Section 129D(2) of the Customs Act, 1962 would rectify the error considering the proof of realization of the remittances.

ii) That the OIO had sought the recovery in terms of Rule-16(A) Sub-Rule- (1) & (2) of the Customs, Central Excise Duties and Service Tax Drawback Rules-1995 read with Section 75 A(2) of the Customs Act, 1962. Rule-16(A) clearly prescribe the situation wherein the DBK amount are recoverable with interest where the export proceeds are not realized within the prescribed period. Sub- Rule-4 of the said Rule prescribes that even where the Drawback is recovered the same is refundable if the exporter produces evidence within one year. In the instant case the export proceeds were realized well within the stipulated period. Therefore, the Order for recovery is not sustainable in law as well as in fact.

iii) That they have neither contravened any provision of this Act nor abetted any such contravention in as much as the export proceeds were recovered and therefore, the penalty under Section 117 is not attracted.

iv) That the order was passed without providing an opportunity of Personal Hearing. In plethora of judicial pronouncement it has been held that any order passed without affording an opportunity of hearing is violative of principal of natural Justice.

In view of the above, the applicant requested to set aside the impugned OIO and OIA.

4. A personal hearing in the case was fixed on 16.11.2022, 30.11.2022 and 05.01.2023. On 04.01.2023, Shri Shyam Dhar Maurya, Partner, and Shri Ajit Pratap Kushawalia, Advocate appeared for the hearing and submitted that remittance have been realized in this case. They further submitted that OIO passed is patently wrong as the same is based on wrong facts. They requested to allow their application as they are being punished for no mistake on their side. .

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 Commissioner Appeal in his Order has held that the appeal as not maintainable due to delay in filing the appeal. Government finds from the submissions of the Applicant that they neither received the SCN nor they received Personal hearing memos. They received only the OIO directly and hence they could not produce the proof of remittance before the adjudication. 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 :

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. 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 in his impugned appeal has claimed that the export proceeds have been realized in full and has attached the copy of the Bank Certificate of Export and Realisation with the signature of the Officer of Union Bank of India and also the copy of the Negative statements issued by Union Bank for the period from 1-01-2004 to 30-06-2014 along with the appeal. The certificate states that export proceeds for exports shipments made during the said period have been received and no export bill pending to be realized pertaining to the above period.

10. In view of the above Government finds that the original authority need to decide the matter after due verification of documents in terms of the extant

drawback rules and specifically Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The applicant should be given opportunity to provide all the documents evidencing receipt of foreign remittances. The original authority is directed to pass appropriate order in accordance with law after following the principles of natural justice.

11. In view of the above discussion and findings, Government sets aside Order in Appeal No. MUM-CUSTM-AXP-APP-909-2018-19 dated 28-12-2018 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

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


(SHRAWAN KUMAR)

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

ORDER No. 350/2023-CUS /ASRA/Mumbai

Dated 13-03-2023

To,

1. M/s Maurya Brothers, G.T.Road, Ghatampur, P.O.Aurai, District S.R.N. Badhoi (UP), Pin-221301
2. 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 (5th 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) Sr. P.S. to AS (RA), Mumbai
- 4) Notice Board
- 5) Spare Copy.