

REGISTERED
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. 371/300/DBK/2022-RA

Date of Issue:

2022

ORDER NO. 372/2022-CUS (WZ)/ASRA/MUMBAI DATED 12.12.2022
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 House of Anita Dongre Pvt. Ltd.

Respondent: Pr. Commissioner of Customs(Exports), Mumbai.

Subject : Revision Applications filed, under Section 129DD of the
Customs Act, 1962, against the Order-in-Appeal No. Mum-
Custm-Pax-App-1930/2021-22 dated 15.03.2022 passed by
the Commissioner of Customs(Appeals),Mumbai Zone III.

ORDER

This Revision Application has been filed by M/s. House of Anita Dongre Pvt. Ltd. (hereinafter referred to as "the applicant"), against the Order-in-Appeal No. Mum-Custm-Pax-App-1930/2021-22 dated 15.03.2022 passed by the Commissioner of Customs(Appeals),Mumbai Zone III.

2. Brief facts of the case are that the Applicant was issued a demand show cause notice dated 23.08.2017 for non-submission of Negative statements/certificates (BRCs) for export proceeds realised against the shipping bills under claim of drawback. As per Rule 16[A] Sub-Rule [1] & [2] of Customs, Central Excise and Service Tax Drawback Rules, 1995 read with Circular No.05/2009 dated 02.02.2009 which states that the exporter is under obligations to evidence to show that the sale proceeds (foreign exchange) in respect of the goods exported have been realised within the time limit prescribed under the Foreign Exchange Act, 1999. In this regard, Facility Notice No.05/2017 dated 07.06.2017 was issued by the department wherein all Exporters, Customs Brokers and all Members of trade were requested to submit the details of realisation received/certificates from their Authorised Dealers/Chartered Accountant for EDI Shipping Bills with LEO date prior to 01.04.2013 immediately and not later than 15.07.2017, a list of exporters who had not submitted BRCs/negative statements for above mentioned period was also annexed to the said notice. Further, a Public Notice No.24/2017 dated 17.07.2017 extending the time limit upto 31.07.2017 for submitting the requisite documents was also issued. The appellant/exporter failed to submit proof of their export realisation and accordingly the case was adjudicated vide the impugned order confirming the demand raised and imposition of penalty under Section 117 of the Customs Act, 1962. Being aggrieved by the aforesaid order-in-original the applicant filed appeal before the Commissioner of Customs(Appeals),Mumbai Zone III, who vide Order-in-Appeal No. Mum-Custm-Pax-App-1930/2021-22 dated 15.03.2022 rejected their appeal on being time barred. Appellate Authority has computed the time limit to file

appeal by taking into account the date on which the Order-in-Original dated 27.03.2018 was issued, which he finds beyond the expiry date of 30 days of condonable period and rejected the appeal without going into the merits of the case.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application under Section 129 DD of the Customs Act, 1962 before the Government on the following grounds:

- a) All export proceeds were realized within the time limit. However, alert inserted against the applicant in the system causing difficulties in further export and import had forced them to pay amount of drawback demanded and confirmed by the adjudicating authority.
- b) The ex-parte Order-in-original is ex facie misconceived and illegal and hence not sustainable. It deserves to be set aside. It has been passed in utter disregard to the principles of natural justice and fair play since the Applicant has neither been provided show cause notice nor was afforded personal hearing. Thus, Applicant was not given chance to explain their position before the adjudicating authority. If such a chance was provided the Applicant would have certainly produced the Bank Realisation Certificates vis a vis the corresponding Shipping Bills to the adjudicating authority.
- c) Though it has been claimed in the order that a Facility Notice 05/2017 07.06.2017 was issued for submission of Negative Statements/Certificate, the Applicant submit that they did not receive the same. Otherwise, the Applicant would have produced the requisite documents to the concerned officer, as all the sale proceeds in foreign exchange was realised within the stipulated time and the required BRCs were available with the applicant. Nevertheless, the fact remains that the department has not bothered to verify the eBRCS online from the DGFT though it was available to them.
- d) It is a fact that the Applicant Company had shifted to the present address in the year 2015. The department is well aware of the present address as the Applicant have filed various Bills of Entry and imported

consignments showing the present address and the new address has been mentioned on the IEC of the applicant (Copy of IEC and Bill of Entry enclosed Annexure 'E'). Also, communications have been made from the present address. The department should have issued the notices to the present address rather than the earlier one. Having failed to ensure the delivery of notices issued by the department, the department cannot contend that the Applicant did not attend personal hearing. In fact, the Applicant came to know about the impugned through their Customs Broker at the time of filing a Bill of Entry for import, that there was an alert appearing on the system in respect of the Applicant, whereupon the officials from the Applicant Company visited the Custom House and was informed the impugned order.

- e) Applicant would like to submit that the realization of export proceeds in all the shipping bills covered in the present proceedings had been occurred within the prescribed time limit under the Rule 16A sub-rules (1) & (2) of Customs & Central Excise Duties and Service Tax Drawback Rules, 1995. From the Statement of Bank Realization from DGFT website it is evident that the Authorized Dealer / bank had confirmed by issuing certificate which show that the sale proceed remittance in respect of exports shipment of the relevant Shipping bills have been realized within the stipulated time.
- f) The learned adjudicating authority has held that the confirmed demand should be recovered with interest. The Applicant submit that though they have paid interest amount also along with the confirmed demand as a bonafide exporter to avoid further harassment in this regard, the Applicant say that there cannot be any liability of interest in the present case, since the demand itself is unsustainable as the same has been confirmed without appreciating the facts and without application of mind, it is bad in law and therefore liable to be set aside.
- g) Under the impugned order the learned Assistant Commissioner of Customs has imposed a penalty of Rs.25,000/- under Section 117 of

the Customs Act,1962 on the Applicant. He has not given any cogent reasons substantiating imposing a penalty under Section 117 of the Customs Act, 1962. He has simply held in Para 8 (f) of the impugned order as: 'I find that since the exporter has not submitted the relevant documents required as proof of realization of export proceeds, the proceedings under the said notice are liable to be confirmed with penalty u/s 117 of the Customs Act, 1962.' This is a cryptic finding with no discussion or substantiation.

h) The department has said to have issued the notices and order by speed post. One such envelope said to be containing the order was returned by the postal authorities with remarks as "Left" (Copy enclosed as Annexure 'H'), clearly indicate that the order was not received by the applicant which was sent on the earlier address of the applicant. Further, in such a mode of service the department is supposed to have an acknowledgement of delivery of the served documents, which is not the case. No other modes viz, email, delivery in person or through customs broker or authorised representative was even attempted. Therefore, it cannot be considered to effective service of notice/order and the actual date of personally approaching Drawback section, ACC, Sahar by applicant and receiving on 06.01.2021 is the lawful relevant date of receiving of the impugned Order-in-Original No. AC/JD/1947/2017-18/DBK(XOS) ACC dated 27.03.2018.

- i) In view of above applicant requested to:
- a) To set the impugned Order-in-Appeal with consequential relief.
 - b) To set aside the Order-in-Original with consequential relief.
 - c) The duty drawback amount, interest and penalty paid by them to be refunded along with interest.

4. Personal hearing in the case was held on 20.09.2022, the hearing was attended online by Shri Kuldeep Singh Nara, Advocate on behalf of the Applicant. He submitted that neither SCN nor OIO was served on them. He

further submitted that they came to know about OIO only when there imports consignment was held up due to alert inserted on the basis of OIO. He further submitted that all e-BRCs are available with them and foreign exchange has been realized in all shipping bills. He requested to set aside OIA and allow the application.


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

6. Government notes that the Commissioner (Appeals) vide the impugned Order-in-Appeal has found the appeal of the applicant to be time barred and has dismissed the same without going into the merits of the case. Government also notes that Commissioner (Appeals) has computed the time limit by taking into account the date on which the Order-in-Original dated 27.03.2018 was issued. The applicant on the other hand has submitted that they never received a copy of the said Order-in-Original and became aware of the same only when their import consignments were held up in the year 2021. They have also submitted that they pursued the issue with the Department and thereafter received a copy of the said Order-in-Original on 06.01.2021, subsequent to which they filed the appeal before the Commissioner (Appeals) on 05.04.2021. They further submitted that one such envelope said to be containing the order was returned by the postal authorities with remarks as "Left", clearly indicating that the order was not received by the applicant which was sent on the earlier address of the applicant. Further, in such a mode of service the department is supposed to have an acknowledgement of delivery of the served documents, which is not the case. No other modes viz, email, delivery in person or through customs broker or authorised representative was even attempted. Government notes that Section 128(1) of the Customs Act, 1962 provides that the sixty day period for filing of appeal before the Commissioner (Appeals) has to be computed from the date of communication of the Order-in-Original to the parties concerned. On examining the impugned Order-in-Appeal,

Government finds that no evidence has been recorded by the Commissioner (Appeals) to indicate that the impugned Order-in-Original was served/communicated to the applicant. Government finds that no evidence has been adduced by the Department before the Commissioner (Appeals) or during the course of these proceedings to indicate that the said Order-in-Original dated 27.03.2018 was served on the applicant prior to 06.01.2021. Given these facts, Government finds that the applicant received a copy of the impugned Order-in-Original on 06.01.2021 and have filed an appeal against it on 05.04.2021, which is well within the prescribed time limit. Thus, Government finds that the Commissioner (Appeals) has erred in computing the time limit by taking the date of the issue of the Order-in-Original in account rather than the date of communication of the same to the applicant, as required by the law. In view of the above, Government finds the decision of the Commissioner (Appeals) to hold the appeal of the applicant to be time barred to be incorrect and hence sets aside the impugned Order-in-Appeal dated 15.03.2022.

7. Further, Government finds that the applicant has submitted that the BRCs/ negative statements required by the Department have been furnished by them vide letter dated 24.08.2022 and also that they have received the payments in foreign exchange with respect to all the export consignments in question. Government finds that the issue needs to be re-examined by the Original authority by taking into account the submissions of the applicant and hence remands the case back to the original authority for being decided afresh. The applicant should be provided sufficient opportunity to place on record their submission in the matter.

8. The Revision Application is allowed in the above terms.


(SHRAWAN KUMAR)

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

ORDER No. ~~371~~372/2022-CUS (WZ)/ASRA/Mumbai DATED 12.12.2022

To,

1. M/s House of Anita Dongre Private Limited, Plot No. R-847/1/1, TTC Industrial Area, MIDC Rabale, Navi Mumbai- 400701.
2. Elysian Tax Advisors & Associates, A-903, Shelton Sapphire, Sector- 15, CBD Belapur, Navi Mumbai - 400614.
3. The Pr. Commissioner of Customs(Export), Air Cargo Complex Sahar 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. Sr. P.S. to AS (RA), Mumbai
3. Guard file.