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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. 371/11-12/DBKWZ/18-RA / 1783 Date of issue: 23.03.2023

ORDER NO. 376-377 /2023-CUS (WZ)/ASRA/MUMBAI DATED 23.03.2023
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicants : M/s. Anand International

Respondent: Pr. Commissioner of Customs (Export), ACC, Mumbai

Subject : Revision Applications filed, under Section 129DD of the Customs Act, 1962, against the Order-in-Appeal No. Mum-CUSTOM-AXP-APP-387& 388/17-18 dated 19.07.2017 passed by Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This Revision Application has been filed by M/s. Anand International (hereinafter referred as 'Applicant') against the Order-in-Appeal No. Mum-CUSTM-AXP-APP-387& 388/17-18 dated 19.07.2017 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2.1 Brief facts of the case are that the applicant, an exporter, had exported the goods under Drawback Scheme as provided under Section 75 of the Customs Act, 1962 and had obtained drawback towards the said exports. In terms of Rule 16(A) Sub-Rule (1) & (2) of Customs, Central Excise and Service Tax Drawback Rules, 1995, the exporter is under obligation to produce evidence to show that the sale proceeds [foreign exchange] in respect of goods exported have been realized within the time limit prescribed under the Foreign Exchange Management Act (FEMA), 1999.

2.2 Applicant had failed to produce evidence to show that sale proceeds (foreign exchange) in respect of goods exported were realized within the time limit prescribed under the Foreign Exchange Management Act (FEMA), 1999, show cause notice was issued to the Applicant proposing to recover the amount of drawback already paid along with interest. The adjudicating authority passed the Orders-in-Original DC/RG/392/2011/Adj/Acc dated 23.03.2011 confirming the demand of drawback amount along with applicable interest as per Rule 16(A), Sub Rule (1) & (2) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Section 117 of the Customs Act, 1962. Aggrieved, the applicant filed appeal, however the Appellate authority vide impugned Order-in-Appeal rejected the appeal on being time barred as well as on merits.

3. Hence, the Applicants have filed the impugned Revision Applications mainly on the following grounds:

- i. Neither the SCN nor OIO was served to them.

- ii. The Department has erroneously made recovery of drawback amount of the shipping bills which are barred by law of limitation wherein SCN was issued after five years of export.
- iii. Despite of best efforts when the Applicant did not receive any show cause notice and order in original from the department and then the Applicant was forced to apply for show cause and order in original under RTI application dated 06.11.2013 and the copy of show cause notice and order in original was received under cover dated 22.11.2013 from RTI Cell (Import) ACC Mumbai on 23.11.2013 and accordingly the Applicant filed the appeal before the Commissioner (Appeals).
- iv. Since the order in original was received only on 23.11.2013 from RTI Cell and therefore, the limitation would run from 23.11.2013 and Applicant filed the appeal before the Commissioner (Appeals) well within time and there was no delay in filing the appeal.
- v. Because the department has not considered the part remittance against export and the impugned order has been passed without considering the same and hence same is liable to be set aside.
- vi. In view of above Applicants requested to set aside the impugned OIA.

4. A Personal hearing was fixed in this case on 29.11.2022. Mr. Ashok Singh, Advocate on behalf of the Applicant, appeared online for hearing and submitted that RA application has been filed in time from the date of receipt. He submitted that OIA was not sent on the address mentioned in Appeal. He further submitted that SCN has been issued covering period of even more than five years. He requested to allow the application.

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

6. Government observes that the applicant has all been sanctioned drawback in respect of exports made by them. However, the applicant had not produced evidence to show that the sale proceeds (foreign exchange) in respect of the exported goods had been realized within the time limit prescribed under FEMA, 1999. The applicants had therefore been issued show cause cum demand notices for recovery of the drawback sanctioned to them along with interest. The applicants did not respond to the intimations for personal hearing and therefore the adjudicating authority proceeded to confirm the demand for recovery of drawback sanctioned along with interest at the applicable rate. Applicants have claimed that they have not received the copies of the SCN & OIO passed by the adjudicating authority deciding the show cause notice for recovery of drawback sanctioned and that they became aware of the OIO only when officers visited their premises for recovery. These matters were carried in appeal before Commissioner (Appeals) who has rejected the appeal on the ground of being time bar as well as on merits. In this revision application, the applicant has submitted that the appeals were within time as they had filed the appeals within the statutory appeal period after the OIO had been communicated to them. They further claimed to have received the part remittance against their export consignments and submitted proof of receipt of those remittances.

7. Government notes that the Commissioner (Appeals) vide the impugned Order-in-Appeal has found the appeal of the applicant to be time barred. Government also notes that Commissioner (Appeals) has computed the time limit by taking into account the date on which the Order-in-Original dated 25.03.2011 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 officers visited at his place for recovery. They have also submitted that they have received a copy of the said Order-in-Original on 23.11.2013 through RTI, subsequent to which they filed the appeal before the Commissioner (Appeals) in time. Government finds that Adjudicating Authority noted in the OIO that envelope said to be containing the SCN was returned by the postal authorities

with remarks as "Left", clearly indicating that the SCN was not received by 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 authorized 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 23.03.2011 was served on the applicant prior to 23.11.2013. Given these facts, Government finds that the applicant received a copy of the impugned Order-in-Original on 23.11.2013 and have filed an appeal against it on 18.12.2013, 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.

8. Applicant contended that SCN has been issued covering period of even more than five years. In this regard, Government notes that Appellate Authority has rightly discussed at para 6 of the impugned OIA before concluding that limitation of time bar is not applicable in present case since demand of drawback has been confirmed under Rule 16(A) Sub-Rule (1) & (2) of Customs, Central Excise and Service Tax Drawback Rules, 1995 read with rule 75(a)[2].

9. Further, Government notes that the applicant has claimed to have received the partial remittance against their export consignments and have submitted the bank certificates reflecting the receipt of their export proceeds. In view of the assertions made by the applicant regarding receipt of export proceeds, it would be travesty of justice if applicant realized sale proceeds, still the recovery order is sustained exactly on the same ground of non-realization of sale proceeds. Government holds that the drawback cannot be denied to the Applicant on the portion of the remittances received, if they submit the proof of receipt of the same in terms of Rule 16(A) Sub-Rule (1) & (2) of Customs, Central Excise and Service Tax Drawback Rules, 1995 read with rule 75(a)[2]. Therefore, appropriate verification would be vital to settle the issue. Government therefore sets aside the impugned Order- in-Appeal and directs the original authority to decide the case afresh after taking the submissions of Applicant into consideration. The applicant is required to provide the documents evidencing receipt of foreign remittances to the concerned authorities. The original authority is directed to pass appropriate order in accordance with the law after following the principles of natural justice, within 8 weeks from the receipt of this order.

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


23/3/23
(SHRAWAN KUMAR)

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

ORDER No. 376-377 /2023-CU5(WZ)/ASRA/Mumbai dated 23.03.23

To,

1. M/s. Anand International, 202, Evershine Residency, Holi Cross Road, I.C. Colony, Borivali(W), Mumbai- 400103.
2. The Commissioner of Customs (Exports), Air Cargo Complex, Sahar, Andheri(E), Mumbai – 400 099.

Copy to:-

1. M/s. Ashok Singh(Advocate), 302, Gundecha Chambers, Nagindas Master Road, Fort, Mumbai- 400023.
2. Commissioner of Customs (Appeals) Mumbai, Zone – III, 5th floor, Awas Corporate Point, Makwana Lane, Behind S.M. Centre, Andheri – Kurla Road, Marol, Mumbai – 400 059.
3. Sr. P.S. to AS(RA), Mumbai.
4. Guard file.