

REGISTERED
SPEED POST



F.No. 371/22/DBK/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 20/5/15

ORDER NO. 04/2015-Cus dated 18.05.2015 OF THE GOVERNMENT OF INDIA,
PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF
INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

SUBJECT : Revision Application filed, under section 129 DD of the
Customs Act, 1962 against the Order-in-Appeal No. 426 &
427/Mumbai-III/2012 both dated 1.11.12 passed by the
Commissioner of Customs (Appeals), Mumbai Zone-III

APPLICANT : M/s Had Contiments, Thane

RESPONDEN : Commissioner of Customs, Mumbai



ORDER

This revision application is filed by applicant M/s Had Contiments, Thane, against the Order-in-Appeal No. 426- & 427/Mumbai-III/2012 both dated 6.11.2012 passed by the Commissioner of Customs (Appeals), Mumbai-III with respect to Order-in-Original passed by the Assistant Commissioner of Customs, Drawback (XOS), Air Cargo Complex, Sahar, Mumbai.

2. Brief facts of the case are that the applicant exported the goods vide 9 shipping bills and availed drawback benefit. Subsequently, Show Cause Notice was issued to the applicant for recovery of drawback of Rs.1,56,328/- along with interest for not submitting the realization certificate for the exports made by them. On scrutiny of the Bank Remittance Certificates submitted by the exporter, it was observed that in 2 cases the date of realizations was not mentioned and in the remaining 7 BRCs the realization date was beyond the stipulated time period. The applicant was asked to clarify the above discrepancies and also to submit the Reserve Bank of India's permission for extension, if any. However the applicant did not submit any documents nor appeared for the personal hearing. The original authority vide impugned Order-in-Original confirmed demand of already availed drawback.

3. Being aggrieved by the said Order-in-Original, applicant has filed appeal before Commissioner (Appeals), who rejected the same as the applicant failed to produce evidence of realization of remittance within stipulated time including evidence of any extension of the period either before the original authority or Commissioner (Appeals).

4. Being aggrieved by the impugned Order-in-Appeal, the applicant had filed this revision application under Section 129 DD of Customs Act, 1962 before Central Government mainly on the following grounds:

4.1 The impugned Order-in-Appeal passed by the Commissioner (Appeals) 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. It has been admittedly accepted by the applicant that the applicant did not receive the letter dated 07/05/2012. Thus applicant was not given fair chance to explain her position by the lower adjudicating authority.

4.2 Applicant is merchant exporter. As soon as they receive the demand cum Notice to show cause, the applicant immediately responded and replied to the lower adjudicating authority. The applicant had also furnished Bank certificate issued by the Authorized dealer (The Federal Bank Limited) for all 9 shipping bills, which indicates on the face of the each BRC's at Sr No 15 as "date of Realization of Exports proceed in respect of 6 Shipping bills Nos.(i) 698613, ii) 6995244, iii) 7003340, iv)7020903 , v) 6997163, vi) 6988906, the date of realized exports proceed as 3-11-2010; 2 shipping bills No. i) 7084048, ii) the date of realized exports proceed as 25/11/2010 and 1- Shipping Bill the date of realized exports proceed as 27/10/2010. Thus it was established that for sale proceeds in respect of export shipment made by the applicant during the period of 1-1-2008 to 30-6-2008 and 1-7-2008 to 31-07-2008, the Authorized Dealer had issue certificate and same was furnished by the applicant on 3-12-2012 to the respondent revenue. This factual position was completely ignored by the adjudicating authority. This both certificate issued by the Authorized Dealer (The Federal Bank Limited) clearly shows the remarks that (i) Amount pending realization "Nil" (ii) Remarks like whether exporter has been granted extension or applied for extension or waiver or any other reasons for non-recovery "Nil". The applicant has no control in the administrative matter of banking system. The concerned authorized dealer followed the Reserves Banks instruction. The lower adjudicating authority has ignored the factual position. The applicant now also furnished fresh 'CERTIFICATE BY THE AUTHORISED DEALER' issued on dated 5-9-2012 which clearly established that the Exports proceed in respect of exports shipment made by the applicants have been realized. The lower adjudicating

authority has ignored the factual position. Thus denial of principle of natural justice and fair play. Hence, such order deserve to be set aside.

4.3 The Commissioner in his finding observed that exporter was under the obligation to produce in respect of realization of exports proceed within time frame allowed under the FEMA Act,1999 or any extension of the said period permitted by the Reserve Bank of India. The applicant has not produced required documents within the stipulated time and also violated the provisions of the Drawback Rules. Secondly, even during the personal hearing the applicant has not stated/submitted any clarification or extension which requested by the department. The Commissioner had erroneously observed in his finding. The applicant says and submits that applicant did not received the communication dated 07-05-20 12. Secondly, with references the demand cum show cause notice, applicant immediately furnished 9 certified copies of Bank Realization Certificate twice i.e. on 16-11-2010 and also on 07-12-2010 for which acknowledgement receipt was also obtained by the applicant. This factual position had been conveniently ignored by the original adjudicating authority. This fact also ignored by the Commissioner (Appeals).

4.4 Applicant also says and submits that the stipulated prescribed time limit in term of the Rule -16 (A) Sub-Rule (1) &(2) of Customs & Central Excise Duties and Service Tax Drawback Rule 1995. It is beyond control of the exporter's to produce the required certificate in proscribed within time limit. However the Authorised Dealer's bank had confirmed by issuing Certificate which show that the sale proceed remittance in respect of exports shipment of 9 have been realized. In such circumstance the impugned order of the Commissioner (Appeals)'s is not just and proper and legal.

5. Personal hearing was re-scheduled in this case for 10.4.14, 27.03.15, 14.4.15 and 7.5.15. However, the applicant neither attended the hearing nor submitted any

permission letter from Reserve Bank of India. Personal hearing was held on 10.4.14, which was attended by Shri N.S.Patel, Advocate on behalf of the applicant, who reiterated the grounds of revision application. The applicant also admitted that they realized foreign remittance after one year and Reserve Bank of India permission for extension of time limit for such realization is still awaited for which he sought 2 months time for submission. Nobody attended hearing on behalf of department. The department vide their letter dated 27.3.2015 mainly reiterated contents of impugned orders.

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

7. On perusal of records, Government observes that the exporter were granted drawback with regard to exports made by them vide Nine (9) shipping bills. Subsequently, demand of drawback already sanctioned was confirmed on the ground that in respect of 2 shipping bills, the date of realization was not mentioned and in respect of remaining 7 shipping bills, the realization date was beyond the stipulated time period and no Reserve Bank of India's permission for such extension, if any, was submitted. Commissioner (Appeals) upheld the impugned orders-in-appeal. Now, the applicants have filed this revision application on grounds mentioned in para (4) above.

8. Government observes 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:

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

(2) If the exporter fails to produce evidence in respect of realisation 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 or Deputy Commissioner of Customs shall cause notice to be issued to the exporter for production of evidence of realisation 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 or Deputy Commissioner of Customs 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:

(In rule 16A, in sub-rule (2) has been substituted vide Notification No. 10/2006 - Customs (N.T.) dated 15/02/2006)

Provided that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds.

(4) Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or sub-rule (3) and the exporter produces evidence about such realisation within one year from the date of such recovery of the amount of drawback, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs or Deputy Commissioner of Customs to the claimant."

9. From perusal of above provision, it is evident that the drawback is recoverable, if the export proceeds are not submitted within stipulated time limit or extension given by Reserve Bank of India, if any. In these cases, it is an undisputed fact that the realization were made beyond one year stipulated period. This fact is also self-evident from certificate dated 5.9.2012 issued by the authorized dealer, Federal Bank Limited and also from copies of Bank Realisation Certificates, wherein there is a gap of more than two years between the date of export and date of realization of export proceeds.


Further, the applicant also failed to submit any extension of Reserve Bank of India regarding realization of export proceeds. Under such circumstances, Government finds that the applicants are liable to pay drawback availed by them for the reasons of failure to realize foreign exchange within stipulated time limit or Reserve Bank of

India's extension, if any. Therefore, the lower authorities have rightly confirmed the recovery of said drawback amount along with interest.


10. In view of above, Government finds no infirmity in order of Commissioner (Appeals) and hence, upholds the same.

11. Revision application thus rejected being devoid of merit.

12. So, ordered.


(Rimjhim Prasad)
Joint Secretary (Revision Application)

M/s Had Contiments
A-7/302, Soma Height,
Main Ambadi Road
Beside Evershine City
Godhivare, Vasal (East)
Thane-401208

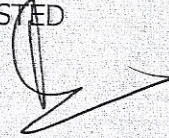
ATTESTED

(B.P.Sharma)
OSD (Revision Application)

Order No. 04/2015-Cus Dated 18.05.2015

Copy to:

1. The Commissioner of Customs, Mumbai Zone -III
2. The Commissioner of Customs (Appeals) Mumbai-III, Awas Corporate Point, 5th Floor Makwana Lane, Behind SM Centre, Andheri-Kurla Road, Mumbai-400059
3. Shri N.S.Patel, Advocate, Panchratana CHS Building-5, 503, 5th Floor, MAHDA Colony, Shell Colony Road, Opp. Tilak Nagar Rly, Mumbai-40071
4. The Assistant Commissioner of Customs, Drawback (XOS), Air Cargo Complex, Sahar, Andheri (East), Mumbai-400098
5. PS to JS(RA)
- ✓ 6. Guard File.
7. Spare Copy

ATTESTED



(B.P.Sharma)
OSD (Revision Application)