

SPEED POST
REGISTERED 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.371/334/DBK/2019/245

Date of Issue: 19.01.2023

ORDER NO. 21/2023-CUS (WZ) /ASRA/Mumbai DATED 17.01.2023
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 Nandan Denim Limited,
(Formerly known as Nandan Exim Limited)
Survey No.198/1, Pirana Road,
Ahmedabad – 382 405.

Respondent : Commissioner of Customs (Export),
Air Cargo Complex, Sahar, Mumbai.

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal no.
MUM-CUSTOMS-APP-376/2019-20 dated 31.07.2019
passed by the Commissioner of Customs (Appeals),
Mumbai, Zone – III.

ORDER

The subject Revision Application has been filed by M/s Nandan Denim Limited, Ahmedabad (here-in-after referred to as 'the applicant') against the Order-in-Appeal dated 31.07.2019 passed by the Commissioner of Customs (Appeals), Mumbai, Zone - III, which decided an appeal filed by the applicant against the Order-in-Original dated 27.03.2018 passed by the Assistant Commissioner of Customs, DBK (XOS), ACC, Mumbai, which in turn had confirmed the demand seeking to recover Drawback sanctioned to the applicant.

2. Brief facts of the case are that the applicant was issued a Show Cause cum Demand Notice seeking to recover the Drawback amounting to Rs.1,11,596/- sanctioned to them, as it appeared that they had not realized the foreign exchange involved on the goods exported by them as required under Rule 16(A) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 (DBK Rules, 1995). The same was issued as the applicant had failed to respond to the Facility Notice No.05/2017 dated 07.06.2017 and Public Notice No.24/2017 dated 17.07.2017 vide which the applicant, along with several other exporters, were called upon to submit the BRC's/Negative statements in respect of the consignments on which Drawback was claimed. The applicant failed to respond to the Show Cause Notice and hence the original authority, vide Order-in-Original dated 27.03.2018, confirmed the demand raised. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals). The said appeal was dismissed by the Commissioner (Appeals) without going into the merits of the case, as it was found that the appeal was time barred and filed even beyond the condonable period of ninety days.

3.1 Aggrieved, the applicant has filed the subject Revision Application against the impugned Order-in-Appeal, on the following grounds:-

(a) They became aware of this issue in July 2019 when the EDI system of Customs indicated an alert leading them to check with the original authority who informed them that the same was due to non-submission of proof of foreign remittance with respect to three Shipping Bills pertaining to the year 2010 wherein they were granted Drawback amounting to Rs.1,11,596/-;

(b) They submitted that during the relevant time the procedure was to submit Appendix-22 duly countersigned by the concerned Bank authorities evidencing receipt of export proceeds in India and that they had submitted the same and also submitted copies of the same;

(c) They had neither received the copy of the Show Cause Notice, intimation of personal hearing or the Order-in-Original; that on learning of this issue in July 2019, they had approached the original authority and had requested for copies of the relevant documents vide their letter dated 15.07.2019 and had also requested the proof of delivery of Show Cause Notice, intimation of PH and the Order-in-Original; however, the same was not heeded to and they were only provided a photocopy of a PH intimation letter dated 30.01.2018 and Order-in-Original dated 27.03.2018;

(d) That they received the copy of the Order-in-Original dated 27.03.2018 only on 16.07.2019; that they had filed the appeal before the Commissioner (Appeals) within 60 days of the receipt of the copy of the Order-in-Original which was within the permitted time limitation; hence the Commissioner (Appeals) should have disposed of their case on merits;

(e) They cited several decisions of the higher Courts to submit that it was a settled law that it is the obligatory duty of the proper officer of the Customs to deliver the Show Cause Notice, intimation of PH and Order-in-Original to them; that Section 153 of the Customs Act, 1962 provided for the same and that the Commissioner (Appeals) had failed to take cognizance of the same;

(f) The Commissioner (Appeals) had failed to give them a personal hearing and hence the impugned Order-in-Appeal was not a judicial order;

(g) That substantive benefit like drawback should not be denied on technical grounds; that it was the policy of the Government that taxes should not be exported;

In view of the above the applicant requested for the impugned Order-in-Appeal to be set aside.

3.2 The applicant made additional submissions on 21.11.2022 wherein they submitted as under:-

(a) The Order-in-Original dated 27.03.2018 was not tenable under the relied upon provisions of the Rules of 1995; that the Order-in-Original was incorrect as it seeks to recover drawback under Rule 16A of the Drawback Rules, 1995 which was not existing in the statute book or save on introduction of Drawback Rules, 2017 and could not be sustained in law, without a saving right under the repealed Rules of 1995; that the Order-in-Original had not appreciated that by virtue of Rule 20 of Drawback Rules, 2017 the previous rules of Customs, Central Excise Duties and Service Tax Drawback Rules, 2017 had ceased to operate from 01.10.2017; that the said Rule 20 which provided for saving clause did not contain any clause for the recovery of drawback claims filed and sanctioned prior to 01.10.2017;

(b) That since no fresh Show Cause Notice was issued for recovery proceedings and the Order-in-Original had adjudicated a Show Cause Notice which had lapsed, the same would also automatically lapse;

(c) That the Order-in-Original was beyond the scope of the Show Cause Notice as the Show Cause Notice sought to recover the drawback with interest however the Order-in-Original had in addition had also levied a penalty of Rs.7000/- which was incorrect and not permitted by law;

(d) That the law provided that Show Cause Notice seeking to recover drawback should be issued within 'reasonable time'; that in their case Show Cause Notice had been issued on 04.09.2017 for drawback pertaining to the period from 28.05.2010 to 04.08.2010 and hence was not within 'one year' and was also beyond the extended period of five years from the notice dated 04.09.2017; that the Show Cause Notice deserves to be set aside on the ground of limitation as well.

4. Personal hearing in the matter was granted to the applicant on 16.11.2022 and Shri P.P. Jadeja, Advocate appeared online for the same. He submitted that full remittance has been received and details were submitted to the Department. He submitted that the appellant came to know about the demand only when an alert was inserted in the EDI and their export was stopped. He submitted that after knowing about the Order-in-Original they filed appeal within time. He requested to allow the application.

5. Government has gone through the records available in case files, the written and oral submissions and also perused the impugned Order-in-Original and the 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 passed. 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 export consignments were held up in the year 2019. They have also submitted that they pursued the issue with the Department and thereafter received a copy of the said Order-in-Original on 16.07.2019, subsequent to which they filed the appeal before the Commissioner (Appeals) immediately. The Commissioner (Appeals) has recorded that the said appeal was filed on 22.07.2019. 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 the date on which they were given a copy of the same on 16.07.2019. Given these facts, Government finds that the applicant received a copy of the impugned Order-in-Original on 16.07.2019 and have filed an appeal against it on 22.07.2019, which is well within the prescribed time limit of sixty days. 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 into 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 31.07.2019.

7. Further, Government finds that the applicant has submitted that the proof of receipt of realization of export proceeds in Form Appendix-22, as required by the law at the material, was submitted by them to the Department. Given the above, 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. H\ /2023-CUS (WZ) /ASRA/Mumbai dated } } .01.2023

To,

M/s Nandan Denim Limited,
(Formerly known as Nandan Exim Limited)
Survey No.198/1, Pirana Road,
Ahmedabad - 382 405.

Copy to:

1. Commissioner of Customs (Export), Air Cargo Complex, Sahar, Mumbai.
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. Shri P.P. Jadeja, Consultant, 53, Sarovar Complex, Behind Jain
Derasar, Off C.G. Road, Navrangpura, Ahmedabad - 380 009.
4. Sr. P.S. to AS (RA), Mumbai.
5. Notice Board.