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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.371/15/DBK/2019-RA | 3678

Date of issue: 17/05/23

ORDER NO. 761 /2023-CUS (WZ)/ASRA/MUMBAI DATED 16-05-2023
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. Rags Enterprises.

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

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-AXP-APP-952-18-19 dated 28.12.2018 passed by the
Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This Revision Application is filed by M/s. Rags Enterprises, (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. MUM-CUSTOM-AXP-APP-952-18-19 dated 28.12.2018 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Brief facts of the case are that the Applicant had obtained a drawback amounting to Rs.91,789/- in respect of the exports done by them. As the applicant failed to produce evidence for realization of export proceeds in respect of the concerned exports, a show cause notice was issued on 17.02.2010 and after due process of law, the adjudicating authority ordered recovery of demand amount of Rs. 91,789/- alongwith interest vide Order-in-Original No. DC/SRB/188/2011/ADJ/ACC dated 28.02.2011. Aggrieved, the Applicant filed an appeal which was rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal being time barred under Section 128 of the Customs Act, 1962.

3. Hence the Applicant has filed the impugned Revision Application mainly on the following grounds:

- i. Applicant submit that Respondent erred in passing the order in gross violation of principles of natural justice as the order is passed without granting any hearing to the Applicant. Applicant submit that they have filed an Affidavit sworn-in by the proprietor of the firm narrating the non-service of the captioned order-in-original and also sending the order in Mumbai rather, than sending into the Applicant's registered address. This is evident from the address mentioned in the Order-in-original itself. Applicant submit that neither the show-cause notice nor the order in original is served on Applicant before attaching the bank account. Therefore, order passed in gross violation of principles of natural justice is void ab-initio. Any subsequent order passed on the basis of such order is legally not sustainable and liable to quashed and set aside.

- ii. Respondent erred in directing the bank to freeze the salary bank account of Applicant even without serving the copy of Order-in-original when visited in person to Customs office. The export relates to the period from April 2004 to September 2007 and the alleged Notice is said to have been issued in February 2010, not served on the Applicant. After personal visit and denying the copy of the order-in-original, the same is sent to M/s. Delloite only in October 2018. Similarly, the order is also sent to the address of some other unit at 232/233 Anandraj Industrial Estate, Sonapur Lane, LBS Marg, Bhandup (West), Mumbai-400 078 whereas the Applicant's unit was situated at 7/1, Vaswani Nagar, German Bakery Lane, Koregaon Park, Pune-411 001. It is disgraceful to refuse to hand over the copy of order, even after pointing out that the order was sent to wrong address, when the Applicant visited the office of Customs. All these acts clearly show the cause for delay in adjudication and subsequently denying the Applicant their legitimate right of hearing/appeal.
- iii. Respondent erred in passing the adjudication order without verifying the details of export proceeds received in bank. Applicant submit that instead of seeking the details of export proceeds from Bank for such delayed notice, they preferred to give instruction to bank for freezing the salary bank account. Applicant submit that they have realized all export proceeds in Convertible Foreign Exchange and all the remittances were received through Oriental Bank of commerce, F.C.Road Pune. Applicant submit that Oriental Bank of Commerce have provided bank statement identifying the Foreign bills collection entries & duly authenticated the same for the period from October 2005 to September, 2012 (relevant period). It is clearly evident from the said Bank statement that almost all export proceeds have been received by the said bank. These details are shown clearly at exhibit E annexed above, Therefore there is no violation any rules of duty drawback and the Applicant have correctly claimed the said duty drawback amount.
- iv. Applicant further submit that as per Rule 17 of Drawback Rules 1995, powers are vested to relax the Provisions of recovery of

drawback from the Exporter, if failed to comply With any of the provisions of the said rules, and has thus been entitled to drawback after considering the representation, if any, made by such exporter, for reasons to be recorded in writing, exempt such exporter from the provisions of such rule and allow drawback in respect of such goods. Applicant submit that they were deprived of any such opportunity to make their representation. In fact, there is no contravention of provisions of Drawback Rules as the sale proceeds have been received within the stipulated time. Therefore, allegations in the show cause notice that "Exporter have not realized the foreign exchanges involved on the goods exported under the shipping bills (attached to the notice) as per Rule 16[A], Sub-rule (1) & (2) are not correct and baseless. Therefore order of Respondent is required to be quashed and set aside.

- v. Without prejudice to the right to claim refund subject to outcome of the present application, applicant have deposited the balance amount of duty draw back in dispute. Applicants have deposited Rs.82,610/- being the balance refund amount vide GAR 7 Challan dated 1.2.2019 and the copy of said challan is annexed to the appeal. This is to establish the bonafide of the applicant.

In the light of the above submissions, the applicant prayed to set aside the impugned order with consequential relief.

4. Personal hearing in the matter was held on 15.02.2023. Ms. Shailaja Virraghavan, Proprietress of M/s. Rags Enterprise and Shri P.K.Shetty appeared before me and submitted a synopsis of the matter. They submitted that Appeal was filed with Commissioner (Appeals) within 60 days from receipt of original order. They further submitted that remittances have been realized in all cases and submitted Nil pendency certificate from Banks. They requested to set aside the Order of Commissioner (Appeals).

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

6. Government observes that the applicant had 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 realised within the time limit prescribed under FEMA, 1999. The applicant had therefore been issued show cause cum demand notice for recovery of the drawback sanctioned to them alongwith interest. The applicant 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. The applicant has claimed that they had not received the 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 their Bank intimated them about the lien placed by the Customs Authorities. They then received the OIO only after approaching the Customs Authorities and this matter was brought to the notice before Commissioner (Appeals) who has rejected the appeal on the ground of time bar. In the revision application, the applicant has made similar grounds to contend that the appeal was filed within the statutory appeal period after the receipt of the OIO. 6. 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 the Circular No. 5/2009-Customs dated 02.02.2009 had set out a mechanism to monitor the realisation of export proceeds. It is observed that exports involved in the instant case pertained to the period prior to 2010-11. The SCN was issued on 17.02.2010. The circular dated 02.02.2009 was in vogue and therefore the applicant was required to produce evidence of receipt of export proceeds before the Assistant/ Deputy Commissioner of Customs in terms of Rule 16A of the Drawback Rules, 1995/ Rule 18 of the Drawback Rules, 2017 within the period allowed under the FEMA, 1999. The applicant has contended that they had furnished such evidence before Commissioner (Appeals). However,

the appeal filed by the applicant was dismissed on the grounds of time bar by the Appellate authority.

8. Government observes that the applicant has submitted copies of 10 Certificates all dated 15-01-2021 issued by their banker/authorized dealer, Punjab National Bank, F. C. Road branch, Pune (erstwhile Oriental Bank of Commerce). The Certificates pertain to half yearly period starting from January 2004 to June 2004 till July 2008 to December 2008. As per these certificates outstanding export proceeds in respect of export shipments made by the applicant from Air Cargo, Mumbai, during the given period is 'NIL'

9. Government observes that para 4 of said Circular No. 5/2009-Customs dated 02.02.2009 reads as under:

4. *In view of this change, particularly considering that under the statute, the drawback payment is ultimately linked to the realization of export proceeds, it has become necessary for the Department to put in place an in-house monitoring mechanism to monitor the realization of such proceeds for exports made under the Drawback Scheme. Extensive consultations were held with field formations and trade & industry in this regard, and subsequently, the matter was examined by the Board. For monitoring the realization of export proceeds for drawback purposes, the Board has decided that the exporters will submit a certificate from the authorized dealer (s) or chartered accountant providing details of shipment which remain outstanding beyond the prescribed time limit including the extended time, if any, allowed by the authorized dealer/RBI on a 6 monthly basis. Such certificate shall be furnished by the exporter, authorised dealer wise for each port. In order to put the exporters on notice at the time of export itself, an endorsement on the exporter's copy of shipping bill would be made specifying the due date for realization of export proceeds.*

Thus, Government observes that the applicant had submitted valid documents certifying no pendency against realization of the export proceedings against exports done by them during the period starting from January 2004 to December 2008.

10. In view of the above discussion and findings, the Government sets aside Order-in-Appeal No. MUM-CUSTOM-AXP-APP-952-18-19 dated 28.12.2018 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III and allows the Revision Application.


16/5/23
(SHRAWAN KUMAR)

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

ORDER No. 461 /2023-CUS (WZ)/ASRA/Mumbai dated 16.5.2023

To,
M/s. Rags Enterprises,
B-2, Goodwill Residency,
Lane 13E, Adarsh Colony,
Vidya Nagar, Tingre Nagar,
Pune - 411 032.

Copy to:

1. Commissioner of Customs,
Air Cargo Complex, Sahar,
Andheri (East), Mumbai - 400 099.
2. Advocate P.K.Shetty,
F-160, 1st Floor, Dreams Mall,
LBS Marg, Bhandup (W),
Mumbai - 400 078
3. Sr. P.S. to AS (RA), Mumbai
- ✓ 4. Guard file.