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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. 371/201/DBK/2018-RA / ३ ७ ३ १

Date of Issue: २२.०९.२०२३

ORDER NO. २६५/२०२३-CUS (WZ) /ASRA/Mumbai/१८-९-२३ DATED
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. S.K. Signature,
7, Evergreen Industrial Area,
Shakti Mulls Lane,
Mahalaxmi, Mumbai - 400 011.

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

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-AXP-APP-1126-17-18 dated 13.03.2018
passed by the Commissioner of Customs (Appeals),
Mumbai, Zone - III.

ORDER

The subject Revision Application has been filed by M/s. S.K. Signature, 7, Evergreen Industrial Area, Shakti Mulls Lane, Mahalaxmi, Mumbai – 400 011 (here-in-after referred to as 'the applicant') against the Order-in-Appeal No. MUM-CUSTOM-AXP-APP-1126-17-18 dated 13.03.2018 passed by the Commissioner of Customs (Appeals), Mumbai, Zone – III which decided an appeal filed by the applicant against the Order-in-Original No. AC/RGB/5246/16-17/DBK(XOS)/ACC dated 28.02.2017 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. 46,86,954/- 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) Sub Rule (1) & (2) 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. 08/2016-17 dated 18.08.2016 and Public Notice No. 19/2015 dated 02.12.2015 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 No. AC/RGB/5246/16-17/DBK(XOS)/ACC dated 28.02.2017, confirmed the demand raised.

3. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals). Commissioner (Appeals) vide his Order-in-Appeal No. MUM-CUSTOM-AXP-APP-1126-17-18 dated 13.03.2018 rejected the appeal as the applicant failed to comply with the provisions of Rule 16A of Customs, Central Excise duties and Service Tax Drawback Rules, 1995 read with

Foreign Exchange Management Act, 1999 by not realizing the export proceeds in the prescribed period and also failed to submit BRC or certificate from the Authorised Dealer / Chartered Accountant in the prescribed format for the requisite period.

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

4.1 The Applicants stated that during the hearing Applicants have submitted the C.A. Certificate and Payment Challans in the cases where remittances did not receive. The Applicants again submitted the Drawback paid back to the Department Challans and Statement of payment in respect S.B. wise alongwith interest paid. In respect of remaining Shipping Bills they have received many payments. The statement of amount of receipt as shown in the SCN is also submitted along with BRC.

4.2 The Applicants submitted that they crave leave to submit all the BRCS in respect of remaining Shipping Bills alongwith the payment in case they have not received the payment from abroad.

4.3 The Applicants stated that the export was during year 2013-14. This period was the recession period and the importer was also in difficulty. With Applicant's good relation and excessive pressure they are getting the remittances. They hope that they will get the remittances early and they will be able to submit all the BRCS alongwith Negative statement early before the P.H. before the Hon'ble Joint Secretary, R.A., GOI.

4.4 The Applicants submitted all the required documents before the Hon'ble Commissioner (Appeals). The original copies of BRC, C.A. certificate everything has been submitted. The confirmation of drawback paid to the

Applicants is nothing but the harassment to the Genuine exporter. The Order in Original needs to be set aside on this ground alone.

4.5 They enclosed CA Certificate alongwith payment Sheet wherever the remittance not received as per CA Certificate.

4.6 That, in the above genuine circumstance and bonafide facts, it may kindly be appreciated that, the said Order-in-Appeal is, improper, in correct, against the law, and thus is required to be set aside in limine.

5. Personal hearing in the matter was granted to the applicant on 04.01.2023 and Shri R.V.Shetty, Advocate appeared for the same. He submitted that Order-in-Original has confirmed demand without giving an opportunity to applicant to submit remittance details. He further submitted that foreign remittances have been received in the case. He requested to allow the application.

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


7. Government observes that there was a delay of 18 days in filing the present Revision Application by the applicant. The applicant in their Application for condonation of delay submitted that the Applicant could not file the appeal against the impugned order with in the time limit of three months, the reason for delay was non response from the Authorised Bank. In spite of submitting all the papers required, the Bank did not post the remittance particulars in their Computer. Further, the concerned person who was looking after the BRC work left the organization without informing, also the issue is very old and the Applicant had to search all the documents

for getting the proper documents. The applicant requested for condonation of delay of 18 days in filing the Revision Application. Since, the applicant filed this revision application 18 days after the initial 90 days period, which falls within condonable limit of 90 days and the grounds for seeking condonation of delay by the applicant are reasonable and justifiable. Government in the interest of justice condones the said delay and proceeds to examine the case on merits.

8. Government notes that the Commissioner (Appeals) vide the impugned Order-in-Appeal has rejected the appeal as the applicant failed to comply with the provisions of Rule 16A of Customs, Central Excise duties and Service Tax Drawback Rules, 1995 read with Foreign Exchange Management Act, 1999 by not realizing the export proceeds in the prescribed period and also failed to submit BRC or certificate from the Authorised Dealer / Chartered Accountant in the prescribed format for the requisite period.

9. Government finds that the applicant agreed to submit the BRC's alongwith Negative statement, before the personal hearing. However, applicant till date have failed to submit the BRCs required by the Department, which could have proved realization of export proceeds as required under Rule 16(A) Sub Rule (1) & (2) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 (DBK Rules, 1995) read with Foreign Exchange Management Act, 1999. The applicant failed to produce Bank Realization Certificates even after 9 years from the date of exports. Under such Circumstances, the drawback availed by the applicant is liable for recovery in absence of submission of proof of foreign exchange realization, within the stipulated time limit. The applicant have submitted that some of their buyers have gone bankrupt leaving any scope of recovery of export proceeds. Further, their submissions like the export was during year 2013-14, which was the recession period and importer was in difficulty, are not convincing arguments and cannot be accepted. As discussed above, the applicant has clearly failed to comply with their statutory obligations. Therefore, the order for recovery of drawback claim along with interest & penalty cannot be faulted with.

10. In view of the above, Government finds no reason to interfere with the impugned order-in-appeal. The revision application filed by the applicant are rejected as being devoid of merits.


(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 464/2023-CUS (WZ) /ASRA/Mumbai dated 18.5.23

To,

M/s. S.K. Signature,
7, Evergreen Industrial Area,
Shakti Mulls Lane,
Mahalaxmi, Mumbai – 400 011.

Copy to:

1. Commissioner of Customs (Export), Air Cargo Complex, Mumbai.
2. Commissioner of Customs (Appeals) Mumbai, Zone – III.
3. Shri. R.V.Shetty(Advocate), 101, Sterling Court, 'E' Wing, Maheshwari Nagar, Orkay mill Road, MIDC, Andheri E, Mumbai – 400 093.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.