

REGISTERED
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.371/77/DBK/2020-RA

4047

Date of issue:

02.10.2023

ORDER NO. N70 /2023-CUS (WZ)/ASRA/MUMBAI DATED 31.05.2023
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. Universal Knit Creation

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-795-2019-20 dated 27.12.2019 passed by
the Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This Revision Application is filed by M/s. Universal Knit Creation, (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. MUM-CUSTM-AXP-APP-795-2019-20 dated 27.12.2019 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.9,97,802/- 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 12.09.2017 and after due process of law, the adjudicating authority ordered recovery of demand amount of Rs.9,97,802/- alongwith interest and penalty amounting to Rs.90,000/- vide Order-in-Original No. AC/PTS/494/2018-19/DBK(XOS)/ACC dated 30.08.2018. 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. The Applicant would like to submit that they had not received any show cause notice as well as Order in Original. The Applicant got to know that some alert was put against them in the system due to non-receipt of the bank realisation against the export made. But the Applicant has submitted the Original Negative Certificate (Certificate issued by the Bank authority confirming no pendency in realisation of the export proceeds) for all the exports made by them. As and when the Applicant got to know that one Order in Original was issued exparte against them, they have approached the concerned authorities of the department to provide them a copy of the Order in Original. The Applicant vide their letter dated 16.08.2019 has requested the Original Authority to provide a copy of the Order in Original to them,

but the department has not provided to them. Then the Applicant through their legal consultant has requested the Hon'ble Commissioner of Customs, DBK(XOS), ACC, Mumbai vide their letter dated 30.08.2019 to provide a copy of the said Order in Original dated 30.08.2018. Finally, the department has handed over a copy of the Order in Original dated 30.08.2018 to the Applicant on 01.10.2019. After receiving the copy of the Order in Original on 01.10.2019 from the Original Authority the Applicant has filed the Appeal on 07.11.2019. Therefore, there is no delay on the part of the Applicant in filing the Appeal before the Hon'ble Commissioner of Customs (Appeals). All the facts are on records. In spite of that the Commissioner of Customs (Appeals), Mumbai, Zone-III has stated that the Appeal is not maintainable on the time period prescribed for Appeal and he has not gone into the merits of the Appeals. The Hon'ble Commissioner of Customs (Appeals) has failed to appreciate the provision of Section 128 of the Customs Act, 1962. It has been clearly mentioned in the section 128 that Appeal can be filed within sixty days from the date of the communication to him (Applicant) of such decision or order. Here it is evident that the copy of Order in Original was provided to the Applicant on 01.10.2019, vide the endorsement dated 01.10.2019 made in the last page of the Order in Original by the Superintendent of Customs, DBK(XOS) and AC, DBK(XOS). The Hon'ble Commissioner of Customs (Appeals) has not bothered to verify from the department whether the Show Cause Notice as well as Order in Original have been served to the Applicant or not. Instead of verifying the date of communication of such decision or order to the Applicant from the department the Hon'ble Commissioner has passed the Order in Appeal stating that the Appeal is not maintainable on the time period prescribed for appeal. Therefore, such Order is neither legal nor proper and it is liable to be set aside.

- ii. The Applicant would like to submit that the impugned Order-in-Original is passed in violation of the principles of natural justice. It is

a fact on record that the impugned Order-in-Original is an ex-parte order because the Adjudicating Authority has not bothered to give a chance to the Applicant to justify their export realization without granting personal hearing to the Applicant since none of the so-called personal hearing letters issued by the department was received by the Applicant. Moreover, the Applicant has neither received any Show Cause Notice nor received any personal hearing notice in this matter. The Adjudicating Authority has passed the impugned Order arbitrarily without informing about any demand cum show cause notice and also without extending sufficient opportunity of personal hearing to the Applicant. Any order passed in violation of principles of natural justice may amount to violation of the Fundamental Right to Equality guaranteed under the Constitution of India. The Applicant relies on case laws of Rajmal Lakhichand Versus Commissioner of Customs, Aurangabad, [2010 (255) E.L.T. 357 (Bom.)] and Ambal Mills Ltd. Versus Commissioner of C. Ex., Coimbatore, [2000 (124) E.L.T. 345 (Tribunal)]

- iii. The Applicant submits that the export proceeds were realized in the bank account. Hence, the Applicant is eligible for duty drawback and no duty drawback amount is recoverable from them. Therefore, no interest is payable by them. In this regard reliance is placed on the following case laws: Pratibha Processors vs Union Of India [1996 (88) E.L.T. 12 (S.C.)] and Bayer Abs Limited Versus Commissioner Of Central Excise, Vadodara - 2012 (281) E.L.T. 296 (Tri.-Ahmd.).
- iv. The Applicant would like to submit that the Hon'ble Commissioner of Customs (Appeals) has ignored the fact that the Adjudicating authority has failed to appreciate that penalty has been imposed on the Applicant without any basis and bereft of truth and based on misconception and without any evidence. The Applicant submits that the export proceeds were realized in the bank account. In proof of the realisation of export proceeds the Applicant have submitted the Negative Statement duly issued by the Bank Hence, the Applicant is eligible for duty drawback and no duty drawback amount is recoverable from them.

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 04.05.2023. Mr. Sanjay Kalra, Advocate appeared on behalf of the applicant and submitted that the appeal was filed with Commissioner (Appeals) within time from receipt of OIO. He further submitted that Negative Statements duly issued by the Bank were submitted to DC, Drawback vide letter dated 12.01.2017. He requested to allow the application and submitted copies of Negative Statements relevant in the matter.
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, it was alleged that 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 and penalty amounting to Rs. 90,000/-. The applicant has claimed that they had not received the OIO passed by the adjudicating authority and that they became aware of the OIO when they came to know that some alert was put against them in the system due to non-receipt of the bank realisation against the exports made by them. 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. 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 01.04.2013. The SCN was issued on 12.09.2017. 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 22 Certificates all dated 10-09-2019 issued by their banker/authorized dealer, Tamilnad Mercantile Bank Ltd., Dr. Nanjappa Road branch, Coimbatore. The Certificates pertain to half yearly period starting from January 2004 to June 2004 till July 2014 to December 2014. 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 2014.

10. In view of the above discussion and findings, the Government sets aside 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 and allows the Revision Application.

Shrawan
31/5/23

(SHRAWAN KUMAR)

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

ORDER No. *M70* /2023-CUS (WZ)/ASRA/Mumbai dated *31.5.2023*

To,
M/s. Universal Knit Creation,
(now known as M/s. Ambertex Universal Export)
No.36, Vivekananda Nagar, Behind Prema School,
Sirupuluva Patti Post,
Tirupur - 641 603.

Copy to:

1. Commissioner of Customs,
Air Cargo Complex, Sahar,
Andheri (East), Mumbai - 400 099.
2. Advocate Sanjay Kalra,
5th Floor, Hitkari House
284, Shahid Bhagat Singh Road,
Fort, Mumbai - 400 001.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file.