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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.371/355/DBK/2018-RA / 5910

Date of Issue: 12/12/19

ORDER NO. 50 /2019-CX (WZ)/ASRA/MUMBAI DATED 05.12.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Choosy Fashion

Respondent : Commissioner of Customs (Appeals), Mumbai Zone-III

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. MUM-CUSTOM-AXP-APP-610/18-19 dated 28.09.2018 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This Revision Application is filed by the M/s Choosy Fashion, 204, Grand Canyon, Pali Hill, Bandra, Mumbai 400 503 (hereinafter referred to as "the Applicant") against the Order-in-Appeal MUM-CUSTM-AXP-APP-610/18-19 dated 28.09.2018 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. The issue in brief is that the Applicant, exporter, having IEC No. 030011371 had obtained a drawback amount of Rs. 5,71,967/- (Rupees Five Lakhs Seventy One Thousand Nine Hundred and Sixty Seven Only) for the exports made under the Shipping Bills having LEO dated from 01.04.2004 to 31.12.2008. The Applicant had not furnished the proof of realization of foreign exchange for the goods exported under the said Shipping Bills in terms of CBEC Circular No. 5/2009-Cus dated 02.02.2009 and Public Notice No. 5/2009-Cus dated 07.03.2009. Hence, the Applicant was issued Demand Cum Notice to Show Cause F.No. S/3-Misc/DBK (XOS)-0794/2010-11 ACC dated 14.05.2010 under Rule 16(A) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 for recovery of drawback amount Rs. 5,71,967/- paid to them under 12 Shipping Bills enlisted in the Annexure to the said notice. The Assistant Commissioner of Customs, Air Cargo Complex, Sahar, Mumbai vide Order-in-Original CAO No. AC/NKM/995/2012 ADJ./ACC dated 22.02.2012 confirmed the Demand Cum Notice to Show Cause dated 14.05.2010 and ordered the Applicant to return the drawback amount of Rs. 5,71,967/- along with interest applicable. Aggrieved, the Applicant then filed appeal with the Commissioner of Customs (Appeals), Mumbai-III who vide his Order-in-Appeal No. MUM-CUSTM-AXP-APP-610/18-19 dated 28.09.2018 rejected their appeal as time barred.

3. Being aggrieved, the Applicant then filed the current Revision Application on the following grounds :

3.1 That the action taken by the Commissioner(Appeals) by dismissing their appeals without going into the merits and facts of the case, should be set aside.

- 3.2 That the Applicant neither received the Show Cause Notice nor the Order-in-Original. They came to know only when their full money in the Bank accounts was withdrawn by Customs through the Bank without the knowledge of the Applicant.
- 3.3 That the Applicant's address is their residence address and the same is in the OIO. Further they have not received the Order-in-Appeal nor the PH letter, hence could not appear for the PH.
- 3.4 That on enquiry, it was given to understand that the department had missed to sent the PH letters prepared. When they came to know from their Bank that money was withdrawn.
- 3.5 That they rely on the following order of Hon'ble Tribunal in their case
- (i) Yapp India Automotive Systems Pvt Ltd. Vs CCE & ST Pune-I [2019 (365) ELT 109 (Tri. Mumbai)]
 - (ii) Omkareshwar Engineering Vs CCST Palghar - Order No. A/85063/2019 dated 11.01.2019 (Appeal No. E/88856/2018).
- 3.6 That they have received "No Remittance to be received Certificate" issued by Bank of India in respect of export of Applicants for the following period:
- (i) 01.10.2003 to 31.03.2004
 - (ii) 01.04.2004 to 30.09.2004
 - (iii) 01.10.2004 to 31.03.2005
 - (iv) 01.04.2005 to 30.09.2005
 - (v) 01.10.2005 to 31.03.2006
 - (vi) ~~01.04.2006 to 30.09.2006~~
 - (vii) 01.10.2006 to 31.03.2007
- This cover the full period of drawback demand by the Customs. There is no remittances to be received for the Exports by the Applicant. In view of the same, the demand of drawback may be set aside.
- 3.7 That they prayed that their Revision Application be allowed and the Order-in-Appeal and Order-in-Original be set aside.

4. A personal hearing in the case was held on 11.09.2019 which was attended by Shri D.C. Chadha, Proprietor on behalf of the Applicant. The

Applicant reiterated the submission made in Revision Application and submitted written submission dated 18.09.2019.

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. In the instant case, the Applicant was paid Drawback amount of Rs. 5,71,967/- for the export made under the Shipping Bills having LEO dated from 01.04.2004 to 31.12.2008. However the Applicant did not produce necessary certificate showing realization of foreign exchange against the exported goods and hence was issued Show Cause Notice. The Applicant have stated that they had not received the SCN nor the Order-in-Original and they only came to know when their money in the Bank account was withdrawn by Customs without the knowledge of the Applicant. It is further noticed that the Applicant vide their letter dated 11.04.2018 addressed to the Deputy Commission of Customs, Air Cargo, Mumbai, had requested to issue relevant correspondence letters/notices issued to them as they did not have any demand notices with them. On the Applicant's request letter dated 11.04.2018, they received the Order-in-Original No. CAO No. AC/NKM/995/2012 ADJ./ACC dated 22.02.2012 on 16.04.2018.

7. Government finds that the Applicant has received seven "No Remittance to be received Certificate" all dated 06.07.2018 issued by Bank of India in respect of export of Applicants IEC No. 0390011371 for the period 01.10.2003 to 31.03.2007.

8. Government notices that the impugned Order-in-Original dated 22.02.2012 was passed without giving an opportunity of hearing to the Applicant. Further, the Applicant had not be given personal hearing before the Commissioner(Appeals) also and therefore it amounts to violation of principle of natural justice. Further, the Applicants have received the Order-in-Original dated 22.02.2012 on 16.04.2018.


9. Prima facie, it appears that the Applicant have realized the remittances within the stipulated time and non submission of the same can not negate the fact of realization. Therefore, the Government is of the view that the Applicant

claim of realization of proceeds within due time requires verification from the original authority.

10. In view of the above, Government set aside the impugned Order-in-Appeal MUM-CUSTOM-AXP-APP-610/18-19 dated 28.09.2018 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III and remands back the instance case to the original authority for fresh consideration, who shall consider and pass appropriate orders on the drawback claim and in accordance with law after giving proper opportunity within four weeks from receipt of this order.

11. The Revision Application is disposed off in terms of above.

12. So, ordered.


(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 50 /2019-CX (WZ)/ASRA/Mumbai DATED 05.12.2019.

To,
M/s Choosy Fashion,
Grand Canyon, Pali Hill,
Bandra,
Mumbai 400 503

Copy to:

- 1) The Commissioner of Customs (Appeals), Mumbai Zone-III
- 2) The Commissioner of Customs(Export), Air Cargo Complex, Mumbai.
- 3) Sr. P.S. to AS (RA), Mumbai
- 4) Guard file
- 5) Spare Copy.