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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.371/225/DBK/2020-RA

4591

Date of issue:

11.02.2023

ORDER NO. 523/2023-CUS (WZ)/ASRA/MUMBAI DATED 06.7.2023
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. Aligns International

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-811/19-20 dated 27.12.2019 passed by the
Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This Revision Application is filed by M/s. Aligns International, (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. MUM-CUSTOM-AXP-APP-811/19-20 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.1,26,873/- 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 23.08.2017 and after due process of law, the adjudicating authority ordered recovery of demand amount of Rs.1,26,873/- alongwith interest and penalty of Rs.7,000/- vide Order-in-Original No. AC/JD/1882/2017-18/DBK(XOS)/ACC dated 27.03.2018. 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 Commissioner (Appeals) erred in not appreciating that the said Order-in-Original dated 27-3-2018 was for the first time served on the Applicants only on 26-9-2019, pursuant to the directions of the Joint Commissioner noted in the endorsement made on the certified copy of the Order-in-Original provided to the Applicants on 26-9-2019. The Commissioner (Appeals) erred in not appreciating that the Order-in-Original dated 27-3-2018 was not served on the Applicants at any time before 26-9-2019 and consequently the limitation for filing the appeal before the Commissioner (Appeals) commenced only on 26-9-2019 and since the Appeal was filed on 19-11-2019, which is within 60 days from 26-9-2019, the same was filed in time. The

Commissioner (Appeals) should have therefore entertained and decided the Appeal on merits.

- ii. The Commissioner (Appeals) erred in not appreciating that the department has not shown any evidence to the effect that the Order-in-Original dated 27-3-2018 was served on the Applicants any time before 26-9-2019. The Commissioner (Appeals) seriously erred in proceeding on the basis that the Appeal was filed after approximately 595 days for the date of passing of the Order-in-Original and was therefore barred by time. He erred in not appreciating that the period of limitation is to be computed from the date of communication of the Order-in-Original to the applicants and not from the date of passing of the Order-in-Original.
- iii. The Commissioner (Appeals) should have entertained and decided the Appeal on merits and he should have set aside the Order-in-Original on the following grounds:
 - a) the Order-in-Original dated 27-3-2018 was passed in violation of the principles of natural justice since the Show Cause notice mentioned therein was never served on the Applicants nor was any notice of hearing received by the Applicants and
 - b) it is evident from the previous Order-in-Original dated 1-12-2016, that the Applicants had duly submitted the evidence of realization of foreign exchange in respect of exports made from October 2004 till 31-3-2015. Consequently, the finding in the impugned Order-in-Original dated 27-3-2018 that the Applicants had not submitted evidence of realization of foreign exchange for exports prior to 1-4-2013 was ex-facie erroneous. Copies of the Shipping Bills for the period prior to 1-4-2013 along with the Bank Realization Statements clearly show that foreign exchange had been duly realized.

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 18.05.2023. Shri Santosh Thakare, authorized signatory of M/s. Align International, Shri J.C.Patel,

Advocate and Shri Vinay Patil from M/s. Yash Raj Logistics appeared before me and reiterated earlier submission. They further submitted that they came to know about OIO only when their consignment was held up due to alert in EDI. They filed appeal within time to Commissioner (Appeals) once OIO was received. They further submitted that OIO dated 01.12.2016 had already closed the issue of BRCs for the period Oct 2004 to March 2015. They contended that their application may be allowed unconditionally as both on time limit and merit, there is no case against them.

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 done 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 and penalty. The applicant has claimed that they had not received the SCN, PH Notices and OIO passed by the adjudicating authority deciding the show cause notice for recovery of drawback sanctioned and that they became aware of the OIO in the year 2019 when an alert was raised against their IEC code. Thereafter they received the OIO on 18.09.2019 after approaching the Customs Authorities. These facts were brought to the notice before Commissioner (Appeals) but the appeal has been rejected 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 and that it is evident from the previous Order-in-Original dated 1.12.2016, that the

Applicants had duly submitted the evidence of realization of foreign exchange in respect of exports made from October 2004 till 31.3.2015. Consequently, the finding in the impugned Order-in-Original dated 27.3.2018 that the Applicants had not submitted evidence of realization of foreign exchange for exports prior to 1.4.2013 was ex-facie erroneous. 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 Facility Notice No. 5/2017 dated 07.06.2017 had set out a mechanism to monitor the realisation of export proceeds in respect of EDI shipping bills with LEO date prior to 01.04.2013. As per this notice all exporters mentioned in enclosed Annexure were required to submit details of export realization received/certificate from authorized dealers/chartered accountants before 15.07.2017 which was subsequently extended till 31.07.2017. The applicant's name appeared in list of exporters mentioned in the Annexure to impugned Facility Notice. As the applicant failed to respond, a SCN was issued to them on 23.08.2017. The applicant has contended that they had furnished evidence regarding realization of export proceeds before Commissioner (Appeals). However, the appeal filed by the applicant was dismissed on the grounds of time bar by the Appellate authority.

8. Government notes that since the rejection by Appellate Authority is on the grounds of limitation and the applicant has contended that the impugned OIO and other related correspondence was not received by them and also their averment that it is evident from the previous Order-in-Original dated 1.12.2016, that they had duly submitted the evidence of realization of foreign exchange in respect of exports made from October 2004 till 31.3.2015, it is in the interest of justice that these claims of the applicant be taken up for verification.

9. In view of the above discussion and findings, the Government sets aside Order-in-Appeal No. MUM-CUSTOM-AXP-APP-811/19-20 dated 27.12.2019 passed by the Commissioner of Customs (Appeals), Mumbai

Zone-III and allows the instant Revision Application by remanding the matter to original authority for appropriate verification. The applicant should be provided reasonable opportunity for submission of required documents.


6/7/23
(SHRAWAN KUMAR)

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

ORDER No. 523 /2023-CUS (WZ)/ASRA/Mumbai dated 6.7.23

To,
M/s. Aligns International,
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Copy to:

1. Commissioner of Customs (Export),
Air Cargo Complex, Sahar,
Andheri (East), Mumbai – 400 099.
2. Shri J.C. Patel, Advocate
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213, Free press Journal Road,
Nariman Point, Mumbai – 400 021.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file.