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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. 373/55/DBK/2014-RA / 1906

Date of Issue: 12.03.2021

ORDER NO. 53 /2021-CUS (SZ)/ASRA/MUMBAI DATED 08.03.2021
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.

Subject : Revision Application filed, under Section 129DD of the Customs
Act, 1962 against the Order-in-Appeal No. CMB-CEX-000-APP-
163-14 dated 18.09.2014 passed by the Commissioner of
Customs, Central Excise & Service Tax(Appeals), Coimbatore.

Applicant : M/s Thangamman Export, C/o Prop.Shri R. Rathinasabapathy

Respondent : Commissioner of Customs, Coimbatore.

ORDER

This Revision Application is filed by the M/s Thangamman Export, Prop. Shri R. Rathinasabapathy, 13 & 15 Shanmuga Layout, Parapalayam, Managalam Road, Tirupur - 641 604 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CMB-CEX-000-APP-375-13 dated 12.12.2013 passed by the Commissioner of Customs, Central Excise & Service Tax(Appeals), Coimbatore.

2. The issue in brief is that the Applicant was granted drawback amount of Rs. 13,684/- (Rupees Thirteen Thousand Six Hundred and Eighty Four Only) for the exports made by them. The Applicant did not produced the evidence for realization of export proceeds in respect of the shipping bills within the period allowed under the Foreign Exchange Management Act, 1999 including any extension of such period granted by the Reserve Bank of India. A Show Cause Notice dated 28.03.2012 was issued to the Applicant for recovery of drawback amount of Rs. 13,684/-. The Assistant Commissioner of Customs, Air Cargo Complex, Coimbatore vide Order-in-Original No. 149/2013-Customs(BRC) dated 04.11.2013 confirmed the duty drawback amount of Rs. 13,684/- to be recovered with interest under Rule 16(A)(2) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Section 75A(2) of the Customs Act, 1962 and also imposed a penalty of Rs. 13,684/- under Section 117 of the Customs Act, 1962. Aggrieved, the Applicant then filed appeal with the Commissioner of Customs, Central Excise & Service Tax(Appeals), Coimbatore, who vide his Order-in-Appeal No. CMB-CEX-000-APP-375-13 dated 12.12.2013 rejected their appeal and upheld the Order-in-Original dated 04.11.2013.

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

- (i) The Applicant had received the export proceeds for the export made and had also intimated the Department vide record number 954 for the Shipping Bill No. 09003498 dated 26.11.2009 on time.
- (ii) A copy of the Bank Realization Certificate is also enclosed with the Revision Application.
- (iii) The Applicant being a small exporter prayed to take a lenient view and allow the application in their favour.

4. The Applicant delayed filing the Revision Application, details of which is given below:

Sl. No.	Revision Application	OIA dt	Date OIA recd	Date RA/COD filed	No. of days delay
1	373/55/DBK/2014-RA	12.12.2013	13.12.2013	20.03.2014 / 05.06.2014	07 days

5. A personal hearing in the case was held on 21.05.2018, 15.12.2019 / 12.02.2020 and none appeared for the hearing. In view of a change in the Revisionary Authority, the final hearing in the matter was granted on 02.02.2021 and 16.02.2021. The Applicant vide letter dated 05.02.2021 submitted that he is not interested in virtual mode of personal hearing or in person. Therefore, it was requested that order may please be passed based on the facts available on record and render justice to him.

6. The Applicant vide letter dated 05.02.2021 submitted written submission on the following grounds:

- (i) They had submitted BRC certificate in Appendix-22 issued by the bank concerned in respect of Shipping Bill No. 1993 dated 19.08.2009 which was the subject matter in Order-in-Original No. 149/2013-Customs(BRC) dated 04.11.2013 and Order-in-Appeal No. CMB-CEX-000-APP-375-13 dated 12.12.2013.
- (ii) They submitted that they had not violated provisions of Section 75 of Customs Act, 1962 read with the provisions of Foreign Exchange

Management Act, 1999. Therefore, the rejection of their appeal to set aside the Order-in-Original dated 04.11.2013 by the Commissioner(Appeals) vide Order-in-Appeal dated 12.12.2013 was a flawed one.

(iii) Therefore, the Applicant prayed that justice may be rendered to them as order for recovery of DBK amount even after production of BRC certificate is untenable.

7. 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.

8. Government first proceeds to discuss the issue of delay in filing this revision application. The Applicant submitted that the delay was only due to the fact that the Proprietor of the Applicant fell sick and hence was not able to file the revision application on time and requested to condone the delay. The revision application is filed with a delay of 07 days and Government, in exercise of power under Section 35EE of Central Excise Act, 1944 condones the said delay and takes up revision application for decision on merit

9. On perusal of the records, Government observes that the Applicant, had exported the goods and availed drawback amounting to Rs. 13,684/- and was issued Show Cause Notice dated 28.03.2012 for the recovery of the same amount as they did not produce the evidence regarding realization of export proceeds. The Applicant in their appeal before the Commissioner(Appeals) submitted that *"The appellants have enclosed the original bank realization certificate along with the appeal and that they had filed the BRC with the customs. The show cause notice was not received by them as it was sent to the wrong address."* Further the Applicant has submitted the following documents:

- (i) Copy of Bank Certificate of Export and Realisation dated 02.11.2009 issued by Corporation Bank, Tirupur;
- (ii) Copy of Shipping Bill No. 1993 dated 19.08.2009;

(iii) Copy of Invoice No. TE/002/09-10 dated 17.08.2009

10. Government notes that the Applicant in their Revision Application have stated "..... for the Shipping Bill No. 09003498 dated 26/11/2009 on time." And whereas in their written submission dated 05.02.2021 have stated ".....in respect of Shipping Bill No. 1993 dated 19.08.2009 ..." Government finds that Applicant have submitted the copy of the number of Shipping Bill No. 1993 dated 19.08.2009 which tallies with the Bank Certificate of Export and Realization dated 02.11.2009 issued by Corporation Bank, Tirupur. Further, inspite of realization of export proceeds dated 02.11.2009 received by the department in respect of Shipping Bill No. 1993 dated 19.08.2009, the adjudicating authority had confirmed the duty drawback amount along with interest and penalty vide Order-in-Original dated 04.11.2013 which is not legal and proper.

11. Government notes that the Applicant had not received the Show Cause Notice nor the PH letter, hence the impugned Order-in-Original dated 04.11.2013 was passed without giving an opportunity of hearing to the Applicant and therefore it amounts to violation of principle of natural justice.

12. It is evident that the Applicant has realized the remittances within the stipulated time in respect of Shipping Bill No. 1993 dated 19.08.2009 and non submission of the same can not negate the fact of realization. Therefore, Government is of the view that the Applicant's claim of realization of proceeds within due time requires verification from the original authority.

13. Under the circumstances, for following the natural justice, Government sets aside the impugned Order-in-Appeal No. CMB-CEX-000-APP-375-13 dated 12.12.2013 and Order-in-Original No. 149/2013-Customs(BRC) dated 04.11.2013 and remands back the instance case to the original authority for fresh consideration with the direction to decide the

appeal on merits after giving opportunity of being heard to the Applicant within eight weeks from receipt of this order.

14. The Revision Application is allowed in above terms.

Shrawan
8/3/21
(SHRAWAN KUMAR)

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

ORDER No. 53 /2021-CUS (SZ)/ASRA/Mumbai Dated 08.03.2021

To,
M/s Thangamman Export,
Prop. Shri R. Rathinasabapathy,
13 & 15 Shanmuga Layout,
Parapalayam, Managalam Road,
Tirupur - 641 604.

Copy to:

- 1) The Commissioner of Customs, 6/7, A.T.D. Street Race Course Road,
Coimbatore - 641 081.
- 2) Sr. P.S. to AS (RA), Mumbai
- 3) Guard file
- 4) Spare Copy.