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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.371/32/DBK/2021 / 5039

Date of Issue: 03.08.2023

ORDER NO. 545 /2023-CUS (WZ) /ASRA/Mumbai DATED 27.07.2023 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 INSTEP,
Gala No.9, 1st floor, Vora Industrial Estate No.4 B Unit,
Vasai Road (E) - 401210,
Thane, Maharashtra.

Respondent : 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-CUSTOMS-APP-619/2020-21 dated 24.12.2020
passed by the Commissioner of Customs (Appeals),
Mumbai, Zone - III.

ORDER

The subject Revision Application has been filed by M/s INSTEP, Vasai (here-in-after referred to as 'the applicant') against the Order-in-Appeal dated 24.12.2020 passed by the Commissioner of Customs (Appeals), Mumbai, Zone - III, which decided an appeal filed by the applicant against the Order-in-Original dated 27.03.2018 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 Drawback amounting to Rs.3,39,410/- 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) 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.05/2017 dated 07.06.2017 and Public Notice No.24/2017 dated 17.07.2017 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 dated 27.03.2018, confirmed the demand raised. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals). The said appeal was dismissed by the Commissioner (Appeals) without going into the merits of the case, as it was found that the appeal was time barred and filed even beyond the condonable period of ninety days.

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

(a) That both the Orders passed by the lower authorities were in violation of principles of natural justice inasmuch as the Order-in-Original was an ex-parte Order and was issued without giving them a chance to justify their export realization; that they had neither received any Show Cause Notice nor any Facility notice in the matter; that the Order-in-Original was passed without extending sufficient opportunity for personal hearing; that the original authority had instead asked them to prove that they had not received

the Show Cause Notice which was an impossible task; and that the Commissioner (Appeals) too had failed to ask Revenue to produce evidence regarding the Show Cause Notice having been sent by post; they sought to place reliance on the following decisions in support of the arguments put forth: -

- Rajmal Lakhichand vs CC, Ahmedabad [2010 (255) ELT (357) (Bom)]
- Ambal Mills Limited vs CCEx., Coimbatore [2000 (124) ELT 345 (Tribunal)]
- Thirumalai Chemicals Ltd vs Addl.C.C. Enforcement, Mumbai [2017 (347) ELT 464 (ATFE)]
- Prince International vs UOI [2015 (325) ELT 495 (Bom.)]

(b) That revenue should have asked the RBI as to whether sale proceeds had been realized or not and only then should have they taken any action in this matter and also relied on several decisions in support of the said argument;

(c) That no export proceeds are pending realization and they submitted self-certified copies of the Statements of Bank Realization for all the impugned shipping Bills as evidence towards their claim;

(d) That the demand is barred by limitation inasmuch as the Show Cause Notice was issued on 18.08.2017 for exports during the period 05.04.2007 TO 23.05.2011 which was beyond a period of five years;

In view of the above the applicant requested for the impugned Order-in-Appeal to be set aside along with consequential relief.

4. Personal hearing in the matter was granted to the applicant on 04.05.2023 and Dr. Sanjay Kalra, Advocate, Shri Kurush Jhunjunwala and Shri Jayant Hire appeared for the same. They submitted that their appeal before the Commissioner (Appeals) was filed well within time from the date of knowing about the same, which they became aware when their live consignment was held up based on alert in EDI. They further submitted that neither the Show Cause Notice nor the Order-in-Original was ever served on them. They further submitted that BRCs are available and have been submitted along with the Revision Application. They requested to allow their application.

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

6. Government notes that the Commissioner (Appeals) vide the impugned Order-in-Appeal has found the appeal of the applicant to be time barred and has dismissed the same without going into the merits of the case. Government also notes that Commissioner (Appeals) has computed the time limit by taking into account the date on which the Order-in-Original dated 27.03.2018 was issued. The applicant on the other hand has submitted that they never received a copy of the said Order-in-Original and became aware of the same only when their export consignments were held up at a much later date. The applicant has submitted copy of their letter dated 03.02.2020 addressed to the Commissioner of Customs, DBK (XOS), ACC, Mumbai informing that they not received any Order along with which they also enclosed copy of their letter dated 15.07.2019 addressed to the D.C. DBK (XOS), ACC, Mumbai vide which they had submitted the required BRCs. Government finds that the applicant had requested for a copy of the Order-in-Original vide the above letter and have submitted that they received the same on 27.02.2020. Government notes that these facts as submitted by the applicant have not been disputed by the Department at any point during these proceedings. Government notes that Section 128(1) of the Customs Act, 1962 provides that the sixty day period for filing of appeal before the Commissioner (Appeals) has to be computed from the date of communication of the Order-in-Original to the parties concerned. On examining the impugned Order-in-Appeal, Government finds that no evidence has been recorded by the Commissioner (Appeals) to indicate that the impugned Order-in-Original was served/communicated to the applicant. Government finds that no evidence has been adduced by the Department before the Commissioner (Appeals) or during the course of these proceedings to indicate that the said Order-in-Original dated 27.03.2018 was served on the applicant prior to 27.02.2020 i.e. the date on which they were given a certified copy of the same. Given these facts, Government finds that the applicant received a copy of the impugned Order-in-Original on 27.02.2020 and have filed an appeal against it on 18.03.2020 with the Commissioner (Appeals), which is well within the prescribed time limit of sixty days. Thus, Government finds that the Commissioner (Appeals) has erred in computing the time limit by taking the date of the issue of the Order-in-Original in account rather than the date of

communication of the same to the applicant, as required by the law. In view of the above, Government finds the decision of the Commissioner (Appeals) to hold the appeal of the applicant to be time barred to be incorrect and hence sets aside the impugned Order-in-Appeal dated 24.12.2020.

7. Further, Government finds that the applicant has submitted that the BRCs required by the Department have been furnished by them vide letter dated 15.07.2019 and that they have received the payments in foreign exchange with respect to all the export consignments in question. They have also submitted copies of the relevant BRCs and Negative Statements issued by the Banks for the period 06.01.2006 to 31.07.2011. In view of the above, Government finds that the issue needs to be re-examined by the Original authority by taking into account the submissions of the applicant and hence remands the case back to the original authority for being decided afresh. The applicant should be provided sufficient opportunity to place on record their submission in the matter.

8. The Revision Application is allowed in the above terms.

Shrawan
27/7/23
(SHRAWAN KUMAR)

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

ORDER No. *545*/2023-CUS (WZ) /ASRA/Mumbai dated *27*.07.2023

To,

M/s INSTEP,
Gala No.9, 1st floor, Vora Industrial Estate No.4 B Unit,
Vasai Road (E), 401210,
Thane, Maharashtra.

Copy to:

1. Commissioner of Customs (Export), Air Cargo Complex, Sahar, Mumbai 400 099.
2. Commissioner of Customs (Appeals) Mumbai, Zone - III, 5th floor, Awas Corporate Point, Makwana Lane, Behind S.M. Centre, Andheri - Kurla Road, Marol, Mumbai - 400 059.
3. M/s KPS Legal, 2 414, 4th floor, Brahma Shopping Centre, Plot No.53, Opposite D Mart, Sector - 15, CBD Belapur, Navi Mumbai - 400 614.
4. Sr. P.S. to AS (RA), Mumbai.

S. Grand file

