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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. 371/275/DBK/WZ/2018-RA/9882 Date of Issue: 03.08.2023

ORDER NO. 561 /2023-CUS (WZ)/ASRA/MUMBAI DATED 31.7.2023
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. Diamond Overseas

Respondent: Pr. Commissioner of Customs(NS-II),JNCH, Mumbai.

Subject : Revision Applications filed, under Section 129DD of the Customs
Act, 1962, against the Order-in-Appeal No.
93(DBK)/2018(JNCH)/Appeals-I dated 31.07.2018 passed by
the Commissioner of Customs(Appeals),Mumbai-II.

ORDER

This Revision Application has been filed by M/s. Diamond Overseas (hereinafter referred to as "the applicant"), against the Order-in-Appeal No. 93(DBK)/2018(JNCH)/Appeals-I dated 31.07.2018 passed by the Commissioner of Customs(Appeals),Mumbai-II.

2. Brief facts of the case are :

- 2.1. Directorate of Revenue Intelligence, Lucknow Zonal Unit had undertaken investigation against M/s. Diamond Overseas who dealt in the manufacture and export of home furnish products. The investigation pertained to their exports made, drawback availed and realization of their export proceeds.
- 2.2. Enquiries made with Export Credit Guarantee Corporation (ECGC) for providing the details of the claim settled by their office relating to those exporters whose payments/remittances were not received from their Overseas/Foreign buyers resulted in a list being furnished by them and that M/s Diamond Overseas were mentioned in the aforesaid list.
- 2.3. Accordingly, enquiries were initiated and it was noticed that the exporter had received ECGC claim on account of non-realization of the export proceeds from their overseas buyer. It further came to notice that the exporter had availed duty drawback with respect to the export made under certain shipping bills. The total drawback disbursed under the ECGC scheme amounted to Rs. 28,46,026/-.
- 2.4. On further inquiry, it was noticed that besides the above, seven more, drawback shipping bills were noticed in which export proceeds were un-realized. The total drawback disbursed on these shipping bills amounted to Rs. 7,78,645/-.
- 2.5. During the investigation, the exporter had deposited total amount at Rs.7,46,305/-along with appropriate interest against the drawback

wrongly availed by them due to non-realization of export proceeds and paid interest thereon.

- 2.6. During the investigation, the exporter had produced certificate Ref. No. NYCG/COM/17/2015 dated 14.12.2015 from Coastal (Trade, Commerce & Education), Consulate General of India, New York regarding buyer's inability to pay the exporter for his shipments. The exporter had also submitted negative statement as envisaged by CBEC's Circular No. 05/2009 dated 02.02.2009 issued by their authorized dealer 0300151-Punjab National Bank reflecting non-receipt of payments from their foreign buyer. The exporter did not produce any document regarding the writing off of the un-realised sale proceeds by the RBI.
- 2.7. Of these 22 export shipments, the exporter had received ECGC claim on account of non-realization of the export proceeds from the overseas buyer for 15 shipping bills. The exporter has not submitted any document from the RBI reflecting a write off as mentioned in Rule 16A(5) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.
- 2.8. Further, the exporter for the remaining seven shipping bills (which were not covered under ECGC) has not submitted any proof of realization of export proceeds. The exporter has however deposited a sum of Rs. 7,46,305/- towards purported inadmissible drawback and Rs. 6,40,681/- towards interest.
- 2.9. Accordingly, a Show Cause Notice was issued demanding the inadmissible drawback amounting to Rs. 35,92,331/- under Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules 1995, read with Section 75(1) of the Customs Act, 1962 along with interest as per Section 75A (2) of the said Act and appropriation of the amount of Rs. 7,46,305/- along with interest deposited by the exporter during investigation against the demands mentioned above.

2.10. SCN was adjudicated vide which the demand was confirmed. Original Authority observed that the exporter failed to realize the foreign exchange for the 22 Shipping Bills. The exporter received ECGC claim for the 15 S/Bills covered under the said scheme, however they did not submit any document from RBI reflecting a write off as mentioned in Rule 16A(5) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Further the exporter for the other shipping bills which are not covered under the ECGC scheme has not submitted any proof of realization of export proceeds. Accordingly, the Original Authority demanded the inadmissible drawback amounting to Rs. 35,92,331/- and also ordered appropriation of Rs. 7,46,905/-.

2.11. Aggrieved by the Order of the Original Authority, the applicant filed an appeal before the Appellate Authority, who vide Impugned OIA rejected their appeal and upheld the OIO.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application under Section 129 DD of the Customs Act, 1962 before the Government on the following grounds:

- i. the demand of drawback made under the provisions of Rule 16A of the Drawback Rules, 1995 was hit by limitation as the show cause notice had been issued on 15.03.2017 relating to the demand of drawback for the period June 2010 to November, 2010.
- ii. the demand was required to be issued within a reasonable period in the light of judicial pronouncements cited by the Applicant in case of Prathibha Syntex Ltd. vs. Union of India.
- iii. in terms of the provisions of Rule 16A(2) of Customs, Central Excise & Service Tax Drawback Rules, 1995 a show cause notice was required to be issued within 30 days of such notice which in the instant case is dated 13.05.2015 when the DRI issued summon for purpose of investigation into the non receipt of sale proceeds of exports made under the said 22 shipping bills. Accordingly, the show cause notice

was required to be issued within 30 days of such notice i.e. on or before 12.06.2015 and therefore the demand was hit by limitation of time and hence void,

- iv. In view of above, Applicant has requested to set aside the impugned Order in Appeal.

3. Personal hearing in this case was fixed for 01.03.2023, Mr. Sunil Deshpande, Consultant appeared online on behalf of the Applicant and reiterated their earlier submissions. He submitted that SCN for recovery of drawback is time barred. He further submitted that in case of Femina India Pvt. Ltd., High Court Held that five years to be maximum period for recovery of drawback.

4. Government has carefully gone through the relevant case records available in case files, perused the impugned Order-in-Original, Order-in-Appeal.

5. It is observed that the applicant is aggrieved by Order-in-Appeal No. 93(DBK)/2018(JNCH)/Appeals-I dated 31.07.2018 wherein their appeal was rejected on ground of non-submission of certificate/document from RBI as required in terms of Rule 16A(5) of Drawback Rules,1995. Government finds that an amount of Rs. 7,46,305/- against the seven shipping bills without the cover of ECGC scheme has already been appropriated and not in dispute. Therefore, in the present case Government restricts itself to decide on the following issues :

- a) whether non submission of certificate/document from RBI can be a reason to deny the drawback.
- b) whether SCN has been time barred or otherwise

6.1 Government observes that provisions of recovery of already sanctioned drawback have been prescribed under Section 75 of Customs Act, 1962 and Rule 16A of Customs and Central Excise duties drawback Rules, 1995. In the present case, the point of contention is that the Applicant could not submit

any document from Reserve Bank of India reflecting write off as required in terms of Rule 16A(5) of Drawback Rules, 1995, reproduced as under :

“(5) Where sale proceeds are not realized by an exporter within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but such non-realization of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realization of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer, the amount of drawback paid to the exporter or the claimant shall not be recovered”

From the above it is clear that in order to avail the benefits stipulated under the Rule 16 A(5) of the Drawback Rules, 1995, the exporter is required to fulfill following three conditions:

- i. *Non realization of sale proceeds is compensated by the ECGCI.*
- ii. *To submit proof showing the requirement of realization of sale proceeds being written off by the Reserve Bank of India on merits and*
- iii. *To produce a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer*

6.2 The government, in the present case, finds that the following documents have been submitted by the applicant:

- i. A copy of the certificate issued by the relevant foreign mission.
- ii. A negative statement from their authorized dealer, Punjab National Bank, indicating the absence of payments received from their foreign buyers.

6.3 Furthermore, the Applicant has been compensated by the ECGC against that non realization of export proceeds, which is recorded by the Adjudicating Authority in para 21 of the OIO. The same is reproduced as under:

"I find that the importer has failed to submit proof of realization of export proceeds for shipping bills listed at Table 'A' above. I also find that the exporter has submitted documents reflecting of having been compensated by Export Credit Guarantee Corporation of India Ltd (ECGC) under an Insurance cover and the concerned Foreign Mission of India i.e. The Consul (Trade Commerce & Education), Consulate General of New York vide letter No. NYCG/COM/17/2015 dated 14.12.2015 certified that the outstanding sale proceeds in the instant case cannot be recovered."

Therefore, documents adduced by the Applicant along with the compensation provided by the ECGC, certificate of the relevant Indian Mission, and statement from concerned bank are sufficient to support their case. In light of the circumstances surrounding this case and considering the facts of the case, the applicant cannot be denied the benefits of the Drawback claim under the provisions outlined in Rule 16A(5) of the Drawback Rules, 1995.

7. With regard to the issue that SCN has been time barred or otherwise, Government finds that once the applicant succeeds on merits, this issue becomes redundant. Therefore, Government does not go in the merits of this issue.

8. In view of above, Government sets aside the Order-in-Appeal No. 93(DBK)/2018(JNCH)/Appeals-I dated 31.07.2018 passed by the Commissioner of Customs(Appeals), Mumbai-II to the extent of confirming the demand of Rs. 28,46,026/-. Further, Government finds the appropriation of amount of Rs. 7,46,305/- to be correct and proper.

9. Revision application is disposed off in above terms.

Shrawan
31/7/23
(SHRAWAN KUMAR)

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

ORDER No. 561/2023-CUS (WZ)/ASRA/Mumbai DATED 31.7.2023

To,

1. M/s. Diamond Overseas, Nai Ka Nagla Marg, Hathras(U.P.)-204101.
2. The Pr. Commissioner of Customs(NS-II),JNCH, Nhava-Sheva, Tal-Uran,Dist. Raigad, Maharashtra-400707.

Copy to:

1. The Commissioner of Customs(Appeals), Mumbai-II, JNCH, Nhava Sheva, Taluka-Uran, Dist. – Raigad, Maharashtra-400707.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.