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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.371/217/DBK/2021-RA | 4990

Date of issue: 03.08.23

ORDER NO. 564 /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. Globe Design

Respondent : Pr. Commissioner of Customs (Gen.), Mumbai

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUS-PK-EXP-259/20-21 dated 22.03.2021 passed by the
Commissioner of Customs (Appeals), Mumbai Zone-I.

ORDER

This Revision Application is filed by M/s. Globe Design, (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. MUM-CUS-PK-EXP-259/20-21 dated 22.03.2021 passed by the Commissioner of Customs (Appeals), Mumbai Zone-I.

2. Brief facts of the case are that the Applicant had obtained drawback but had failed to produce evidence of realization of export proceeds in respect of the concerned exports, hence a show cause cum demand notice for recovery of total drawback amounting to Rs.11,65,422/- against 21 shipping bills pertaining to the period 01.01.2012 to 31.12.2014 was issued to them on 30.04.2016. After due process of law, the adjudicating authority vide Order-in-Original No. 17/2018-19/ICD(M)(X)/AC/SMS dated 08.03.2019, passed following Order:

- (i) Dropped demand of Rs.2,14,259/- as evidence of realization in respect of 4 shipping bills had been found in order.
- (ii) Confirmed demand of Rs.2130/- alongwith applicable interest against total demand of Rs.2,50,846/- pertaining to 4 shipping bills due to short realisation
- (iii) Confirmed demand of Rs.7,00,307/- alongwith applicable interest pertaining to 13 shipping bills as realization of export proceeds was found to be beyond the period stipulated by RBI.
- (iv) Imposed penalty of Rs.5,000/- on the applicant.

Aggrieved, the Applicant filed an appeal which was rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal.

3. Hence the Applicant has filed the impugned Revision Application mainly on the following grounds:

- i. that the Hon'ble Commissioner Appeal has not taken on record the written submissions and case laws relied upon in the appeal memorandum. The impugn Order has been passed in complete

violation of principles of natural justice. The applicant relies upon the following case laws:

- 2011 (264) E.L.T. 207 (Bom.) Tata Motors Ltd. Versus Commissioner of C. Ex., Pune-I
- 2019 (367) E.L.T. 241 (Bom.) Sri Dudeshwarnath Steels Pvt. Ltd. Versus Commr. of C. Ex. & Customs
- 2019 (367) E.L.T. 254 (Bom.) Commissioner of CGST & C. Ex., Mumbai East Versus DHL Logistics Pvt. Ltd.

ii. that the Hon'ble Commissioner of Customs (Appeals) has failed to appreciate the fact that the exports had taken place during 03.05.2012 to 18.11.2014. But the Demand cum Show Cause Notice has been issued on 30.04.2016. It shows that the Demand cum Show Cause Notice is beyond the normal period of limitation and the whole demand is barred by limitation. Admittedly there is no allegation, evidence and finding of any fraud or mis-statement or willful suppression of facts on the part of the Applicant and hence the larger period of limitation of 5 years prescribed in the proviso to section 28(1) could not be invoked against them. Hence, the order is to be set aside on the point of limitation. Moreover, the Applicant would like to submit that all the export remittance has already been realized by them through banking channel therefore extended period cannot be invoked against the Exporter/ Applicant. Reliance is placed on the following case laws:

- Ballarpur Industries Ltd. Versus Commissioner of C.Ex., (Adj.), New Delhi [2012 (275) E.L.T. 88 (Tri. - Del.)]
- Commissioner of Customs, Amritsar Versus Vallabh Design Products [2007 (219) E.L.T. 73 (P & H)]
- Pratibha Syntex Ltd. Versus Union of India [2013 (287) E.L.T. 290 (Guj)]
- Famina Knit Fab Versus Union of India [2020 (371) E.L.T. 97 (P & H)]

- iii. That no export proceeds are pending for realization. Applicant is submitting the self-certified copies of the Statement of Bank Realisation for all the impugned shipping bills in as much as evidence showing that no export proceeds are pending for realization in proof of realization of export proceeds against every shipment exported under duty drawback scheme. The Applicant submits that all the export proceeds have already been realized and no amount of export proceeds is pending for realization. The Applicant submits that he has produced all the copies of the Bank Realisation certificates. The Appellate authority has not considered the relied upon case laws in the appeal. Therefore, passing of the subject order-in-Appeal is not a justified action done by the Ld. Appellate authority the dismissal of the appeal by the Hon'ble Commissioner and hence it is liable to be set aside.
- iv. That that the Reserve Bank of India provides for extension of time limit for realization of export proceeds beyond stipulated period of realization from the date of export and for this the exporter needs to submit a declaration that the export proceeds will be realized during the extended period. The Master Direction — Export of Goods and Services (updated as on January 12, 2018); RBI/FED/20458-16/11 FED Mas e Direction No. 16/2015-16 provides for such extension. The Applicant would like to submit that once the exporter submits a declaration that the export proceeds will be realized during the extended period, the AD Category-I banks would give extension. However, the Applicant failed to submit such declaration to the Bank for extension of time limit which may be treated as a technical lapse and condoned in view of the admitted fact that the export remittance has been realized beyond stipulated time period (One year). The Applicant relies on the following case laws:
- Sabic Innovative Plastics India P. Ltd. Versus Commr. of C.C. E. & S.T., Noida [2018 (363) E.L.T. 531 (Tri. - All.)]
 - Modern Process Printers [2006 (204) E.L.T. 632 (G.O.I.)]

- Shantilal & Bhansali 91991 (53) E.L.T. 558 (G.O.I.)]
- v. that so far as imposition of penalty is concerned mensrea play a vital role to determine quantum thereof. That aspect was not looked into in the adjudication. The Commissioner of Customs (Appeal) has failed to appreciate the fact that the adjudicating authority has imposed penalty of Rs.5000/- mechanically under section 117 of the Customs Act, 1962 without stating any reason as to imposition which is unjust. Therefore, penalty is liable to be set aside.

In the light of the above submissions, the applicant prayed to set aside the impugned OIA with consequential relief.

4. Personal hearing in the matter was held on 07.06.2023. Shri Sanjay Kalra, Advocate appeared on behalf of the applicant and submitted that Commissioner(A) has incorrectly confirmed the demand even though foreign remittance has been received and BRCs were produced. He further submitted that minor delay in realization of remittances due to problem in country of export cannot take away their right. He requested to allow the application.

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. On perusal of records, Government observes that the applicant had obtained drawback with regard to exports done by them vide 21 shipping bills. Subsequently, demand notice for drawback disbursed totally amounting to Rs.7,00,307/- was confirmed alongwith applicable interest and penalty of Rs.5,000/- in respect of 13 shipping bills on the ground that the realization date was beyond the stipulated time period and no permission for extension from RBI was submitted in compliance with Rule 16A(2) of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995. Commissioner (Appeals) has upheld the impugned OIO.

7. Government observes that Rule 16A(4) of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 reads as under:

(4) Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or sub-rule (3) and the exporter produces evidence about such realisation within one year from the date of such recovery of the amount of drawback, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs or Deputy Commissioner of Customs to the claimant.

From the above provision, Government notes that even if amount of drawback has been recovered, the same is to be repaid on submission of evidence of realization of export proceeds by the exporter. Thus, the intention of the legislature is very clear that if export proceedings have been realized, the eligible drawback needs to be released to the exporter. In the instant case, as apparent from the Annexure to the impugned OIO, the applicant had produced valid evidence against realization of export proceeds. Government observes that no other discrepancies as regards impugned export realizations were detected by the department. It is undisputed that rebate/drawback and other such export promotion schemes are incentive-oriented beneficial schemes intended to boost export and to earn more foreign exchange for the country and in case the substantive fact of export having been made is not in doubt, liberal interpretation is to be accorded in case of technical lapses if any, in order not to defeat the very purpose of such scheme.

8. Similar observation was made by the Hon'ble Apex Court in the *Formika India v. Collector of Central Excise* 1995 (77) E.L.T. 511 (S.C.), while observing that once a view is taken that the party would have been entitled to the benefit of the Notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so had elapsed. In the case of Madhav

Steel v. UOI [2016 (337) E.L.T. 518 (Bom.)], Hon'ble Bombay High Court had also put forth similar views. The relevant paras from this judgment are reproduced hereunder:

23. We, therefore, hold that the aforestated particulars set out in the documents produced by the petitioners, establishes beyond any doubt that the goods purchased by the petitioners from the manufacturer are the goods sold by the petitioners to the exporter and the same have been exported by the said exporter. The respondent No. 2 has, therefore, erred in concluding that the petitioners could not prove beyond doubt that the goods cleared on the payment of duty for home consumption, were subsequently exported through shipping bills mentioned in the Order-in-Appeal dated 22nd December, 2004. As held by the Hon'ble Supreme Court in its decision in the case of Mangalore Chemicals and Fertilizers Limited (supra), technicalities attendant upon a statutory procedure should be cut down especially, where such technicalities are not essential for the fulfillment of the legislative purpose. The Hon'ble Supreme Court has again held in the case of Formica India v. Collector of Central Excise (supra), that the benefit should not be denied on technical grounds. Reliance by the respondents on the judgment of the Hon'ble Supreme Court in the case of Indian Aluminium Company Limited (supra), is not well-founded. In that case, refund of octroi was claimed after lapse of a long time. Further, admittedly, declaration in Form-14 was not filed. In the circumstances, there was no scope for verification. Therefore, the Hon'ble Apex Court refused to exercise its discretion and dismissed the SLP.

24. In view of what is aforestated, we hold that the order dated 29th May, 2006 passed by the respondent No. 2, is erroneous and perverse and is hereby quashed and set aside. Rule issued is made absolute and the respondents are directed to forthwith pay to the petitioners the amount of Rs. 9,87,777/- claimed by them by three rebate claims under Rule 18 of the Central Excise Rules, 2002 under three AREs all dated 28th March, 2003.

9. In view of the above discussion and findings, the Government sets aside the Order-in-Appeal No. MUM-CUS-PK-EXP-259/20-21 dated 22.03.2021 passed by the Commissioner of Customs (Appeals), Mumbai Zone-I and allows the instant Revision Application.


31/7/23
(SHRAWAN KUMAR)

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

ORDER No. 564 /2023-CUS (WZ)/ASRA/Mumbai dated 31.7.23

To,

M/s. Globe Design,
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136/138, Bapu Khote Street, Pydhonie,
Mumbai - 400 003.

Copy to:

1. Pr. Commissioner of Customs (General),
New Custom House, Ballard Estate,
Mumbai - 400 001.
2. M/s. KPS Legal,
D-414, 4th Floor, Braham Shopping Centre,
Plot No.53, opp. D'Mart, Sector-15,
CBD Belapur, Navi Mumbai - 400 614.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file.