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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.371/06/DBK/2020-RA / 6356 Date of issue: 28/08/2023

ORDER NO. 610 /2023-CUS (WZ)/ASRA/MUMBAI DATED 23.8.2023
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. Arihant Creative Textiles

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-589-2019-20 dated 16.10.2019 passed by
the Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This Revision Application is filed by M/s. Arihant Creative Textiles, (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. MUM-CUSTOM-AXP-APP-589-2019-20 dated 16.10.2019 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.62,778/- 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 03.05.2010 and after due process of law, the adjudicating authority ordered recovery of demand amount of Rs.62,778/- alongwith interest vide Order-in-Original No. AC/PB/232/2012-13-Adj./ACC dated 08.01.2013. 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. That the office of the adjudicating authority while issuing the certified copy of the impugned order checked the fact that the appellant had not received the copy. Then only, the adjudicating authority issued certified copy to enable the applicant to approach appellate authority for redressal of their grievances in the appropriate forum after following criteria enumerated in Standing Instruction No.01/2018 dated 14.03.2018 issued by the Addl. Commissioner of Customs, Export, Sahar. In this case the certified copy of impugned order-in-original was issued to the applicant and same was received by the applicant on 12.09.2019 so as to enable them to file appeal.
- ii. That the applicant has explained the facts vividly in the grounds of appeal submitted to the Appellate authority that the applicant was

- ignorant about the issuance of impugned O-in-O against them. The applicant came to know when their bankers Oriental Bank of Commerce, HSIIDC Building, UDYOG Vihar, Phase-V, Gurgaon, Haryana intimated the Applicant that they have marked lien against our account for Rs.62,778/ (availed earlier as drawback) at the advice of the Asst. Commissioner of Customs, TRC (Export), ACC, Sahar. Accordingly, the applicant paid total amount of Rs.1,97,486/- (principal+ interest+penalty) to Govt. That applicant was made to pay the above stated amount in spite of providing all the requisite export realization documents to the adjudicating authority vide letter dated 03.09.2010 in pursuance of the Demand Cum Show Cause Notice. Moreover, the said letter was duly acknowledged by the office of the adjudicating authority. While passing the impugned O-in-O the adjudicating authority did not discuss about the above stated document and also did not discuss why same were not taken as proof of export realization. On the basis of this point alone the impugned Order-in-Appeal passed by the Hon'ble Appellate authority should be set aside.
- iii. The contentions of Hon'ble appellate authority at paras of his order are not proper. The applicant has submitted that they were ignorant about the issuance of impugned order-in-original. When they came to know about the impugned order-in-original they immediately acted and taken all steps to obtain a certified copy of the said order so that they can file appeal against the said order. The applicant without further loss of time requested the adjudicating authority to issue certified copy as they had already in receipt of Bank realization certificate of export proceeds received for the export done during period 1.04.2004 to 31.12.2008. That interest of justice also demands that the applicant should be provided an opportunity to contest the matter on merits in appeal.
- iv. The applicant submits that in the case of The Fashion House, the appeal was filed on the basis of receipt of certified copy from the adjudicating authority and the Hon'ble Commissioner of Appeal has

decided the case and annulled the case to the adjudicating authority after taking into account the period of limitation from the date of receiving the certified copy of the order till the date of filing appeal before the Appellate Authority. In his order the appellate authority has directed the exporter to produce the evidence of export realization to the adjudicating authority. The applicant submits that on the basis of this the order-in-appeal passed by the appellate authority ought to be set aside.

- v. The applicant submits that in the case of The Fashion House, the appeal was filed on the basis of receipt of certified copy from the adjudicating authority and the Hon'ble Commissioner of Appeal has decided the case and annulled the case to the adjudicating authority after taking into account the period of limitation from the date of receiving the certified copy of the order till the date of filing appeal before the Appellate Authority. In his order the appellate authority has directed the exporter to produce the evidence of export realization to the adjudicating authority. The applicant submits that on the basis of this the order-in-appeal passed by the appellate authority ought to be set aside.
- vi. Further to above the applicant submits that as per Sub-Rule 4 of Rule-16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995," Where the sale proceeds are realized 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 realization 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 Asst. Commissioner of Customs or Dy. Commissioner of Customs to the Claimant." In the instant case the applicant has realized the sale proceeds of the exports made against the impugned S/Bills. Therefore, even if the applicant deposits the Drawback amount with the applicable interest, the applicant is eligible for the refund of such drawback amount returned by the Applicant. Therefore, the demand of drawback

amount with applicable interest, even after realization of exports proceeds against the all the subject shipping is bad in law. The Appellant submits that the sale proceeds of the goods exported the said letter of remittances, the proceeding initiated under the said Show Cause Notice should have been dropped. The applicant further submits that Adjudicating Authority did not discuss about the receipt of reply of show cause notice in his order-in-original and did not discuss why the Bank Realization details provided to them were not taken int record. Further, applicant submits that the realisation of export proceed has received within 6 months from the date of export.

- vii. The applicant submits that in view of the receipt of remittance by their above Banker's, the demand of Drawback amount of Rs.62778/- (Rupees Sixty Two Thousand Seven Hundred and Seventy Eight only) along with interest to be recovered from the Applicant vide O-in-O No. AC/PB/232/2012-13/DBK (XOS),ACC dated 08.01.2013, ought not to have been confirmed at all. That the applicant placed their reliance on the Judgements passed by the Government of India in case Of 2018 (363) E.L.T.821 (G.O.I) that "it is manifest that the applicant has realised the sate proceeds well in time and as a result the applicant 's case is not covered under Rule 16/16A of Drawback Rules 1995. White non submission of CA Certificate on 6monthly basis as per CBE & C. Circular is certainly a lapse, it cannot be termed as violation of above Drawback Rules." Thus, the applicant has correctly availed drawback.
- viii. Further to above it is submitted that the Asst. Commissioner of Customs, DBK(XOS),ACC, Mumbai vide another O-in-O No. AC/JD/1625/2017-18 has dropped demand proceedings against us elated two common S/ Bills i.e.5941848 dated 20.03.2006 and 6124047 dated 15.09.2006 where in total drawback amount or Rs. 18,200/-. The office of the adjudicating authority has recovered excess amount of 18,000/+interest during recovery of total amount of Rs. 1,97,486/- (Rs.62,778/+ interest Rs. 1,34,708/-) which took place during 2019.

That they should have excluded Rs. 18,000/+interest from the total amount of Rs.1,97,486/- at time of sending recovery notice to the applicant. The applicant submits that no proper verification has been done while recovering the money.

- ix. The Applicant without prejudice to the aforesaid contentions submits that the non-submission of the Bank Certificate of Export and realization in Form No. 1 in time is a technical breach and demand of Drawback amount of Rs. 62,778/-with interest and subsequent recovery of Rs. 1,97,486/- (Rs.62,778/+ interest Rs.1,34,708/-) (Rupees One Lakh Ninety Seven Thousand Four Hundred and Eight Six only) deserves to set aside. The applicant may be given one more opportunity to submit the requisite documents in support of realization of export proceeds against all the impugned shipping bills.

In the light of the above submissions, the applicant prayed to set aside the impugned order with consequential relief and Rs.1,97,486/- deposited with the Commissioner of Customs (Export), ACC in lieu of Recovery Notice should be refunded to them with interest as export proceeds were already realized.

4. Personal hearing in the matter was held on 22.06.2023. Ms. Reema S. Deshnehare, Advocate appeared on behalf of the applicant and submitted that the applicant came to know about the OIO only when their consignment was held up due to an 'alert' in EDI. She further submitted that the appeal was filed within time from the date OIO was received by the applicant. She also said BRC's have been received and submitted in all the cases. She 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. Government observes that the applicant had been sanctioned drawback in respect of exports done by them vide 4 Shipping Bills between the period Apr-05 to Sep-06. However, it was alleged that 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 dated 03.05.2010 for recovery of the drawback sanctioned to them alongwith interest. The applicant claims that they had replied to SCN vide letter dated 20.09.2010 enclosing the relevant BRCs. 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. The applicant has claimed that they had not received the OIO dated 08.01.2013 passed by the adjudicating authority as the same was sent to their old address and that they became aware of the OIO when they came to know that some alert was put against them in the system due to non-receipt of the bank realisation against the exports made by them. They then received the OIO only after approaching the Customs Authorities and this matter was brought to the notice before Commissioner (Appeals) who has rejected the appeal 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. 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 Circular No. 5/2009-Customs dated 02.02.2009 had set out a mechanism to monitor the realisation of export proceeds. It is observed that exports involved in the instant case pertained to the period Apr-05 to Sep-06. The SCN was issued on 03.05.2010. The circular dated 02.02.2009 was in vogue and therefore the applicant was required to produce evidence of receipt of export proceeds before the Assistant/ Deputy Commissioner of Customs in terms of Rule 16A of the Drawback Rules, 1995/ Rule 18 of the Drawback Rules, 2017 within the period allowed under the FEMA, 1999.

8. Government observes that with reference to impugned SCN dated 03.05.2010, the applicant had vide their letter dated 03.09.2010 having acknowledgement stamp dated 20.09.2010 of the department, informed to department that no payment is outstanding beyond the time allowed and had enclosed the relevant BRCs against the four shipments. The letter also has remarks of Superintendent of Customs (P) stating about mismatch of AD code with AD code on shipping bills. However, the impugned OIO dated 08.01.2013, does not have any mention about this letter. Government observes that the details of concerned shipping bills and corresponding BRCs are as under:

Shipping Bill No./date	Drawback amount (in Rs.)	BRC dated	Amt realised (in Rs.)
5626210/20.04.2005	39,628/-	03.05.2005	5,09,154/-
5643043/09.05.2005	4,950/-	18.05.2005	59,877/-
5941848/20.03.2006	13,397/-	11.04.2006	2,48,842/-
6124047/15.09.2006	4,803/-	15.09.2006	2,02,934/-
	62,778/-		

Government observes that the applicant has also submitted another SCN dated 24.08.2017 wherein on the same issue an amount of Rs.64,280/- was demanded. This SCN also involves 4 Shipping bills out of which 2 Shipping bills, viz. 5941848/20.03.2006 and 6124047/15.09.2006 are also considered in the instant matter. Thus, these shipping bills were initially considered in the instant matter and later on got repeated in the SCN dated 24.08.2017 which was decided vide OIO No. AC/JD/1625/2017-18 dated 08.03.2018. Government observes that in the said OIO, on the basis of Bank Realization Certificates (BRCs) submitted by the applicant, the adjudicating authority had dropped the proceedings initiated vide SCN dated 24.08.2017.

9. Government observes that para 5(c) of said Circular No. 5/2009-Customs dated 02.02.2009 reads as under:

(c) The exporter shall submit a certificate from the Authorized Dealer(s) in respect of whom declaration has been filed containing details of the shipments which remain outstanding beyond the prescribed time limit, including the extended time, if any, allowed by

AD/RBI. Such a certificate can also be provided by a Chartered accountant in his capacity as a statutory auditor of the exporter's account. A proforma for furnishing such negative statement is enclosed as Annexure. Further, the exporters also have the option of giving a BRC from the concerned authorized dealer(s).

Thus, Government observes that the applicant had submitted valid documents in respect of realization of the export proceedings against exports done by them vide aforementioned 4 shipping bills.

10. In view of the above discussion and findings, the Government sets aside Order-in-Appeal No. MUM-CUSTOM-APP-589-2019-20 dated 16.10.2019 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III and allows the Revision Application.

Shrawan
23/8/23
(SHRAWAN KUMAR)

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

ORDER No.

610/2023-CUS (WZ)/ASRA/Mumbai dated 23.8.23

To,
M/s. Arihant Creative Textiles,
755, Udyog Vihar, Phase-V,
Gurgaon - 122 016.

Copy to:

1. Commissioner of Customs (Export),
Air Cargo Complex, Sahar,
Andheri (East), Mumbai - 400 099.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.

