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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. 371/283/DBK/2020-RA / 6211

Date of Issue: 12.09.2023

ORDER NO. 611/2023-CUS (WZ) /ASRA/Mumbai DATED 08.9.23 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. J.S. Overseas,
191/5A, Angalamman,
Kovil Street, T.M.H. Road,
Nagalkeni, Chromopet,
Chennai - 600 044.

Respondent : Pr. 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-522/2020-21 dated 29.10.2020
passed by the Commissioner of Customs (Appeals),
Mumbai Customs, Zone - III.

ORDER

The subject Revision Application has been filed by M/s. J.S. Overseas, 191/5A, Angalamman, Kovil Street, T.M.H. Road, Nagalkeni, Chromopet, Chennai – 600 044 (here-in-after referred to as ‘the applicant’) against the Order-in-Appeal No. MUM-CUSTOMS-AXP-APP-522/2020-21 dated 29.10.2020 passed by the Commissioner of Customs (Appeals), Mumbai Customs, Zone – III which decided an appeal filed by the applicant against the Order-in-Original issued vide F.No. S/3-MISC/DBK/(XOS)-177(87) 15-16 ACC dated 31.03.2017 passed by the Assistant Commissioner of Customs(Export), ACC, Sahar, 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 the Drawback amounting to Rs. 7,76,767/- 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. 08/2016-17 dated 18.08.2016 and Public Notice No. 19/2015 dated 02.12.2015 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 31.03.2017, confirmed the demand raised and imposed a penalty of Rs. 38,000/- under Section 117 of the Customs Act, 1962. 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 in terms of Section 128 of the Customs Act, 1962; the

appeal was filed without payment of pre deposit amount in terms of Section 129(E) of the Customs Act, 1962 and the appellant failed to submit copy of the Order appealed against as mandated in Rule 3(3) of the Customs (Appeals), Rules, 1982.

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

3.1. The Applicant submitted that the Asstt. Commissioner of Customs, DBK(XOS), ACC, Mumbai as well as the Commissioner of Customs (Appeal) Mumbai Zone-III ought to have seen the Bank realisation certificate issued by the Karur Vysya Bank, Chromepet, Chennai and they ought to have given proper opportunity to Applicant.

3.2. The Applicant submitted that the Order passed by Asstt. Commissioner of Customs, DBK(XOS), ACC, Mumbai as well as the Commissioner of Customs (Appeal) Mumbai Zone-III is against the fact and circumstance of the case and provisions of the Customs Act, 1962.

3.3 The Applicant submitted that the Order passed by Asstt. Commissioner of Customs, DBK(XOS), ACC, Mumbai as well as the Commissioner of Customs (Appeal) Mumbai Zone-III, is against the Violation of the Principles of the natural justice.

3.4. The Applicant submitted that the allegation that the Exporter has not realized the sale proceeds the foreign exchange is false one.

3.5 The Applicant submitted that authority asked to return the said drawback amount along with applicable interest is not applicable to this Applicant since the they realized the export proceeds in the prescribed format of the bank.

3.6 The Applicant submitted that the presumption of Rule 16(A) Sub-Rule (1) & (2) of Customs, Central Excise Duties and Service Tax Drawback Rule, 1995 is rebuttable and Applicant herein rebut the presumption by way of documentary evidence.

3.7. The Applicant submitted that interest on drawback under section 75A(2) only applicable where any drawback has been paid to the exporter erroneously or paid against Act or Rule such a circumstance not arise in this case.

3.8. The Applicant submitted that the Appellate Authority without going to merit of the case rejecting the Appeal is against law and natural justice.

3.9. The Applicant submitted that the Appellate Authority ought to have condoned the delay and has to consider the merit of the case.

3.10. The Applicant submits that Appellate authority not considered the pre-deposit paid under section 129(E) of the Customs Act, 1962 and also not considered the submitted the copy of Order in Original as mandated in Rule 3(3) of Customs (Appeal) Rule, 1982.

3.11. The Applicant submits that the Applicant has not done or abetted any contravention or not failed to comply with any provision of the act so the imposition penalty on the Applicant under section 117 of the Customs Act, 1962 is against the law and liable to be set aside and thus render justice.

4.1 Personal hearing in the matter was granted to the applicant on 22.06.2023 and Shri M. Ayyadurai, Advocate appeared online on behalf of the applicant and reiterated earlier points. He requested to condone the delay and decide the matter on merits. He requested 10 days' time to file additional submissions.

4.2 They submitted additional submissions dated 03.07.2023 wherein they reiterated their earlier submissions and stated that the applicant has not done or abated any contravention or failed to compile with any provision of the Act so the imposition of penalty on the applicant under Section 117 of the Customs Act, 1962 is against the law and liable to be set aside and thus render justice.

5. Government has carefully gone through the relevant case records available in case files, 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 Orders-in-Appeal has rejected the appeal filed by the applicant without going into the merits of the case predominantly as the applicant failed to make the pre-deposit of 7.5% of the amount demanded while filing the appeal, in terms of Section 129E of the Customs Act, 1962. Government notes that the Commissioner (Appeals) had issued a Defective Notice dated 17.05.2019 for submitting the proof of payment of mandatory deposit. However, the applicant failed to submit any reply in this regard.

7. In this context, Government finds it pertinent to examine Section 129E of the Customs Act, 1962 as it then stood: -

"The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal:

- (i) under sub-section (1) of Section 128, unless the appellant has deposited seven and half percent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of decision or an order passed by an officer of Customs lower in rank than the Principal Commissioner of Customs or Commissioner of Customs."*

A reading of the above, makes it is clear that the applicant was required to deposit 7.5% of the duty and penalty levied by the original authority. Government finds that it is not in dispute that the applicant failed to make

the pre-deposit as per under Sub-Section (1) of Section 128 of the Customs Act, 1962 till date. Government notes that the applicant has merely contended that the Commissioner(Appeals) has not considered the pre-deposit paid by the applicant. However, Government finds that they have paid only a token amount of Rs. 2,850/- vide challan dated 04.11.2020 as pre-deposit. The applicant has not adduced any evidence during the course of these proceedings indicating that they had submitted any reply to the Defective Appeal Notice dated 17.05.2019 requiring them to make the pre-deposit for their case to be heard on merit. Government has examined the submissions of the applicant and finds that no case has been made out therein that they have paid the entire amount of pre-deposit or as to why they did not file any reply to the Defective Appeal Notice of the Commissioner (Appeals) requiring them make the pre-deposit. In view of the above, Government finds the decision of the Commissioner (Appeals) in the impugned Orders-in-Appeal to dismiss the appeal of the applicant as non-maintainable for not having complied with his directions to make the pre-deposit of the duty and penalty imposed by the original authority to be proper and legal and accordingly holds so.

8. The subject Revision Application is rejected.


(SHRAWAN KUMAR)

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

ORDER No. 41/2023-CUS (WZ) /ASRA/Mumbai dated 08-9-23

To,

M/s. J.S. Overseas,
191/5A, Angalamman,
Kovil Street, T.M.H. Road,
Nagalkeni, Chrompet,
Chennai – 600 044.

Copy to:

1. Commissioner of Customs (Export), Air Cargo Complex, Mumbai.
2. Commissioner of Customs (Appeals) Mumbai, Zone – III.
3. Mr. M. Ayyadurai(Advocate), No. 3/F-2,MM Poorna Flate, VGP Ponnagar Extn., Sembakkam, Chennai-77.
4. Sr. P.S. to AS (RA), Mumbai.
5. Notice Board.

