

REGISTERED
SPEED POST



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. 371/415/DBK/2022-RA / 7036 Date of issue: 26.09.2023

ORDER NO. 680/2023-CUS (WZ)/ASRA/MUMBAI DATED 22.9.2023
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicants : M/s. Green Sources Private Limited.

Respondent: Pr. Commissioner of Customs (Export), ACC, Mumbai

Subject : Revision Applications filed, under Section 129DD of the Customs
Act, 1962, against the Order-in-Appeal No. Mum-CUSTM-AXP-APP-
549/2022-23 dated 17.06.2022 passed by Commissioner of Customs
(Appeals), Mumbai Zone-III.

ORDER

This Revision Application has been filed by M/s. Green Sources Private Limited(hereinafter referred as 'applicant') against the Order-in-Appeal No. Mum-CUSTOM-AXP-APP-549/2022-23 dated 17.06.2022 passed by Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Brief facts of the case are Applicant having IEC No. 0309042585 filed drawback claim on 28.5.2021 in reference to drawback Shipping Bill No. 1348450 dated 12.2.2020 for Rs. 56,61,638/- under section 74 of the Customs Act, 1962 read with Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995. Re-export of the said goods were taken place within one year from the date of import vide Shipping Bill No. 1348450 dated 12.2.2020 and LEO date 14.2.2020. Goods were found in unused condition during examination also. The Adjudicating Authority found that the drawback claim was received on 28.5.2021. However, exporter claimed it was reminder letter and first letter was received by department on 5.2.2021. Department revealed that letter dated 05.02.2021 was submitted to DC/Export Shed and claimed drawback under section 74 ibid. Further, LEO date in this case was 14.2.2021 and any claim with respect to drawback under section 74 should be filed within 3 months after LEO date with proper documents as prescribed under Re-export of imported goods (Drawback of Customs Duties) Rules, 1995 to the proper officer. As the exporter had filed the claim of drawback after one year from LEO date hence, they have violated the Rule 5 of Re-export of imported goods (Drawback of Customs Duties) Rules, 1995. Accordingly, the Adjudicating Authority rejected the said claim for the said violation. Aggrieved, the applicant filed appeal, however, the Appellate authority vide impugned OIA rejected the appeal and upheld the OIO.

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

- i. the letter/application bears date as 05.02.2020, it was filed along with the subject SB. Thus, this is well within the time limit as stipulated in drawback rules, 1995. In any case as per rules of drawback rules, 1995, Application for claim of duty drawback is required to be filed within 3 months from the LEO date. It basically

provides the maximum/upper time limit within which the application can be filed. It does not bar filing of application prior to the LEO date.

- ii. In any case, proactiveness in filing of letter/application even prior to statutory period cannot be detrimental to the assessee, and benefit otherwise available cannot be denied.
- iii. Without prejudice, even if the reminder letter dated 28.05.2021 for drawback claim is considered as filing of application, then also the same is within time in light of the various orders of the Hon'ble Supreme Court granting extension on account of COVID-19.
- iv. Applicant has placed reliance on various case laws.
- v. In view of above Applicants requested to set aside the impugned Order-in-Appeal.

4. A Personal hearing was fixed in this case on 28.06.2023. Mr. Akhilesh Kangsia, Advocate, Madhura Khandekar, Advocate and Mr. Sanjay Navandkar appeared for hearing and submitted that their drawback claim on reexport of goods has been rejected on time bar. They submitted

- i. Drawback Shipping Bill itself being claim document, their claim can not be held time barred.
- ii. Their original application for drawback was incorrectly rejected on the ground that application was made before let export order.
- iii. Their reminder application filed after one year due to covid has also not been considered even though Supreme Court has ordered to exclude covid time.

They requested to allow the application.

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

6. Government finds that department has confirmed that letter dated 5.2.2020 was filed by the Applicant on 12.2.2020 along with shipping bills. It is also undisputable fact that LEO date is 14.2.2020 for the filed shipping bill no. 1348450 dated 12.2.2020 vide which the goods were re-exported.

Government also finds that the Adjudicating Authority has rejected the drawback on limitation ground wherein department has considered letter dated 28.5.2021 as date of claim, thus there is delay of 1 year 3 months and 14 days from LEO date. The applicant vehemently asserts that even if the claim date is taken as 28.5.2021, their claim falls within the time limit by virtue of Supreme Court suo moto cognizance in case of limitation issue due to pandemic of COVID-19. Therefore, the issue to be decided is whether the applicant's claim, made under section 74 of the Customs Act, 1962, in conjunction with the Re-export of imported goods (Drawback of Customs Duties) Rules, 1995, meets the stipulated time frame or otherwise.

7. Applicant argued that Rule 5 of Re-export of Imported goods Rules, 1995 provides the maximum/upper time limit within which the application can be filed. It does not bar filing of the application prior to the LEO date. Therefore, letter filed dated 05.02.20 is well within the time limit stipulated. In this regard, Government reproduces rule 5 of Re-export of Imported goods Rules, 1995:

"5. Manner and time of claiming drawback on goods exported other than by post.-

(1) A claim for drawback under these rules shall be filed in the form at Annexure II [See Customs Series Form No. 109 in Part 5] within three months from the date on which an order permitting clearance and loading of goods for exportation under Sec. 51 is made by proper officer of customs : Provided that the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may, if he is satisfied that the exporter was prevented by sufficient cause to file his claim within the aforesaid period of three months, allow the exporter to file his claim within a further period of three months.

(2) The claim shall be filed [* * * *] alongwith the following documents, namely :- (a) Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export. (b) Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation. (c) Import invoice. (d) Evidence of payment of duty paid at the time of importation of the goods. (e) Permission from Reserve Bank of India for re-export of goods, wherever necessary. (f) Export invoice and packing list. (g) Copy of Bill of lading or Airway bill. (h) Any other documents as may be specified in the deficiency memo. "*

From the above, it is evident that a drawback claim must be submitted within three months from the Let Export Order (LEO) date. Additionally, Rule

5(2) outlines the required documents for submission alongside the claim. Notably, certain documents are accessible to the exporter only after the LEO has been issued. Consequently, interpreting the rule to allow for filing the drawback claim before the LEO contradicts the proper and accurate procedure. As a result, the government concludes that the date 05.02.2020 cannot be deemed as the correct filing date for the drawback claim.

8. Another argument put forward by the Applicant is that even if the claim date is taken as 28.5.2021, their claim still falls within the acceptable time limit due to the Supreme Court's *Suo moto* recognition of the limitation issue amid the COVID-19 pandemic. The government acknowledges that a range of concessions were indeed granted to taxpayers during the pandemic. Notably, the Hon'ble Supreme Court addressed this matter through 'Miscellaneous Application No. 665 of 2021 in SMW (c) No. 3 of 2020,' wherein an extension of the time limit was sanctioned. Hon'ble SC has extended time limit for computing the period of limitation for any suit, appeal, application or proceedings and further held that the period from 15.3.2020 till 14.3.2021 shall be excluded from this calculation. However, Appellate Authority vide the impugned OIA, held that this Supreme court order is not applicable in the present matter by relying on circular No. 157/13/2021-GST dated 20.07.2021. Government reproduces the relevant excerpt from the said circular :

" 5. In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 is applicable in respect of any appeal which is required to be filed before Joint/ Additional Commissioner (Appeals). Commissioner (Appeals). Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws."

From the above, Government finds that the circular unambiguously specifies the applicability of the Hon'ble Supreme Court's Order dated 27.04.2021. Further, para 4(b) of the circular states, ***"quasi-judicial proceedings by tax authorities: The tax authorities can continue to hear and dispose off proceedings where they are performing the functions as quasi-judicial authority this may interalia include***

disposal of application for refund, application for revocation of cancellation of registration, adjudication proceedings of demand notices etc. Similarly appeals which are filed and are pending, can continue to be heard and disposed off and the same will be governed by those extension of time granted by the statutes or notification if any.”

Thus the present case does not get covered under the same and the Supreme Court order will not be applicable to the case in hand. Further, Appellate Authority has discussed this issue in Para 7(ii) of the OIA in detail. The Government concurs with the Appellate Authority's observation and deems it appropriate and reasonable.

9. Furthermore, regarding the high court judgments relied upon by the Applicant in support of their argument, these judgements were issued to address a specific case and the judgments have not set aside the clarification issued by CBIC. Government emphasizes the following excerpt from the aforementioned circular:

“Subject: Clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27.04.2021.

The Government has issued notifications under Section 168A of the CGST Act, 2017, wherein the time limit for completion of various actions, by any authority or by any person, under the CGST Act, which falls during the specified period, has been extended up to a specific date, subject to some exceptions as specified in the said notifications. In this context, various representations have been received seeking clarification regarding the cognizance for extension of limitation in terms of Hon'ble Supreme Court Order dated 27.04.2021 in Miscellaneous Application No. 665/2021 in SMW(C) No. 3/2020 under the GST law. The issues have been examined and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues detailed hereunder.

.....

2.2 The matter of extension of period of limitation under Section 168A of the CGST Act, 2017 was deliberated in the 43rd Meeting of GST Council. Council, while providing various relaxations in the compliances for taxpayers, also recommended that wherever the timelines for actions have been extended by the Hon'ble Supreme Court, the same would apply.

3. Accordingly, legal opinion was solicited regarding applicability of the order of the Hon'ble Supreme Court to the limitations of time lines under GST Law. The matter has been examined on the basis of the legal opinion received in the matter. The following is observed as per the legal opinion:- "

It is evident from the above that the Central Board of Indirect Taxes and Customs (CBIC) has thoroughly examined all aspects, including consideration of the Supreme Court's order, before issuing such a circular. Further, this circular has been issued taking into account legal opinion and approval of GST Council. Government also finds that CBIC has issued the clarification for uniformity in application. Therefore, the government does not find any merit in the applicant's argument in this regard.

10. In view of above, Government finds no infirmity with the Order-in-Appeal No. Mum-CUSTOM-AXP-APP-549/2022-23 dated 17.06.2022 passed by Commissioner of Customs (Appeals), Mumbai Zone-III and upholds the same.

11. The Revision Application/s are disposed of on the above terms.

Shrawan
22/9/23

(SHRAWAN KUMAR)

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

ORDER No. 680/2023-CUS (WZ)/ASRA/Mumbai dated 22.9.23
To,

1. M/s. Green Sources Private Limited, 21, Udyog Bhavan, Sonawala Road, Goregaon East, Mumbai- 400063.
2. The Pr. Commissioner of Customs(E), Air Cargo Complex, Sahar, Andheri(E), Mumbai - 400 099.

Copy to:-

1. The 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.
2. Sr. P.S. to AS(RA), Mumbai.
3. Guard file.

