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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 371/34/DBK/14-RA } 20^{6/18} Date of Issue
28.11.2018

ORDER NO. 159/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.09.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : M/S.MFG Jewellery Products

Respondent: Commissioner of Customs, New Custom House,
Ballard Estate, Mumbai-400001.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 1362(CFSMULUND)/2013(JNCH)/EXP-262 dated 18.12.2013 passed by the Commissioner of Customs (Appeals) MUMBAI.

ORDER

The revision application is filed by M/s.MFG Jewellery Products against the Order in Appeal No. 1362(CFSMULUND)/2013(JNCH)/EXP-262 dated 18.12.2013 passed by Commissioner of Customs (Appeals), Mumbai in respect of Order in Original No. 152/2012-13 dated 12.11.2012 passed by the Assistant Commissioner of Customs(Exp), CFS Mulund, Mumbai.

2. The revision application is filed on 12.05.2014 with a delay of 50 days and delay appears to be an account of litigation before a wrong forum i.e. CESTAT, Mumbai and CESTAT vide its order dated 07.04.2014, dismissed the appeal as not maintainable with liberty to the appellants to approach the appropriate authority within 30 days of the communication. Hence, the delay is condoned and the RA is taken up for consideration on merits.

3. Brief facts of the case are: M/S.MFG Jewellery Products, Mumbai have exported goods against shipping bills detailed in the order in original no. 152/2012-13 dated 12.11.2012 and availed Drawback amount of Rs.1,24,574/-. On verification, it is noticed by the department that remittances in respect of the above mentioned exports, covering the period 01.01.2004 to 31.12.2010, were not realized and a demand notice was issued to the exporter under Rule 16 A of Drawback Rules read with section 75 of the Customs Act, 1962 towards recovery of Drawback amount in the event of non-submission of repatriation of export proceeds.

The Demand Notice was confirmed by the original authority on grounds that no reply was received from the noticee with in the stipulated 30 days. Aggrieved by the order in original, the exporter M/S.MFG Jewellery Products filed appeal before the Commissioner (Appeal) and the said appeal was rejected on grounds of limitation by the Commissioner (Appeal). The applicant have also litigated the matter before the Hon'ble CESTAT and the same was dismissed as not maintainable on grounds of jurisdiction.

4. Personal Hearing was held on 26.09.2018, Shri.Sadanand Patnaik Assistant Commissioner, Mulund CFS appeared on behalf of the

respondent Department and pleaded for upholding the order of the lower Appellate Authority. Shri. Sashikant and Shri. Ahmed Rafiq Mustafa appeared on behalf of the applicant and reiterated the submissions made in Revision Application pleading for allowing the Revision Application.

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

6. The issue involved is non-submission of proof towards realisation of foreign remittance against exports made by the applicant within the stipulated time. In terms of the provisions of Section 75 (1) of the Customs Act, 1962 read with sub-rule 16A (1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, where an amount of drawback has been paid to an exporter but the sale proceeds in respect of such export goods have not been realized within the time allowed under the Foreign Exchange Management Act (FEMA), 1999, such drawback amount is to be recovered. Sub-rule 16A (2) stipulates that if the exporter fails to produce evidence in respect of realization of export proceeds within the period allowed under the FEMA, 1999 or as extended by the Reserve Bank of India (RBI), the Assistant/Deputy Commissioner of Customs shall issue a notice to the exporter for production of evidence of realization of export proceeds, failing which an order shall be passed to recover the amount of drawback paid to the claimant.

7. The Government finds that CBEC circular 5/2009 dated 02.02.2009 prescribes mechanism for monitoring realisation of export proceeds. Para 5(c) of the circular states that:

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)

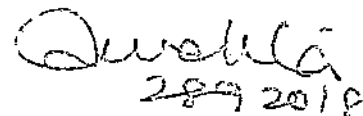
As per the Board circular a periodic six monthly statement has to be furnished by the exporters at the end of every six months for the exports made during that period.

8. The government finds that the exporters have submitted copies of bank realisation certificates along with the revision application and on perusal of the same, prima facie, it appears that the exporters have realised the export proceeds within the stipulated period. Further government finds that the adjudicating authority has failed to provide proper opportunities to the applicant and the case was adjudicated without personal hearing violating the principles of natural justice.

9. In view of the above discussion and findings, the Government remands the matter back to the original adjudicating authority with directions to the applicant to submit the documents for verification and adjudicating authority, in accordance with the observations of the government supra, shall consider the submissions and pass an appropriate order after affording reasonable opportunity of being heard to the applicant. The adjudicating authority shall decide the case within 8 weeks from the receipt of this order.

10. The Order-in-Appeal No. 1362(CFSMULUND)/2013(JNCH)/EXP-262 dated 18.12.2013 passed by the Commissioner of Customs (Appeals), Mumbai is set aside and Revision Application is allowed on the terms mentioned above.

11. So ordered.



(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ¹⁵⁹/2018-CUS (SZ) /ASRA/MUMBAI

DATED 28.09.2018

To,

M/s. MFG Jewellery Products,
113, Babu Khote Street,
Pydhonie,
Mumbai-400 003.

Copy to:

1. The Commissioner of Customs, New Custom House, Ballard Estate, Mumbai-400001.
2. The Commissioner of Customs (Appeals) Mumbai-II, JNCH, Nhava Sheva, Tal. Uran, Dist. Raigad.
3. Assistant Commissioner (Export), CFS Mulund (West), Mumbai.
4. Sr. P.S. to AS (RA), Mumbai
- ✓ 5. Guard File.
6. Spare Copy.