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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.371/189/DBK/2020-RA

17709

Date of issue:

30.10.23

ORDER NO. 795 /2023-CUS (WZ)/ASRA/MUMBAI DATED 25.10.2023
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. Complast Corporation

Respondent : Pr. Commissioner of Customs, Ahmedabad

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. AHD-
CUSTM-000-APP-601-19-20 dated 17.01.2020 passed by the
Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This Revision Application is filed by M/s. Complast Corporation, (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. AHD-CUSTOM-000-APP-601-19-20 dated 17.01.2020 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Brief facts of the case are that the Applicant had obtained drawback in respect of the export of goods during the period Aug'16 to Dec'16, but had failed to produce evidence of realization of export proceeds hence, a show cause cum demand notice for recovery of total drawback amounting to Rs.8,25,236/- against 7 shipping bills was issued to them on 28.05.2018. After due process of law, the adjudicating authority vide Order-in-Original No. 02/AC/DBK/ICD-SND/2018-19 dated 20.04.2019, passed following Order:

- (i) Confirmed demand of Rs.3,46,686/- alongwith applicable interest pertaining to 3 shipping bills as realization of export proceeds was found to be beyond the period stipulated by the RBI.
- (ii) Imposed penalty of Rs.30,000/- 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 in on perusal of Rule 16A(2) of Drawback Rules, it is revealed that the Assistant Commissioner of Customs shall pass an order to recover the amount of drawback paid to the claimant, if the exporter fails to produce evidence in respect of realization of export proceeds within the period allowed under FEMA or any extension of the said period by RBI after issuance of show cause notice to produce the evidence. In the present case applicant had produced bank realization certificate in respect of shipping bills before the order of recovery was

made. As such the order of learned Commissioner (Appeals) may please be quashed and set aside.

- ii. that in the present case, recovery of drawback has been ordered in respect of 3 Shipping Bills. However, proceeds were realized on 22-02-2019 in respect of shipping bill No. 2486938 dated 28-11-2016 and in respect of shipping bill No. 2756331 dated 12-12-2016 on 03-08-2018, whereas order for recovery of drawback amount was made subsequently on 20-04-2019. Since applicant had produced the bank realization certificate before the order of recovery of amount of drawback, the order of recovery ought to have been quashed and set aside by learned Commissioner (Appeals).
- iii. that learned Assistant Commissioner while passing the order of recovery specifically observed that drawback is allowed in order to encourage exports of the country and to make products of the exporter competitive in overseas. Further, it is submitted that provisions for recovery of drawback amount have been made in the cases where sale proceeds in respect of export goods are not received. Inasmuch as drawback is an essentially export promotion scheme, however, to check the fraud or misuse of drawback scheme, provisions for recovery of drawback have been framed. However, such provisions of recovery cannot be invoked where sale proceeds in respect of export goods have been realized. In this connection Sub-rule (2) of Rule 16A of Drawback Rules, specifically provides that order of recovery can be made where the exporter even after issuance of show cause notice does not produce evidence of realization of export proceeds. However, in the present case applicant produced the evidence of export realization, well before the order of recovery was made.
- iv. that learned Assistant Commissioner in para 9.1 of his order specifically held that applicant have submitted copies of BRC as well as some payment details/ledger, related to the shipping bills in respect of the show cause notice. From the findings of learned adjudicating authority, it is revealed that applicant had produced

evidence of sale proceeds realization either by producing BRC or account entries. As such realization of sale proceeds in respect of export goods was produced by the applicant and learned Assistant Commissioner has taken on record of the same. Therefore, when learned Assistant Commissioner was aware of the fact that sale proceeds in respect of export goods have been realized and there was evidence, he ought not to have passed order of recovery of amount of drawback.

- v. that in terms of sub-rule of Rule 16, even where the Drawback is recovered the same is refundable if the exporter produces evidence within one year. In the instant case the export proceeds were realized well within the stipulated period. 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 Hon'ble Appellate authority ought to have taken this into account would have set aside the Order-in- Original padded by the adjudicating authority.
- vi. that it is well settled law that substantive benefit flowing from the statute cannot be denied merely on account of procedural infraction. In this connection reliance is placed on the judgment of Honorable Supreme Court in the case of Mangalore Chemicals & Fertilizers Ltd. V/s. Deputy Commissioner cited at 1991(55)ELT-437(SC). In light of the law laid down by Honorable Supreme Court, it is submitted that substantive and mandatory conditions in respect of drawback are export of goods and realization of sale proceeds, In the present case applicant has complied with all the conditions and procedure of drawback Rules, including producing evidence of export realization. Therefore, order of recovery of the amount of drawback is against the spirit of export promotion. More specifically, when evidence of export realization was produced before recovery order.

vii. that with respect to imposition of penalty of Rs.30,000/- under Section 117 (wrongly shown Rule 117), it is submitted that drawback Rules are self-contained rules and therefore penalty cannot be imposed under Section 117 of the Customs Act. In this connection reliance is placed on the decision of Honorable Tribunal in the case of Systematic Steel Industries Ltd. V/s. CCE, Vapi cited at 2010(262)ELT-317(Tri-Ahmd.), Indian Oil Corporation Ltd V/s. CCE, Vadodara cited at 2011(263)ELT-698(Tri-Ahmd.), and Asrani Tubes Ltd., V/s, CCE,C&ST, Hyderabad-I cited at 2015(327)ELT-227(Tri-Bang.).

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 17.10.2023. Mr. P.G. Mehta, Advocate appeared online on behalf of the applicant and submitted that certain drawback was not allowed due to insufficient bank realization. He further submitted that now entire remittances have been realized therefore drawback recovery order of appellate authority be set aside. He requested to allow the application.

4.1 On 05.07.2023, Ms. Kriti Pandey, Deputy Commissioner of Customs, ICD-Sanand appeared online and submitted that Commissioner (Appeals) has correctly passed the OIA and requested to maintain the same.

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 7 shipping bills. Subsequently, demand notice for Rs.3,46,686/- alongwith applicable interest pertaining to 3 shipping bills was confirmed and a penalty of Rs.30,000/- was imposed on the ground that the realization date

was beyond the stipulated time period. Commissioner (Appeals) has upheld the impugned OIO.

7.1 Government observes that the concerned Rule 16A(4) of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (hereinafter referred to as the Drawback Rules) 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 findings of the adjudicating authority, the applicant had produced valid evidence against realization of export proceeds in the form of BRCs. 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.

8.1 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.

8.2 Government also relies on a recent judgment passed by Hon'ble Madras High Court in the case of *M/s. Sabare International Limited vs.*

Revision Authority [2022 (5) TMI 395], wherein with reference to said Rule 16A(4) *ibid* it was held as under:

9. A reading of the above provision seems to indicate that 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 Assistant Commissioner of Customs of Deputy Commissioner of Customs to the claimant.

10. In this case, the recovery has been made long after the export realization. Considering the same and considering the fact that there is indeed an export realization, the case of the petitioner deserves a favorable disposal by the respondents.

11. Under these circumstances, I am inclined to dispose of this writ petition by remitting the case back to the 3rd respondent/the Assistant Commissioner of Customs, to take note of Rule 16A(4) of the Customs, Central Exercise Duties and Service Tax Drawback Rules, 1995 and to dispose of the same on merits and in accordance with law, in the light of the Bank Realization Certificate produced by the petitioner on 22.09.2009.

9. In view of the above discussion and findings, the Government sets aside Order-in-Appeal No. AHD-CUSTOM-000-APP-601-19-20 dated 17.01.2020 passed by the Commissioner of Customs (Appeals), Ahmedabad and allows the instant Revision Application.

Shrawan
25/10/23
(SHRAWAN KUMAR)

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

ORDER No. 795 /2023-CUS (WZ)/ASRA/Mumbai dated 25.10.2023

To,

M/s. Complast Corporation,
601-603, Karma Tower,
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Near Suvidha Shopping Centre,
Paldi, Ahmedabad - 380 007.

Copy to:

1. Pr. Commissioner of Customs,
1st Floor, Custom House,
Near All India Radio, Income Tax Circle,
Navrangpura, Ahmedabad - 380 009.
2. Mr. P.G. Mehta, Advocate,
4, Padma Chambers, 1st Floor,
Opp. Gandhigram Railway Station,
Ellisbridge, Ahmedabad - 380 009.
3. Sr. P.S. to AS (RA), Mumbai
4. ~~Guard file.~~

