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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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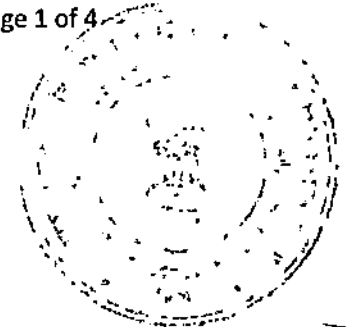
F.No.373/112/DBK/13-RA/8604

Date of Issue

31.08.2020
~~06.2020~~

ORDER NO. 80/2020-CUS (SZ) / ASRA / MUMBAI/ DATED 22.06.2020
OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA ,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY
TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE
CUSTOMS, 1962.

- Applicant** : M/s S. Duraisamy and Sons,
1/A, Old Natham Road,
Madurai - 625 014
- Respondent** : The Commissioner of Customs, Chennai.
- Subject** : Revision Application filed, under Section 129DD of
the Customs Act, 1944 against the Order-in-
Appeal No. C. Cus. No. /1265/2013 dated
16.09.2013 passed by the Commissioner of Central
Excise (Appeals), Chennai.



ORDER

The Revision Application is filed by M/s S. Duraisamy And Sons, Madurai - 625 014 (herein after referred to as 'the applicant') against the Order in Appeal No. C. Cus. No. /1265/2013 dated 16.09.2013 passed by the Commissioner of Central Excise (Appeals), Chennai, in respect of Order in Original No. 338/2013 dated 04.04.2013 passed by the Assistant Commissioner of Customs (Drawback), ICC, Meenambakkam, Chennai - 600 027.

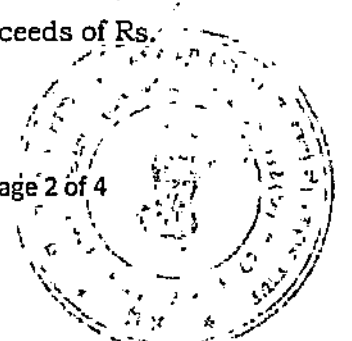
2. Brief facts of the case are that the applicant, a manufacturer and exporter of cotton knitted garments, had exported the goods through Customs formations of ICD, Tuticorin and Air Cargo Complex, Chennai under various Shipping Bills during the year 2008. However the applicant failed to realise the sale proceeds of Rs. 81,34,047/- and therefore were ineligible for drawback of Rs. 8,25,767/ (Rs.7,70,268/-- St. John ICD, Turicorin & Rs. 55,499/- ACC, Chennai). The applicant paid Rs. 8,25,767/- on being questioned by the DRI officials. The Adjudicating Authority confirmed the demand of Rs. 55,499/- with applicable interest of Rs. 25,329/- from the applicant and appropriated the amount of Rs. 55,499/- paid by the applicant vide TR-6 challan No. Nil dated 13.07.2011.

3. Aggrieved by the said order, the Applicant filed appeals before Commissioner (Appeal) on the ground that they are a small industry struggling hard to meet the ends and the litigation with their foreign buyer is on in the Italian Court. The applicant requested the Appellate Authority to waive the interest part of amount. The Appellate Authority vide impugned Order in Appeal rejected the appeal and directed the appellant to immediately pay back the interest as ordered by the Adjudicating Authority.

4. Being aggrieved by the impugned Order in Appeal, the applicant filed the instant Revision Application on following grounds :-

4.1 They are small scale hosiery garment manufacturer. They are a family owned partnership firm.

4.2 They have made all out efforts to collect the export proceeds of Rs. 81,34,047/- from their Italy customers.



4.3 They have fully returned the drawback of Rs. 55,499/- availed through Customs (AIR), Chennai.

4.4 They have paid interest amount of Rs. 25,329/- by DD 505052 dated 23.04.2013 before making appeal to the Commissioner of Customs (Appeals), Chennai.

4.5 They requested to waive the penal interest of Rs. 25,329/-.

5. Personal Hearing was held on 16.07.2018 and 15.10.2019. No one attended the personal hearing on behalf of the applicant or department. The applicant vide their letter dated 09.10.2019 requested to decide the case on merits. As such, the instant Revision Applicant is taken up for decision on the basis of documents and submissions available on record.

6. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the submissions from both sides.

7. On perusal of records, Government observes that the applicant was granted the drawback with regard to exports made by them and demand of drawback already sanctioned was confirmed on the ground that they had failed to submit Bank Realisation Certificate as evidence of remittance within stipulated period

8. Government further notes that it is a statutory requirement under Section 75 (1) of Customs Act, 1962 & Rule 16A(1) of Customs, Central Excise & Service Tax Drawback Rules, 1995, read with Section 8 of FEMA 199 read with regulations 9 of Foreign Exchange Management (Export of goods & services Regulations 2000 & para 2.41 of EXIM Policy 2005-2009 that export proceeds need to be realised within the time limit provided thereunder viz within six months in this case subject to any extension allowed by RBI. Since the applicants have failed to comply with the statutory obligations, the drawback claim becomes recoverable along with interest as per provisions stipulated under Rule 16 of Customs, Central Excise & Service Tax Duty Drawback Rules, 1995 and the Section 75A(2) of the Customs Act, 1962.



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9. It is settled legal proposition that executive instructions cannot override the statutory provisions. Also, it is pertinent to mention that if there is a statutory rule or an Act on the matter, the executive must abide by the Act or the Rules and it cannot ignore or act contrary to that Rule or the Act. In the instant case, the availment of drawback by the Applicant was held to be illegal by orders passed by the lower authorities. Hence, interest is leviable. In view of the above, the Appellate Authority's order cannot be faulted and the same does not give rise to any substantial question of law. The Government holds that the Appellate Authority had rightly confirmed the recovery of the said drawback amount along with interest.

10. In view of above circumstances, Government finds no infirmity in the impugned Order-in-Appeal and therefore upholds the same.

11. Revision Application is thus rejected being devoid of merit.

12. So ordered.


 (SEEMA ARORA)
 Principal Commissioner & Ex-Officio
 Additional Secretary to Government of India.

ORDER No. 80/2020-CUS (SZ) /ASRA/MUMBAI DATED 22.06.2020

To,
 M/s S. Duraisamy and Sons,
 1/A, Old Natham Road,
 Madurai - 625 014

Copy to:

1. The Commissioner of Customs, Chennai Airport, New Custom House, GST Road, Meenambakkam, Chennai-600 027.
2. The Deputy Commissioner of Customs (Appels), 60, RajajiSalai, Custom House, Chennai- 600 001.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard File.
5. Spare Copy.

ATTESTED

B. LOKANATHA REDDY
 Deputy Commissioner (R.A.)

