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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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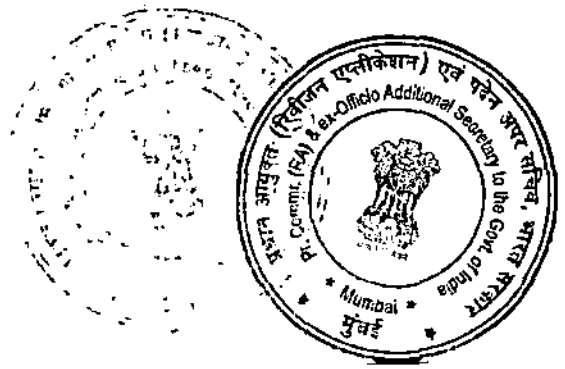
Date of Issue 29.11.2010

ORDER NO. 876/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 23.10.2018 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. Air Exports.

Respondent: Commissioner of Customs (Export), Air Cargo Complex, Sahar, Andheri (East), Mumbai-99.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in- Appeal No.229/Mumbai-III/2013 dated 09.05.2013 passed by the Commissioner of Customs (Appeals) MUMBAI-III.



ORDER

The revision application is filed by M/s. Air Exports, 401, C Wing, Noor-E-Jehan II CHS, Pipe Road, Kurla (West), Mumbai-400070 against the Order in Appeal No.229/Mumbai-III/2013 dated 09.05.2013 passed by Commissioner of Customs (Appeals), Mumbai-III in respect of Order in Original No. DC/RBP/660/2010/ADJ/ACC dated 19.04.2010 passed by the Assistant Commissioner of Customs, DBK (XOS), ACC, Mumbai.

2. Brief facts of the case are that M/s. Air Exports, Mumbai have exported goods against shipping bills detailed in the Annexure to the Order-in-Original No. DC/RBP/660/2010/ADJ/ACC dated 19.04.2010 and availed Drawback amount of Rs.12,43,484/- (Rupees Twelve Lakh Forty Three Thousand Four Hundred Eighty Four only). On verification, it is noticed by the department that remittances in respect of the above mentioned exports, 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 proof towards repatriation of export proceeds. The Demand Notice was confirmed by the original authority on grounds that no reply is received from the noticee with in the stipulated 30 days and all the correspondence returned with remarks returned to the sender. Aggrieved by the Order-in-Original, the exporter M/s. Air Exports, Mumbai filed appeal before the Commissioner (Appeals) and the said appeal was rejected on grounds of limitation by the Commissioner (Appeals).

3. Personal Hearing was held on 07.08.2018 and Proprietor Shri Imran Khan appeared on behalf of the applicant and reiterated the submissions made in Revision Application pleading for allowing the Revision Application.

4. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the applicant's submissions.

5. The issue involved is non-submission of proof towards realisation of foreign remittances against exports made by the applicant with in the stipulated time in terms of the provisions of Section 75 (1) of the Customs



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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.

6. 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 said 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 the preceding period.

7. The Government notes 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 with in the stipulated period. The Government further

S. R. KHURKAR
Assistant Commissioner (R.A.)



