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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.373/08/DBK/14-RA / 3710 Date of Issue : 31.07.2020
06.2020

ORDER NO. 91/2020-CUS (SZ) / ASRA / MUMBAI/ DATED 02.07.2020
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 ACT, 1962.

Applicant : M/s Cee Dee Garments,
15, Kaliappa Nagar, 1st street, Kangayam Road,
Tirupur- 641 604.

Respondent : The Commissioner of Customs, Coimbatore.

Subject : Revision Application filed, under Section 129DD of
the Customs Act, 1962 against the Order-in-
Appeal No.CMB-CEX-000-APP-345/13 dated
28.10.2013 passed by the Commissioner of
Customs (Appeals), Coimbatore.



ORDER

The Revision Application is filed by M/s Cee Dee Garments, Tirupur (herein after referred to as 'the applicant) against the Order in Appeal No.CMB-CEX-000-APP-345-13 dated 28.10.2013 passed by the Commissioner of Customs (Appeals), Coimbatore.

2. Brief facts of the case are that the applicant had exported the goods under the shipping bills and received the drawback of Rs. 5,45,741/- (Rupees Five Lakh Forty Five Thousand Seven Hundred Forty One Only) during the period from 18.06.2006 to 18.08.2006. The applicant did not furnish the BRCs for realisation of export proceeds in respect of export of goods within the period allowed under the Foreign Exchange Management Act, 1973 including any extension of such period granted by the Reserve Bank of India. The adjudicating authority vide Order in Original No. 3/2010-(BRC)dated 30.06.2010 directed the applicant to pay a sum of Rs. 5,45,741/- together with interest at the prescribed rate.

3. Aggrieved by the said order, the Applicant filed appeal before Commissioner (Appeal) on the following grounds :-

3.1 The applicant had not received any show cause notice nor any personal hearing intimation letter.

3.2 The sales proceeds have been realised within the prescribed period.

4. The Appellate Authority vide impugned order in appeal dismissed the appeal being time barred.

5. The applicant contested the impugned Order in Appeal passed by the Appellate Authority in the instant Revision Application on following grounds :-



5.1 The adjudicating authority passed the order in original without examining the factual position and without causing necessary verification of the records available.

5.2 The applicant had not received any of the show cause notices issued during April 2007, September 2007 and October, 2009. The order in original has been passed on 30.06.2010 i.e. nearly after two and half years from the date of issuance of first SCN and after 6 months from the date of third SCN.

5.3 the adjudicating authority had come to a factually incorrect conclusion that the applicant had not filed the evidence of realisation of export proceeds in respect of the said exported goods within the period allowed under the FEMA, 1999.

5.4 The applicant had ensured the filing of copy of BRCs in time. However, the order of recovery was issued without issuing the SCNs and without offering the chances of personal hearing.

5.5 The sale proceeds were realised within time and the same was informed to the department in time.

5.6 They have filed the BRCs twice to the department and are ready to produce again.

5.7 The appellate authority did not give justice.

5.8 The case may be remanded back to the original authority for verification of BRCs.

6. Personal Hearing was held on 19.10.2019. The applicant vide letter dated 11.11.2019 informed that they did not want to be heard in person and requested to decide the revision application base on the submissions. No one attended the personal hearing on behalf of the department.



7. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the grounds of filing the revision application.

8. It is found that the applicant had filed the appeal before first appellate authority on the grounds that the impugned Order in Original No. 3/2010-(BRC) dated 30.06.2010 was passed by the Adjudicating Authority without giving an opportunity of hearing to the Applicant and therefore it amounts to violation of Principal of Natural Justice.

9. In this regard, the Government holds that the show cause notice has to be served upon the appellants as elaborated under the provisions of Section 153 of the Customs Act, 1962. In the instant case, it is not clear whether the same had been complied with by the department. In the absence of any service of notice to the applicant, there is violation of principles of natural justice.

10. The Government further observes that the applicant has taken a stand before the Appellate Authority that the order-in-original was passed in violation of principles of natural justice, in as much that they were not given an opportunity of representing the case or to produce evidence in their support. The Government opines that on this ground itself, the appellate authority should have taken up the application for condonation of delay and disposed it off on its own merits, instead of dismissing the same being time barred.

11. The Government further notices that the issue involved in this case pertains to the year 2006 hence there has to be a time bound direction to the lower authorities to decide the issue conclusively. In the interest of justice, the lower authority i.e. adjudicating authority is directed to grant an opportunity of personal hearing to the appellant and decide the issue on merit within four weeks from the date of receipt of order.



12. Accordingly, the impugned Order in Appeal is set aside and the matter is remanded back to the original adjudicating authority to follow the directions as given above and pass an order on merits. The appeal is allowed by way of remand.

13. So, ordered.

(SEEMA ARORA)

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

ORDER No. 91 /2020-CUS (SZ) /ASRA/Number DATED 01.07.2020

To,

ATTESTED

M/s Cee Dee Garments,
15, Kaliappa Nagar, 1st street,
Kangayam Road, Tirupur- 641 604.

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

Copy to:

1. The Commissioner Of Customs, No.1, Williams Road, Cantonment, Tiruchirapalli- 620 001.
2. The Commissioner of Customs, Central Excise & Service Tax (Appeals), 6/7, A.T.D., Race Course Road, Coimbatore- 641 018.
3. The Assistant Commissioner of Customs, CFS, s.f. No. 129, Poondi Ring Road, Chettipalayam, Tirupur- 641 652, Tamil Nadu.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

