

REGISTERED  
SPEED POST



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. 373/142/DBK/2013-RA/3725

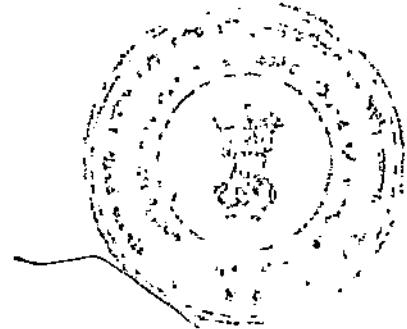
Date of Issue: 31.07.2020

ORDER NO. 95/2020-CX (WZ)/ASRA/MUMBAI DATED 06.07.2020 OF  
THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL  
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE  
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL  
EXCISE ACT, 1944.

Applicant : M/s JKM Overseas Pvt. Ltd.

Respondent : Commissioner of Customs (Appeals), Bangalore

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. 337/2013  
CUS(B) dated 26.09.2013 passed by the Commissioner of  
Customs (Appeals), Bangalore.



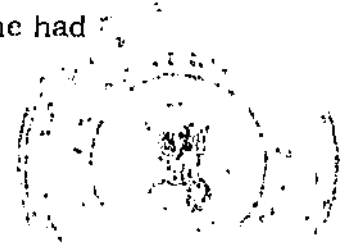
## ORDER

This Revision Application is filed by the M/s JKM Overseas Pvt. Ltd, 242, Opp. Geetanand Ashram, Sohana Road, Gurgaon-122 102 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. 337/2013 CUS(B) dated 26.09.2013 passed by the Commissioner of Customs (Appeals), Bangalore.

2. The issue in brief is that the Applicant during the period 2006 had exported goods through Bangalore Air Cargo Complex and had availed drawback under Section 75 of the Customs Act, 1962. The during April/Mary 2009, the department had sent letter to the Applicant for submission of Bank Realization Certificate (BRC). Since the Applicant failed to respond to the letters, a Show Cause Notice NO. 47/2010 BRC dated 25.02.2010 was issued to them. The Deputy Commissioner of Customs, Air Cargo Complex, Bangalore vide Order-in-Original No. 487/2013 dated 23.04.2013 confirmed the duty drawback amount of Rs. 14,48,432/- to be recovered with interest under Rule 16 & 16(A) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 with proviso to Section 75 of the Customs Act, 1962 and also imposed a penalty of Rs. 5,000/- under Section 117 of the Customs Act, 1962. Aggrieved, the Applicant then filed appeal with the Commissioner of Customs (Appeals), Bangalore who vide his Order-in-Appeal No. 337/2013 CUS(B) dated 26.09.2013 rejected their appeal and upheld the Order-in-Original dated 23.04.2013.

3. Being aggrieved, the Applicant then filed the current Revision Application on the following grounds :

- 3.1 That proof of receipt of export proceeds i.e. the Negative Statements vide letter dated 28.03.2011 were filed by the Applicant.
- 3.2 The Applicant vide their letter No. JKM/601/10-11 dated 28.03.2011 had sent the Negative Statements and the same had



been received by the Customs office on 05.04.2011 and the e-mail of Shri D Phani Kumar, Assistant Commissioner of Customs (Drawback), Devanahalli, Bangalore dated 01.04.011 it was confirmed that the Negative Statements submitted by the Applicant had been received and entered into the system.

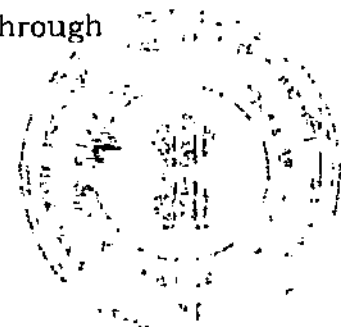
3.3 That SCN and letters to attend the personal hearing had not been received by the Applicant, hence they could not represent their case before the original authority. That in fact, the first time the Applicant received notice of the proceedings was when they received the ex-parte Order of the Dy. Commissioner in their registered office in Calcutta.

3.4 That they prayed the Order-in-Appeal and Order-in-Original be quashed.

4. A personal hearing in the case was held on 04.12.2019 which was attended by Shri Pradeep Sharma, Export Manager and Ms Madhura Khandekar, Advocate on behalf of the Applicant. The Applicant submitted that proof of BRC for the exports made during the period 2006 to 2007 was submitted on 28.03.2011. The SCN was not received by them and Order-in-Original was exparte. Order-in-Appeal simply upheld the Order-in-Original only because BRC was not submitted within the stipulated period. There is no doubt on realization of foreign exchange and the delay is only procedural lapse.

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. The Applicant, had exported the goods and availed drawback amounting to Rs. 14,48,432/- and was issued Show Cause Notice dated 25.02.2010 for the recovery of the same amount as they did not produce the evidence regarding realization of export proceeds. The Applicant submitted that they had not received the SCN and meantime, vide their letter JKM/601/10-11 dated 28.03.2011 they submitted the BRCs through



courier which was received by the Customs office on 05.04.2011. Shri D Phani Kumar, Assistant Commissioner of Customs (Drawback), Devanahalli, Bangalore vide email dated 01.04.011 had confirmed that the Negative Statements had been received and entered into the system. Government finds that inspite of the BRCs/Negative Statements received by the department, the adjudicating authority had confirmed the duty drawback amount along with interest and penalty vide Order-in-Original dated 23.04.2013 which is not legal and proper.

7. On perusal, it is found that the Applicant had received 12 negative statements/certificates all nos CBB/JKM/2010-11 dated 27.12.2010 and 18.03.2011 issued by the Federal Bank in respect of export of Applicant IEC No. 0293001693 for the period 01.01.2004 to 31.12.2009.


8. Government notices that the Applicant had not received the Show Cause Notice nor the PH letter, hence the impugned Order-in-Original dated 23.04.2013 was passed without giving an opportunity of hearing to the Applicant and therefore it amounts to violation of principle of natural justice. In such a situation, the case is required to be remanded back to the original authority to consider the matter.

9. Prima facie, it appears that the Applicant have realized the remittances within the stipulated time and non submission of the same can not negate the fact of realization. Therefore, Government is of the view that the Applicant claim of realization of proceeds within due time requires verification from the original authority.

10. Under the circumstances, for following the natural justice, Government sets aside the impugned Order-in-Appeal No. 337/2013 CUS(B) dated 26.09.2013 and Order-in-Original No. 487/2013 dated 23.04.2013 and remands back the instance case to the original authority for fresh consideration with the direction to decide the appeal on merits after giving opportunity of being heard to the Applicant within four weeks from receipt of this order.



11. The Revision Application is allowed in terms of above.
12. So, ordered.

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

ORDER No. 95/2020-CX (WZ)/ASRA/Mumbai DATED 06.07.2020.

To,  
M/s JKM Overseas Pvt. Ltd,  
242, Opp. Geetanand Ashram,  
Sohana Road,  
Gurgaon  
Haryana-122 102.

**ATTESTED**

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

Copy to:

- 1) The Commissioner of Customs (Appeals), C.R. Building, P.B. No. 5400, Queens Road, Bangalore - 560 001.
- 2) The Commissioner of Customs, C.R. Building, P.B. No. 5400, Queens Road, Bangalore - 560 001.
- 3) Sr. P.S. to AS (RA), Mumbai
- CA) Guard file
- 5) Spare Copy.

