

F.No. 380/36/DBK/SZ/2020-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 04/05/23.

Order No. 173 /23-Cus dated 04-05-2023 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India under section 129DD of the Custom Act, 1962.

Subject : Revision Application, filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. TCP-CUS-000-APP-044-20 dated 17.06.2020, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli.

Applicant : The Commissioner of Customs, Tiruchirapalli

Respondent : M/s. Canimaara Garments, Tirupur

ORDER

Revision Application No.380/36/DBK/SZ/2020-RA dated 02.09.2020 has been filed by the Commissioner of Customs, Tiruchirapalli, (hereinafter referred to as the Applicant department) against the Order-in-Appeal No. TCP-CUS-000-APP-044-20 dated 17.06.2020, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli. The Commissioner (Appeals) has, vide the above mentioned Order-in-Appeal, allowed the appeal filed by M/s. Canimaara Garments, Tirupur (hereinafter referred to as the Respondent), against the Order-in-Original No. 24/2013-(ACC) dated 11.02.2013, passed by the Assistant Commissioner of Customs, Air Cargo Complex, Coimbatore.

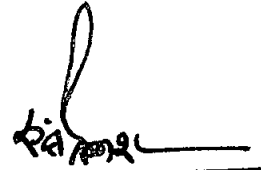
2. Brief facts of the case are that the Respondent filed drawback claims, in respect of exports made by them from the Air Cargo Complex, Coimbatore, for a total amount of Rs. 49,692/-, which was sanctioned. However, subsequently, it was observed by the office of Applicant department that the Respondent had failed to submit the proof to the effect that the export proceeds in respect of the aforesaid Shipping Bills had been realized. Accordingly, a show cause notice dated 18.12.2006 was issued, in terms of Rule 16A(2) and (3) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, to the Respondent for the recovery of drawback availed amount of Rs. 49,692/-, which was confirmed by the original authority vide the aforesaid Order-in-Original dated 11.02.2013. A penalty of Rs. 500/- was also imposed upon the Respondent under Section 117 of the Act, *ibid*. Aggrieved, the Respondent herein filed an appeal before the Commissioner (Appeals), which has been allowed.

3. The revision application has been filed, mainly, on the ground that Commissioner (Appeals) ought to have referred the matter back to the Adjudicating authority with a direction for fresh adjudication as envisaged in Section 128A 3(b) (i) of the Customs Act, 1962.

4. Personal hearings were fixed on 22.03.2023, 21.04.2023 & 03.05.2023. No one appeared for either side on any of the dates fixed for hearing nor any request for adjournment has been received. Since sufficient opportunities have been provided, the case is being taken up for final decision, on the basis of record.

5. The Government has carefully examined the matter. It is observed that the Commissioner (Appeals) has set aside the Order-in-Original on the grounds that the original authority did not confirm the non-realization of Bank Realization proceeds & whether a negative statement was available. The Government finds that in such a case the Commissioner (Appeals) should have either himself verified the position or should have directed the original authority to do so. Instead the Commissioner (Appeals) has allowed the appeal and, consequently, set aside the demand without any verification, thus, committing the same error which he has ascribed to the original authority. As such, the Government finds that it would be in the interest of justice to remand the matter back to the original authority with the direction to decide the case afresh, after due verification of factual position, in accordance with the principles of natural justice.

6. In view of the above, the revision application is allowed by way of remand to the original authority, with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of Customs (Preventive),
No. 1, Williams Road, Cantonment,
Tiruchirappalli-620001.

Order No. 173 /23-Cus dated 04-05-2023

Copy to:

1. M/s. Canimaara Garments, Post Box No. 325 No. 32, Stanes Road 4th Street, Tirupur-641652

2. The Commissioner of Customs & Central Excise (Appeals), No. 1, Williams Road, Cantonment, Tiruchirappalli-620001.
3. PPS to AS(RA)
4. Guard File
5. ☒ Spare Copy
6. Notice Board.

ATTESTED



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