

SPEED POST



F.No. 373/68/DBK/2021-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. 01/05/23.

Order No. 168 / 23-Cus dated 01-05-2023 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

SUBJECT : Revision Application, filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. Seaport. C.Cus.II No. 1051/2020 dated 10.12.2020, passed by Commissioner of Customs (Appeals-III), Chennai.

APPLICANT : M/s A L Enterprises, Chennai.

RESPONDENT : The Commissioner of Customs, Chennai-IV (Export), Chennai.

ORDER

A Revision Application No. 373/68/DBK/SZ/2021-RA dated 08.03.2021 has been filed by M/s A L Enterprises, Chennai, (hereinafter referred to as the Applicant) against the Order-in-Appeal Seaport.C.Cus.II No. 1051/2020 dated 10.12.2020, passed by the Commissioner of Customs (Appeals-II), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 71909/2019 dated 21.10.2019, passed by the Joint Commissioner of Customs (Drawback), Chennai-IV, Chennai.

2. Briefly stated, the Applicants herein were engaged in the export of garments from Chennai port. During the period from June-December, 2009, they exported several consignments of garments, covered by 26 shipping bills, under claim of drawback and a total drawback amount of Rs. 65,08,939/- was sanctioned by the department. Subsequently, based on specific intelligence, Directorate of Revenue Intelligence (DRI), Chennai, took up investigations into exports made by the Applicants herein. Investigations revealed that the goods said to have been exported never arrived at the premises of the respective ICDs/CFS and the export remittances were not released. Accordingly, a show cause notice dated 24.08.2018 was issued, demanding drawback of Rs. 65,08,939/-, alongwith applicable interest, in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The show cause notice further proposed to confiscate the offending goods valued at Rs. 7,31,69,144/-, under Section 113 of the Customs Act, 1962 and levy penalty under Sections 114 and 114AA of the Act *ibid*. Vide a corrigendum dated 28.02.2019, Rule 16A was said to be read as Rule

16A/Rule 18 in the show cause notice. The Applicants herein, thereafter, approached the Hon'ble Madras High Court, vide Writ Petition No. 16141 of 2019, which was disposed of by the Hon'ble High Court, vide Order dated 14.06.2019, with directions to the Original Authority to decide the issue of limitation and thereafter pass further orders on merits, if required. The Original Authority, vide the aforesaid Order-in-Original dated 21.10.2019, confirmed the demand made in the show cause notice and imposed penalty of Rs. 75,00,000/-, inter-alia, on the Applicants herein. Appeal filed by the Applicants herein has been rejected by the Commissioner (Appeals).

3. The revision application has been filed, mainly, on the grounds that show cause notice dated 24.08.2018 is barred by limitation; that the Hon'ble Gujarat High Court has, in the case of Prathiba Syntex Ltd. {2013 (287) ELT 290 (Guj.)}, held that the show cause notice, which was issued after a period 3 years from the date when the drawback came to be paid to the exporter, cannot be said to have been issued within a reasonable period of time; that though Rule 16A ibid does not prescribe a time limit for demand of drawback, in terms of a catena of decisions of Hon'ble Supreme Court, the show cause notice has to be issued within a reasonable time; that, in the present case, investigations were initiated in 2012, whereas show cause notice was issued belatedly in August, 2018, i.e., after six years from the date of initiation of investigations and after 9 years from the date of sanction of drawback; and that the goods had in fact been exported and allegations of forcibly amending the Shipping Bill and making entries in the EDI system are strange in as much as such entries could not have been made without the knowledge of the Appraiser or the Examining Officer.

4. Personal hearing, in virtual mode, was held on 28.04.2023. Ms. Yogalakshmi S, Advocate appeared for the Applicants and reiterated the contents of the RA. She highlighted that there had been an undue delay in issuance of show cause notice and, hence, it is barred by limitation. Shri Sundarvadanam, AC appeared for the department and supported the Orders of the lower authorities.

5.1 Government has carefully examined the matter. Great emphasis has been placed by the Applicants on their preliminary submission that the show cause notice is barred by limitation. It is an admitted position that Rule 16A ibid does not prescribe any limitation period. But it is contended that, in terms of the decisions of the Hon'ble Supreme Court, in respect of statute where limitation period was not prescribed, a show cause notice has to be issued within a reasonable period. It is the contention that, in the present case, the investigations were initiated in 2012, whereas the show cause notice was issued after six years of the initiation of the investigation and, therefore, there has been an unreasonable delay in the issue of the show cause notice. The Government observes that the Hon'ble Supreme Court has, in the case of State of Punjab vs. Bhatinda District Cooperative Milk P. Union Ltd. {2007 (217) ELT 325 (SC)} laid down the law, in this regard, in the following manner *"17. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors."* Similarly, in the case of Government of India vs. Cital Fine Pharmaceuticals {1989 (42) ELT 515 (SC)}, the Hon'ble Supreme Court had earlier held that *"In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable*

period, would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice or demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case." Further, in the present case, the Hon'ble Madras High Court had, vide Order dated 14.06.2019 (in Writ Petition No. 16141 of 2019), specifically asked the Original Authority to address this issue of limitation before proceeding with the matter on merits. Thus, the issue of limitation has been the focus of Applicant's defence from the very beginning. In this background, it was incumbent upon the Commissioner (Appeals) to address this issue, in detail, and record her findings after due examination of the detailed submissions made by the Applicants, including case laws cited. However, unfortunately, the Commissioner (Appeals) has, in para 6 of her order, addressed the issue cryptically, almost perfunctorily, and has failed to disclose any reasons for upholding the order of the Original Authority in respect of limitation and for rejecting the arguments of the Applicants herein in this respect. Similarly, very cryptic findings have been recorded in respect of the merits of the case, without disclosing any reasoning. Therefore, the order of Commissioner (Appeals) is not a speaking order and cannot be upheld.

5.2 In this light, it would be in the interest of justice that the matter is remanded to the Commissioner (Appeals) for examination afresh and with directions to decide the case after detailed examination of the issues raised and ^{by} recording reasoned findings in respect of all relevant submissions made by the Applicants herein. Keeping in view the fact that

this case pertains to drawback sanctioned in 2009, it is further directed that the Commissioner (Appeals) shall conclude the de-novo proceedings and pass appropriate Orders within two months from the date of receipt of this Order.

6. The Revision Application is, accordingly, allowed by way of remand to the Commissioner (Appeals) with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

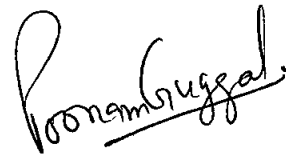
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Order No. 168 /23-Cus dated 01-05-2023

Copy to:-

1. The Commissioner of Customs, Chennai-IV (Export), Custom House, 60, Rajaji Salai, Chennai – 600 001.
2. The Commissioner of Customs (Appeals-II), Custom House, No. 60, Rajaji Salai, Chennai-600 001.
3. M/s AGOL Associates, No. 17, 1st Cross Street, Customs Colony, 4th Avenue, Besant Nagar, Chennai – 600 090.
4. PPS to AS (RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED



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