

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. 373/17-18/14-RA / 809

Date of Issue: 29.01.2021

ORDER NO. 04-05/2021-CUS (SZ) /ASRA/MUMBAI DATED 11.01.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Solo Exports, Tirupur.

Respondent : Commissioner of Customs, Central Excise, & Service Tax, Coimbatore.

Subject : Revision Applications filed under Section 129DD of Customs Act, 1962 against Orders in Appeal No. CMB-CEX-000-APP-001-14 dated 31.01.2014 & CMB-CEX-000-APP-002-14 dated 31.01.2014 passed by Commissioner of Customs, Central Excise, & Service Tax, (Appeals) Coimbatore.

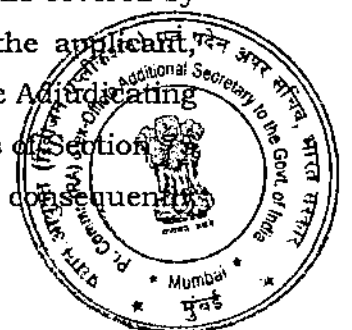


ORDER

These Revision Applications have been filed by M/s Solo Exports, Tirupur (hereinafter referred to as the "applicant") against Orders-in-Appeal No. CMB-CEX-000-APP-001-14 dated 31.01.2014 & CMB-CEX-000-APP-002-14 dated 31.01.2014 passed by Commissioner of Customs, Central Excise, & Service Tax, (Appeals) Coimbatore.

2. The brief facts of the case are that the applicant were granted drawback amount of Rs. 5,48,421/- and Rs.3,81,743/- for exports made by them. As the applicant failed to produce evidence for realization of export proceeds in respect of the said export goods within the period allowed under the Foreign Exchange Management Act (FEMA), 1999 including any extension of such period granted by the Reserve Bank of India . Therefore, show cause notice vide C.No. VIII/48/05/2005 ICD TPR dated 06.02.2006 and reminder letter dated 14.03.2013 were issued to the applicant in terms of Rule 16 A (2) (3) of the Customs, Central Excise, & Service Tax Drawback Rules ,1995 read with Section 75 of the Customs Act, 1962 proposing to recover drawback amount of Rs. 5,48,421/- and Rs.3,81,743/- already paid to them. As there was no response from the applicant, Personal Hearing was offered to them on any working day between 10.00 A.M. to 5.00 P.M. As the Personal Hearing intimation sent to the applicant was returned undelivered with the remarks "Left" the Personal Hearing intimation was displayed on the Notice Board. One more opportunity was given to the applicant by placing Personal Hearing intimation on the Notice Board for three days from 27.05.2013 to 29.05.2013. However, no one appeared for the personal hearing due to which the Adjudicating Authority proceeded to decide the case as 'Ex-parte' based on the evidence on record.

3. Considering the long period of pendency of compliance in the matter by the applicant to discharge an obligation cast on them under Section 75 of the Customs Act, 1962 and Rule 16 A ibid, it appeared that the applicant had no evidence whatsoever to prove that realization of the export proceeds for the subject exports. On observing that the BRC for the Shipping Bills covered by the Show Cause Notice had not been received/submitted by the applicant, within the time limit allowed under FEMA 1999 (42 of 1999), the Adjudicating Authority held that the applicant had contravened the provisions of Section 75 ibid by not realizing the sale proceeds within the time limit and consequently



confirmed the demand of Rs. 5,48,421/- and Rs.3,81,743/- paid to the applicant towards drawback amount alongwith appropriate interest in terms of Rule 16 A (2) and 3 of Customs, Central Excise & Service Tax Drawback Rules, 1995 read with Section 75 of the Customs Act, 1962 and also imposed penalty of Rs. 5,000/- and Rs.3,000/- under Section 117 of the Customs Act, 1962 on the applicant vide Order in Original No.1305/2013 –Asst. Commissioner & 1306/2013 –Asst. Commissioner both dated 30.05.2013 respectively.

3. Being aggrieved with the said Orders in Original, the applicant filed appeals before Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore. Commissioner (Appeals) vide impugned Orders observed that *“the appellants had not submitted the BRC on time; that failure of production of BRC in time would lead to the recovery of drawback sanctioned; that the appellants had exported the goods during April 2005 to June 2005 and October 2005 to November 2005, the BRC should be submitted within six months; that the appellants had submitted a letter dated 07.12.2005 (after a lapse of six months in case of goods exported during April 2005 to June 2005) showing that they had filed the BRCs for the period from April 2005 to October 2005 along with an enclosure showing the date of realization; that on verification of the letter and its enclosure submitted by them it clearly shows that the appellant had not filed the BRCs pertaining to the shipping bills mentioned in the order in original on time and the fact remains that they had not submitted the BRCs in time. The adjudicating authority has rightly demanded the drawback amount claimed and received by them along with interest and also rightly stated the manner of recovery proceedings in the event of their failure to pay the drawback amount”*. While upholding the penalty of Rs. 5000/- and Rs.3000/- imposed vide respective Orders in Original, the Commissioner (Appeals) observed that *“the drawback amount had been granted shortly after export, yet the appellants have not found the time and inclination to submit the BRC in time, which shows scant regard for statutory duties”*.

4. Being aggrieved with the impugned Orders in Appeal, the applicant filed the instant Revision Applications mainly on the following common grounds:-

4.1 The subject orders of recovery pertains to the period of April to June 2005 and October and November 2005 in respect of exports made under 8 and 13 shipping Bills respectively. They had filed BRCs in respect of shipping Bills



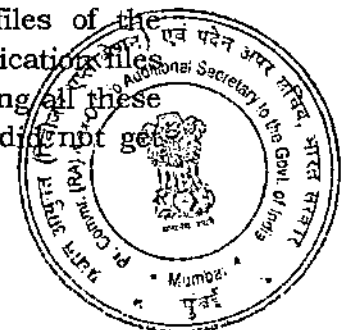
pertaining to April to June 2005 and October 2005 vide letter dated 06.12.2005 duly acknowledged by the STA and Supdt. of Customs ICD, Tirupur on 07.12.2005. However, the Adjudicating authority passed the Order in Original without examining the factual position and without causing necessary verification of the records available with his office and without observing the principles of natural justice by issuing the show cause notice or granting the personal hearing.

4.2 As per Order in Original, the show cause notice was issued on 06.02.2006, though they did not receive any such notice. They are clue less as to why the Show cause notice need be issued in February 2006 when the BRCs were filed on 07.12.2005 itself. The relevant Orders in Original had been passed on 30.05.2013 nearly after eight years from the date of Show cause Notice. While taking up any issue for a final decision, that too in case of 8 years old in all fairness, they should have been extended an opportunity to explain their stand or to file documents if any required once again if the documents already submitted are not traceable in the office of the Adjudicating authority. The entire adjudication proceedings have been initiated and completed in haste and without verifying the factual position and records.

4.3 From the extract of the para 3 of the respective Orders in Original dated 30.05.2013, it leads to suggest that PHs were offered but the intimation were returned undelivered. This is unbelievable in view of the fact that they have never changed the address and all letters are being received by them and there was no instance of returning any letters. In the instant cases, how the Order of Recovery was sent by RPAD has been received by them in time? Moreover they are in the business for the few decades with well known / established brand and are in consistent contact with Customs. In such case a mere phone call would have been sufficient to receive the notice or intimation. Thus it is evident that no such efforts have been taken or there was no justification for deciding the case *ex-parte*.

4.4 The learned Adjudicating authority failed to verify the relevant records and facts available with his own office and passed the orders of recovery in haste. The Adjudicating authority had chosen to display the PH intimation on Notice Board and the reason for not sending the same by post is not known. However, the Order of recovery was sent by RPAD. This leads to suggest that the Adjudicating authority acted in a biased manner in violation of principles of natural justice.

4.5 They had submitted the BRCs to the Customs Department. To confirm the same they had sought the information under the RTI Act. The department vide reply to RTI application informed that the adjudication files of the appellants, the BRCs were provided in respect of 5 out of 8 adjudication files available and accordingly 5 files were updated. In spite of explaining all these factors and even after submitting the relevant documents, they did not get justice from the First Appellate Authority.



4.6 In a similar case where the BRCs were available with the exporter but could not be produced to the adjudicating authority because neither show cause notice nor the Order in Original specifically mentioned the shipping Bills in relation to which the BRCs were required to be produced, the Hon'ble Revisionary Authority vide Order No. 51/2013-Cus Dated 08.02.2013 in Re: M/s Maestro Fashions, Tirupur, remanded the case back to the Original Authority for considering the issue afresh. In the present case they have already submitted BRCs to the ICD and obtained acknowledgment from the Superintendent on the covering letter. Applying the ratio of the aforesaid order of the Revisionary authority end of the justice will be met if matter is sent back to original authority to verify the BRCs and pass appropriate orders afresh.

5. A personal hearing in these cases was fixed on 23.05.2018, however, the applicant vide letter dated 22.05.2018 informed this office that Order may be issued without offering any further chance of personal hearing as they have nothing more to state other than what they have stated in the grounds of appeal. Accordingly, Government proceeds to decide the case on merits on the basis of available records. As the issue involved in both these Revision Applications being the same, both are taken up together.

6. Government observes that it is a statutory requirement under Section 75(1) of Customs Act, 1962 & Rule 16A(1) of Customs, Central Excise & Service Tax Drawback Rules, 1995, read with Section 8 of FEMA, 1999 read with Regulations 9 of Foreign Exchange Management (Export of goods & Services) Regulations, 2000 & Para 2.41 of EXIM Policy 2005-2009 that export proceeds need to be realized within the time limit provided thereunder subject to any extension allowed by RBI.

7. Government further notes that the provisions of recovery of amount of drawback where export proceeds not realized has been stipulated Rule 16A of the Customs, Central Excise and Service Tax Duty Drawback Rules, 1995 and the relevant sub-rules (2) and (4) of the Rule 16A reads as under :

Rule 16A. Recovery of amount of Drawback where export proceeds not realised. -

(1) Where an amount of drawback has been paid to an exporter or a person authorized by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realized by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such drawback shall be recovered in the manner specified below.



Provided that the time-limit referred to in this sub-rule shall not be applicable to the goods exported from the Domestic Tariff Area to a special economic zone.

(2) If the exporter fails to produce evidence in respect of realization of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be shall cause notice to be issued to the exporter for production of evidence of realization of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within thirty days of the receipt of the said order :

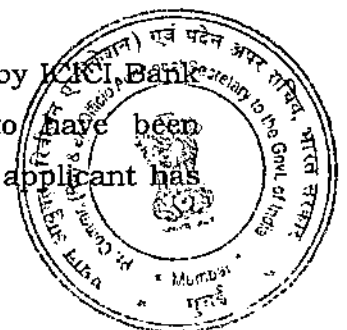
(In rule 16A, in sub-rule (2) has been substituted vide Notification No. 10/2006-Customs (N.T.), dated 15-2-2006).

8. From perusal of above provision, it is evident that the drawback is recoverable, if the export proceeds are not realized within stipulated time limit or extension given by RBI, if any.

9. Government observes that the applicant has claimed that they had filed BRCs in respect of shipping Bills pertaining to April to June 2005 and October 2005 vide letter dated 06.12.2005 duly acknowledged by the STA and Supdt. of Customs ICD, Tirupur on 07.12.2005. The applicant had also sought information under RTI Act, 2005 from CPIO, Office of the Commissioner of Customs, Central Excise and Service Tax, Coimbatore Commissiorate vide application dated 11.11.2013 as to "whether the records maintained at ICD was updated with the particulars of BRCs filed" to which CPIO, ICD Rakkiapalayam @ Coimbatore replied as under :-

The Adjudication Files (records) maintained at ICD, Rakkiapalayam @ Coimbatore is updated with the particulars of Bank Realisation Certificate (BRC for brevity) as and when the same were received from the exporter. In regard to the Adjudication files of the applicant, the BRCs were provided in respect of 5 files out of 8 Adjudication files available. Accordingly, the said 5 files were updated.

10. Also, from the copy of BRC for 21 Shipping Bills issued by ICICI Bank Ltd., Commercial Branch, Coimbatore, which is claimed to have been submitted by the applicant to the department, shows that the applicant has



received the sale proceeds in time in respect of impugned shipping Bills which are tabulated as under:-

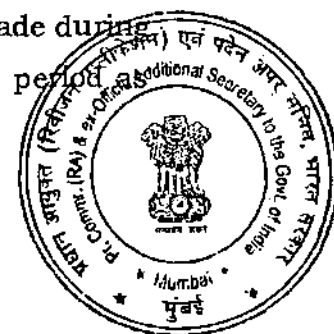
[Order in Original No.1305/2013 –Asst. Commissioner dated 30.05.2013]

Sl. No.	Export Promotion copy of Shipping Bill duly authenticated by Customs		Amount of Drawback Paid (Rs.)	Date of Realization of Export Proceeds
	Shipping Bill No.	Date		
1.	11390	12.04.2005	1,26,985/-	13.05.2005
2.	11389	12.04.2005	1,14,611/-	13.05.2005
3.	12487	05.05.2005	44,710/-	01.06.2005
4.	12488	05.05.2005	26,371/-	01.06.2005
5.	12490	28.04.2005	13,628/-	01.06.2005
6.	12489	06.05.2005	36,477/-	01.06.2005
7.	13198	27.05.2005	23,253/-	16.06.2005
8.	13294	26.05.2005	28,077/-	16.06.2005
9.	13936	27.05.2005	56,380/-	16.06.2005
10.	13935	27.05.2005	36,601/-	16.06.2005
11.	13196	19.05.2005	18,761/-	10.06.2005
12.	13195	09.05.2005	9,717/-	10.06.2005
13.	14832	03.06.2005	12,850/-	24.06.2005
		Total	548,421/-	

[Order in Original No.1306/2013 –Asst. Commissioner dated 30.05.2013]

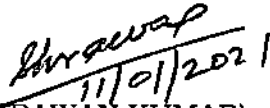
Sl. No.	Export Promotion copy of Shipping Bill duly authenticated by Customs		Amount of Drawback Paid (Rs.)	Date of Realization of Export Proceeds
	Shipping Bill No.	Date		
1.	29224	29.10.2005	1,47,780/-	30.11.2005
2.	29225	29.10.2005	11,844/-	02.12.2005
3.	29710	05.11.2005	31,287/-	30.11.2005
4.	29826	07.11.2005	14,200/-	30.11.2005
5.	29979	10.11.2005	1,04,556/-	02.12.2005
6.	30478	17.11.2005	46,963/-	04.01.2006
7.	30479	17.11.2005	20,327/-	04.01.2006
8.	31124	25.11.2005	4,786/-	29.12.2005
		Total	3,81,743/-	

On examination of Rule 16/16A of the Drawback Rules, the Government finds that drawback amount is recoverable only if the foreign proceeds for export of the goods has not been realized within six months from the export of the goods. But in these cases from the copies of the BRCs enclosed, it is evident that export sale proceeds for the shipments made during the above period have been received/realized within the stipulated period mentioned in the tables above.



11. In view of the above discussion and findings Government sets aside Orders in Appeal No.CMB-CEX-000-APP-001-14 dated 31.01. 2014 & CMB-CEX-000-APP-002-14 dated 31.01.2014 passed by Commissioner of Customs, Central Excise, & Service Tax, (Appeals) Coimbatore and directs original Adjudicating Authority to verify the documents (BRCs) furnished by the applicant in accordance with Government's observations supra and shall pass appropriate order after affording reasonable opportunity to the applicant within 8 weeks from the date of receipt of this order.

12. Revision Applications are disposed off in the above terms.


 11/01/2021
 (SHRAWAN KUMAR)
 Principal Commissioner & ex-Officio
 Additional Secretary to Government of India

ORDER No. ⁰⁴⁻⁰⁵/2021-CUS (SZ) /ASRA/Mumbai Dated 11.01.2021

To,

M/s. Solo Exports ,
 21, Bunglow Road Extention,
 Avnashi Road, Tirupur- 641 602.

Copy to:

1. Commissionerate of Customs, No.1, Williams Road, Cantonment Tiruchirappalli-620001
2. The Commissioner of Customs & Central Excise (Appeals), No.1, Williams Road, Cantonment Tiruchirappalli-620001
3. The Deputy / Assistant Commissioner of Customs, No.1, Williams Road, Cantonment Tiruchirappalli-620001
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

