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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.371/411/DBK/2022-RA / 281

Date of issue: 11.01.2024

ORDER NO. 11/2024-CUS (WZ)/ASRA/MUMBAI DATED 8.1.2024  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE  
CUSTOMS ACT, 1962.

Applicant : M/s. JMD International

Respondent : Pr Commissioner of Customs (Gen.), Mumbai

Subject : Revision Application filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. MUM-  
CUS-KV-GEN-02/22-23 dated 25.04.2022 passed by the  
Commissioner of Customs (Appeals), Mumbai Zone-I.

## ORDER

This Revision Application is filed by M/s. JMD International, (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. MUM-CUS-KV-GEN-02/22-23 dated 25 04 2022 passed by the Commissioner of Customs (Appeals), Mumbai Zone-I

2 Brief facts of the case are that the Applicant had obtained drawback but had failed to produce evidence of realization of export proceeds in respect of the export of goods pertaining to the period 2008 to 2012, hence, a show cause cum demand notice for recovery of total drawback amounting to Rs.10,04,468/- against 26 shipping bills was issued to them on 23.07.2017 After due process of law, the adjudicating authority vide Order-in-Original No. 77/2020-21/ICD(M)(X)/AC/AKS dated 21 08 2020, passed following Order:

- (i) Confirmed demand of Rs 58,369/- alongwith applicable interest pertaining to 09 shipping bills on account of short realization of export proceeds;
- (ii) Confirmed demand of Rs 5,48,921/- alongwith applicable interest pertaining to 17 shipping bills as realization of export proceeds was found to be beyond the period stipulated by RBI

Aggrieved, the Applicant filed an appeal which was rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal.

3. Hence the Applicant has filed the impugned Revision Application mainly on the following grounds:

- 1 that the total value realized in term of US\$1,89,831 74 against total Invoice value US\$1,86,664.73 was in excess. However, the said difference in realization, as per Impugned Order, was required to be condoned in term of Circular No. 33/2019-Customs dated 19 09.2019 and thus Impugned Order confirming the demand of drawback of Rs. 58,369/- is without any basis and thus is required to be set aside.

- ii. that the Order-in-Original dated 28.08.2020 also confirms the demand of drawback Rs 5,48,921/- but there is no allegation or finding that the remittances were not received and/or received in short in the declared Value. The demand is confirmed solely on the basis that the remittance was not received within the time period as stipulated by RBI under Rule 16A of the Customs, Central Excise And Service Tax Drawback Rules, 1995 [now Rule 18 of Customs and Central Excise Duties Drawback Rules, 2017] read with Section 75 of Custom Act, 1962. From the said Rules, it is evident that a condition for realization of drawback within the period permitted by the RBI has been inserted subsequently in Rule 18 of the Customs, Central Excise and Service Tax Drawback Rules, 2017 and thus all along the remittances received late or received after recovery of drawback were held to be legal and proper and drawback was not recovered and/or if recovered, was required to be repaid on realization of remittances.
- iii. that all the relevant shipments have been effected during the period between the year 2008 & 2012 and thus the Rule 16A of the Customs, Central Excise and Service Tax Drawback Rules, 1995 are applicable and not Rule 18 of Customs and Central Excise Duties Drawback Rules, 2017. Thus the Ld. Assistant Commissioner of Customs wrongly placed reliance on Rule 18 of Customs and Central Excise Duties Drawback Rules, 2017 and erroneously confirmed the demand of drawback on this ground, thus the Impugned Orders are required to be set aside.
- iv. that as regard to the applicability of Rule 16A of the Customs, Central Excise and Service Tax Drawback Rules, 1995, reliance is placed to a judgment in the matter of Texport Industries Pvt. Ltd. - 2015 (326) E.L.T. 411 (G.O.I.), wherein it has been held that the Drawback Rules as in existence on the date of export are applicable and the Drawback Rules amended subsequently cannot have any retrospective effect and thus Impugned Order wrongly relied upon Rule 18 of Customs and Central Excise Duties Drawback Rules, 2017, thus the Impugned

Order is liable to be set aside Further reliance is also placed on following judgment / public notice :-

- Intraport India Ltd. -2006 (196) E.L.T. 373 (Tri-Del.)
- JNCH's Public Notice No 40/2017 dated .03.2017.

In the light of the above submissions, the applicant prayed to set aside the impugned OIA with consequential relief.

4 Personal hearing in the matter was held on 28 06.2023 Mr. Devraj Kansara, Advocate appeared on behalf of the applicant and submitted that the foreign exchange has been realized in total 17 shipping bills. He also submitted that there is a small shortage in realization of foreign exchange in respect of 9 shipping bills He requested to set aside OIA and allow their application.

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. Government observes that the applicant had obtained drawback with regard to exports done by them vide 26 shipping bills Subsequently, demand notice for drawback disbursed totally amounting to Rs.5,48,921/- was confirmed alongwith applicable interest in respect of 17 shipping bills on the ground that the realization date was beyond the stipulated time period and in remaining 9 shipping bills, export remittance was found to be less compared to the FOB on which drawback was availed, hence proportionate demand amounting to Rs 58,369/- was also confirmed. Commissioner (Appeals) has upheld the impugned OIO.

7. Government observes that Rule 16A(4) of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (hereinafter referred to as the Drawback Rules) reads as under:

*(4) Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or*

*sub-rule (3) and the exporter produces evidence about such realisation within one year from the date of such recovery of the amount of drawback, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs or Deputy Commissioner of Customs to the claimant*

From the above provision, Government notes that even if amount of drawback has been recovered, the same is to be repaid on submission of evidence of realization of export proceeds by the exporter. Thus, the intention of the legislature is very clear that if export proceedings have been realized, the eligible drawback needs to be released to the exporter. In the instant case, as apparent from the Annexure to the impugned OIO, the applicant had produced valid evidence against realization of export proceeds. Government observes that no other discrepancies as regards impugned export realizations were detected by the department. It is undisputed that rebate/drawback and other such export promotion schemes are incentive-oriented beneficial schemes intended to boost export and to earn more foreign exchange for the country and in case the substantive fact of export having been made is not in doubt, liberal interpretation is to be accorded in case of technical lapses if any, in order not to defeat the very purpose of such scheme.

8.1 Similar observation was made by the Hon'ble Apex Court in the *Formika India v Collector of Central Excise* 1995 (77) E.L.T. 511 (S.C ), while observing that once a view is taken that the party would have been entitled to the benefit of the Notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so had elapsed. In the case of *Madhav Steel v. UOI* [2016 (337) E.L T. 518 (Bom.)], Hon'ble Bombay High Court had also put forth similar views. The relevant paras from this judgment are reproduced hereunder:

23. We, therefore, hold that the aforestated particulars set out in the documents produced by the petitioners, establishes beyond any doubt that the goods purchased by the petitioners from the manufacturer are the goods sold by the petitioners to the exporter and the same have been exported by the said exporter. The respondent No 2 has, therefore, erred in concluding that the petitioners could not prove beyond doubt that the goods cleared on the payment of duty for home consumption, were subsequently exported through shipping bills mentioned in the Order-in-Appeal dated 22nd December, 2004. As held by the Hon'ble Supreme Court in its decision in the case of *Mangalore Chemicals and Fertilizers Limited (supra)*, technicalities attendant upon a statutory procedure should be cut down especially, where such technicalities are not essential for the fulfillment of the legislative purpose. The Hon'ble Supreme Court has again held in the case of *Formica India v Collector of Central Excise (supra)*, that the benefit should not be denied on technical grounds. Reliance by the respondents on the judgment of the Hon'ble Supreme Court in the case of *Indian Aluminium Company Limited (supra)*, is not well-founded. In that case, refund of octroi was claimed after lapse of a long time. Further, admittedly, declaration in Form-14 was not filed. In the circumstances, there was no scope for verification. Therefore, the Hon'ble Apex Court refused to exercise its discretion and dismissed the SLP.

24. In view of what is aforestated, we hold that the order dated 29th May, 2006 passed by the respondent No. 2, is erroneous and perverse and is hereby quashed and set aside. Rule issued is made absolute and the respondents are directed to forthwith pay to the petitioners the amount of Rs 9,87,777/- claimed by them by three rebate claims under Rule 18 of the Central Excise Rules, 2002 under three AREs all dated 28th March, 2003.

8.2 In a recent judgment passed by Hon'ble Madras High Court in the case of *M/s. Sabare International Limited vs. Revision Authority* [2022 (5) TMI 395], with reference to said Rule 16A(4) *ibid* it was held as under.

9. A reading of the above provision seems to indicate that where the sale proceeds are realized by the exporter after the amount of drawback has been recovered from him under sub-rule(2) or sub-rule (3) and the exporter produces evidence about such realization within one year from the date of such recovery of the amount of drawback, the amount of drawback so recovered shall be repaid by the Assistant

*Commissioner of Customs of Deputy Commissioner of Customs to the claimant*

*10. In this case, the recovery has been made long after the export realization. Considering the same and considering the fact that there is indeed an export realization, the case of the petitioner deserves a favorable disposal by the respondents.*

*11. Under these circumstances, I am inclined to dispose of this writ petition by remitting the case back to the 3rd respondent/the Assistant Commissioner of Customs, to take note of Rule 16A(4) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 and to dispose of the same on merits and in accordance with law, in the light of the Bank Realization Certificate produced by the petitioner on 22.09.2009*

9. As regards, short realization of export proceeds, the applicant has relied upon Circular No. 33/2019-Customs (issued vide F. No. 609/19/2019-DBK) dated 19.09.2019. Government observes that in the said Circular, the Central Board of Indirect Taxes & Customs, has clarified that duty drawback is not recoverable where the export proceeds realized are short on account of bank charges deducted by foreign banks and agency commission up to the limit of 12.5% of the FOB value and that agency commission and foreign bank charges, separately or jointly, exceeding this limit should be deducted from the FOB value for granting duty drawback. Thus, Government holds that recovery of proportionate drawback amount due to short realisation of export proceeds needs to be done after allowing the prescribed limit of 12.5% of the FOB value.

10. In view of the above discussion and findings, the Government sets aside the impugned Order-in-Appeal as regards demand amounting to Rs.5,48,921/- The matter regarding short realization of export proceeds and consequent confirmation of demand amounting to Rs.58,369/- is remanded back to the original authority with the direction to decide it afresh, on merits keeping in view the instructions contained in Board's Circular dated 19.09.2019 and provisions of Rule 16A(2) ibid

11. The Revision Application is disposed of with the above directions.

  
(SHRAWAN KUMAR)

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

ORDER No. 11 /2024-CUS (WZ)/ASRA/Mumbai dated 8.1.24

To,

M/s JMD International,  
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Copy to:

1. Pr. Commissioner of Customs (General),  
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- 2 Advocate Devraj Kansara  
201-C, Sukh Sagar, Virat Nagar,  
Opp Union Bank, Virar (West)  
Dist Palghar - 401 303
2. Sr P.S. to AS (RA), Mumbai
3. Guard file.