

REGISTEREDSPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F. No. 373/419/DBK/14-RA / 5336 Date of Issue 11.09.2020

ORDER NO. 118/2020-CUS (SZ) / ASRA / MUMBAI/ DATED 10.07.2020
OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA ,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY
TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE
CUSTOMS ACT, 1962.

- Applicant** : M/s Knitex Textiles Pvt. Ltd.
Vijayalakshmi Cotton Mills Compound,
Door No. 24, Anna Street, 14, Velampalayam,
Tirpur- 641-652.
- Respondent** : The Commissioner of Customs, Coimbatore.
- Subject** : Revision Application filed, under Section 129DD of
the Customs Act, 1962 against the Order-in-
Appeal No. CMB-CEX-000-APP-157/14 dated
18.09.2014 passed by the Commissioner of
Customs (Appeals), Coimbatore.



ORDER

The Revision Application is filed by M/s Knitex Textiles Pvt. Ltd., Tirupur (herein after referred to as 'the applicant) against the Order in Appeal No. CMB-CEX-000-APP-157/14 dated 18.09.2014 passed by the Commissioner of Customs (Appeals), Coimbatore.

2. Brief facts of the case are that the applicant had exported the goods under the shipping bills and received the drawback of Rs. 1,65,079/- (Rupees One Lakh Sixty Five Thousand Seventy Nine Only) by way of cheque. The details are as under :

Sr. No.	Shipping Bill No. / Date	Drawback Amount paid (Rs.)
1	8003/24.09.2009	44,863/-
2.	9097/11.11.2009	1,20,216/-
	TOTAL	1,65,079/-

In respect of all the above mentioned shipping bills, it was noticed that the exporter had failed to produce / submit the evidence of realisation of export proceeds within the period allowed under the Foreign Exchange management Act, 1999 read with Regulations, 2000 and para 2.41 of Export & Import Policy 2009-14 and Section 75 of Customs Act, 1962. The adjudicating authority vide Order in Original No. 375/2014-Asstt. Commissioner dated 25.02.2014 confirmed the demand of Rs. 1,65,079/- alongwith interest and imposed a penalty of Rs. 1000/- under Section 117 of the Customs Act, 1962. rejected the Central Excise portion of duty drawback for non-submission of the supplementary claim as required under the Drawback Rules.

Aggrieved by the said order, the Applicant filed appeal before Commissioner (Appeal) on the following grounds :-



3.1 The applicant were in possession of copy of letter dated 14.05.2010 by which they have submitted the Bank Realisation Certificates (BRCs) duly acknowledged by the Superintendent of Customs, ICD, Tirupur.

3.2 In view of above, the issuance of SCN is not warranted. They have once again vide their letter dated 11.07.2011, after issuance of SCN, furnished the copy of letter dated 14.05.2010 together with the copies of BRCs.

4. The Appellate Authority vide impugned order in appeal upheld the Order in Original. The Appellate Authority observed that the applicant had not submitted the BRCs on time. The drawback is given to the exporter immediately on export and the exporters are under obligation to produce the BRC to the department within the prescribed time. Failure of production of BEC within the prescribed time would lead to the recovery of sanctioned drawback.

5. The applicant contested the impugned Order in Appeal passed by the Appellate Authority in the instant Revision Application on following grounds :-

5.1 The Applicant have realised the export proceeds covered under the subject shipping bills well within the time limit stipulated under the Foreign Exchange Management Act, 1999 and Regulations made thereunder.

5.2 Section 75 of the Customs Act, 1961 read with Rule 16A(2) of the Drawback Rules, 1995 provide substantive ground for initiating proceedings for recovery of drawback could be done only when the export proceeds are not received within time prescribed.

6. Personal Hearing was held on 05.12.2019. Shri H.U. Desai, Manager (Accounts) attended the same on behalf of the applicant. They stated that they have submitted BRCs before the issuance of Show



Cause Notice. No one attended the personal hearing on behalf of the department.

7. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the rival submissions.

8. The Government notes 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 199 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 realised within the time limit provided there under viz within six months in this case subject to any extension allowed by RBI. Since the applicants have failed to comply with their statutory obligations, the drawback claim becomes recoverable along with interest under the statutory provisions stipulated under the Rule 16 of Customs, Central Excise & Service Tax Duty Drawback Rules, 1995 and the Section 75A(2) of the Customs Act, 1962.

9. In the instant case, the Government finds that the applicant had exported goods vide shipping bills Nos. 8003 dated 24.09.2009 and 9097 dated 11.11.2009. The Government also finds that the applicant have submitted the Bank Realisation Certificates in respect of these two shipping bills vide their letter 14.05.2010 duly acknowledged by the department on 28.05.2010. As per the BRCS submitted by the applicant it is observed that the export proceeds were realised on 25.01.2010 in respect of Shipping Bill No. 8003 dated 24.09.2009 and on 17.03.2010 in respect of Shipping Bill No. 009097 dated 11.11.2009. The Government also observes that the documents on record show that said letter dated 14.05.2010 was resubmitted by the applicant vide their letter dated 11.11.2011 along with enclosures which was duly acknowledged by the department on 21.07.2011.



10. In view of the above discussion, the Government holds that the provisions as briefed in para 8 above are prescribed for recovery of drawback where the export proceeds are not realised within the period allowed under Foreign Exchange Management Act, 1999 including any extension of such period granted by the Reserve Bank of India. In the instant case, the applicant have claimed that export proceeds were received by their bank within stipulated period and they have submitted the copies of Bank Realisation Certificates (BRCs) to the department vide letter dated 14.05.2010 duly acknowledge on 28.05.2010. However, the facts about submission of the BRCs were not taken note of by the Adjudicating Authority and Appellate Authority.

11. At this instant, Government observes that the copies of the BRCs submitted by the applicant along with their submissions are not self attested. Under such circumstances, Government opines that the BRCs are required to be verified to determine its authenticity, validity and as to whether the export proceeds were received within stipulated period including any extensions granted by RBI to the applicant. As such, the case needs to be remanded for fresh consideration. Therefore, the applicant are directed to submit the relevant BRCs in original to enable verification of the same within 4 weeks of the receipt of this Order before the Original Authority for consideration in accordance with provisions of law and passing orders.

11.2 The penalty in terms of Section 117 of Customs Act, 1962 will also be re-determined accordingly by the original authority, subject to outcome of the verification.

12. In view of above circumstances, Government sets aside impugned order and remands the case back to the original authority for fresh consideration in the light of above observation after giving reasonable



opportunity of hearing being offered to the applicant. The applicant is also directed to furnish the original BRCs for verification.

13. Revision Application is disposed off in above terms.

14. So ordered.

ORDER No. || Q/2020-CUS (SZ) /ASRA/

DATED | 0 .07.2020

(SEEMA ARORA)

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

To,

M/s Knitex Textiles Pvt. Ltd.
Vijayalakshmi Cotton Mills Compound,
Door No. 24, Anna Street, 14,
Velampalayam, Tirpur- 641 652.

Copy to:

1. The Commissioner Of Customs, No.1, Williams Road, Cantonment, Tiruchirapalli- 620 001.
2. The Commissioner of Customs, Central Excise & Service Tax (Appeals), 6/7, A.T.D., Race Course Road, Coimbatore- 641 018.
1. The Assistant Commissioner of Customs, Inland Container Depot, CFS, Tirupur- 641 603, Tamil Nadu.
2. Sr. P.S. to AS.(RA), Mumbai.
3. Guard File.
4. Spare Copy.

ATTESTED

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

