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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**  
8<sup>th</sup> Floor, World Trade Centre, Cuff Parade,  
Mumbai- 400 005

F. NO. 373/56/15-RA | 2901

Date of Issue: 02.06.2021

ORDER NO. \26/2021-CUS(SZ) /ASRA/Mumbai DATED \9 .05.2021 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 Speedo Tex Exports,  
No.2, 1 T.S.K. Maragatham Layout,  
60 Feet Road, Dharapuram Road,  
Tirpur- 641 608.

Respondent : The Commissioner of Customs, Coimbatore.

Subject : Revision App~~...~~ filed, under Section 129DD of the Customs Act, 1962 against the Orders-in-Appeal No. CMB-CEX-000-APP-221-14 dated 20.11.2014 passed by the Commissioner (Appeals), Customs (Appeals-I), Coimbatore.

**ORDER**

This revision application is filed by M/s Speedo Tex Exports, No.2, 1 T.S.K. Maragatham Layout, 60 Feet Road, Dharapura, Tirpur- 641 608 (hereinafter referred to as "the applicant") against the Order-in-Appeal No. CMB-CEX-000-APP-221-14 dated 20.11.2014 passed by the Commissioner (Appeals), Customs (Appeals-I), Coimbatore.

2. Brief facts of the case are that the applicant were granted the drawback amount of Rs. 1,86,579/- (Rupees One Lakh Eighty Six Thousand Five Hundred Seventy Nine Only) under Section 75 of the Customs Act, 1962 read with the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 in respect of export of 'Knitted Garments' made by them during the period from December, 2004 to December, 2005 under various shipping bills. The applicant did not furnish the BRCs for realisation of export proceeds in respect of export of goods within the period allowed under the Foreign Exchange Management Act, 1973 including any extension of such period granted by the Reserve Bank of India. As such a show cause notice No. VIII/48/05/2005-ICD/TPR dated 27.12.2005 proposing the recovery of the drawback amount was issued to the applicant. However, the applicant did not appear for the personal hearing granted in the matter nor did he furnish the relevant Bank Realisation Certificates for the impugned exports. The adjudicating authority vide Order in Original No. 589/2014-Customs (BRC) dated 25.02.2014 directed the applicant to pay a sum of Rs. 1,86,579/- together with interest at the prescribed rate.

3. Being aggrieved by the Order in Original, the applicant filed an appeal before the Commissioner of Customs, Central Excise & Service Tax (Appeals-I), Coimbatore. The Appellate Authority vide Order in Appeal No. CMB-CEX-000-APP-221-14 dated 20.11.2014 rejected the appeal and upheld the Order in Original. The appellate authority while passing the impugned order in appeal observed that:-

- a) The applicant had not submitted the BRC on time, the drawback was given to them immediately on export and the applicant were under obligation to produce the BRC to the department within the prescribed time.
- b) The adjudicating authority had rightly demanded the drawback amount claimed along with interest.
- c) As per Rule 16(A)(5) of Drawback Rules, the duty drawback will be available even if export proceeds are not realized in the following conditions-

- i) Compensation is received from ECGC for non-realization of sale proceeds and
- ii) RBI writes off requirement of realization on merit, and
- iii) Exporters produce certificate from concerned foreign mission about fact of non-recovery from buyers.

Thus, the careful reading of above provisions make it clear that all the conditions have to be fulfilled, then only the relaxation is available. This provision was not applicable to the applicant as no evidence as prescribed above was produced.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds that:

- 3.1 They had submitted the evidence of export realization immediately after exports through CHA to the authorities. However, they did not take any acknowledgement for the same.
- 3.2 They were in possession of the relevant BRCs for realization of export proceeds. Under such circumstances, there was no need for them for not appearing before authorities and making available the required documents. Communication from the original authority appeared not to have been received as they could not locate any such communication in their office at that point of time.
- 3.3 They had submitted before the appellate authority aht they neither had received the show cause notice nor any personal hearing intimation letter for submitting proof for realization of the sale proceeds in respect of exports. They had enclosed the copies of the BRCs for the reference of the appellate authority. However, without considering the above, the appellate authority passed the impugned order.
- 3.4 They have enclosed the copies of BRCs in the present application also.
- 3.5 Drawback paid is to be recovered only in the cases where exports have not been realized. In the present case, export proceeds have been realized.

4. A Personal hearing in the matter was granted on 16.03.2021 and 23.03.2021. Shri Murugappan, Advocate appeared online and reiterated the submissions. He

submitted that the BRCs have been submitted, therefore, drawback is not recoverable. He requested to drop the proceedings.

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. 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 realized within the time limit provided there under viz within six months in this case subject to any extension allowed by RBI.

7. In the instant case, the Government finds that the applicant had exported goods during the period from December, 2004 to December, 2005 under various shipping bills. The Government notes that the applicant claimed to have submitted the Bank Realization Certificates in respect of relevant shipping bills through CHA, but did not obtain acknowledgement for the same. The applicant have submitted the copies of the relevant BRCs along with the Revision Application. On perusal of the said BRCs, it is observed that the export proceeds in respect of shipping Bill Nos. 39619 to 39623 all dated 31.12.2004 has been realized on 06.03.2005 and that of shipping bill No. 004978 dated 04.02.2005 were realized on 12.04.2005.

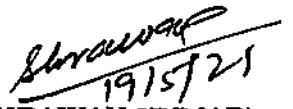
8. In view of the above discussion, the Government holds that the provisions as briefed in para 8 above are prescribed for recovery of drawback where the export proceeds are not realized within the period allowed under Foreign Exchange Management Act, 1995 including any extension of such period granted by the Reserve Bank of India. In the instant case, on perusal of the BRCs enclosed by the applicant, it is observed that the export proceeds were received by their bank within stipulated period. However, the facts about submission of the BRCs cannot be verified in the absence of acknowledgement for the same.

9. Further, Government observes that the copies of the BRCs submitted by the applicant along with their Revision Application 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 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.

10. In view of above circumstances, Government sets aside impugned order in appeal No. CMB-CEX-000-APP-221-14 dated 20.11.2014 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 evidence of realization of export proceeds for verification.

11. Revision Application is disposed off in above terms.

  
19/5/21  
(SHRAWAN KUMAR)

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

ORDER No. 26/2021-CUS(SZ) /ASRA/Mumbai DATED 19.05.2021

To,

M/s Speedo Tex Exports,  
No.2, 1 T.S.K. Maragatham Layout,  
60 Feet Road, Dharapuram Road,  
Tirpur- 641 608.

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, Tirpur- 641 603, Tamil Nadu.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
- ✓ 4. Spare Copy.