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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

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F. NO. 371/45/DBK/15-RA / 2912

Date of Issue: 02.05.2021

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ORDER NO. 133/2021-CUS(WZ) /ASRA/MUMBAI DATED 25.05.2021 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 Vinifine Textile Mills,  
Plot No.4, Dhareshwar,  
GIDC, Jetpur, Gujrat- 360 370.

Respondent : The Commissioner of Customs, Ahmedabad.

Subject : Revision Applications filed, under Section 129DD of the Customs Act, 1962 against the Orders-in-Appeal No. JMN-000-APP/292/14-15 dated 24.11.2014 passed by the Commissioner of Customs (Appeals), Ahmedabad.

## ORDER

This revision application is filed by M/s Vinifine Textile Mills, Plot No.4, Dhareshwar, GIDC, Jetpur, Gujrat- 360 370 (hereinafter referred to as "the applicant") against the Order-in-Appeal No. JMN-000-APP/292/14-15 dated 24.11.2014 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Brief facts of the case are that the applicant had exported the goods and availed the benefits of Duty Drawback under Section 75 of the Customs Act 1962. The applicant had claimed the duty drawback of Rs. 92,98,703/- (Rupees Ninety Two Lakh Ninety Eight Thousand Seven Hundred Three Only) in respect of duty paid on goods exported under 20 Shipping bills. The Assistant Commissioner of Customs, CH-Pirpav had sanctioned the said drawback to the applicant. The applicant at the time of filing the drawback claims had submitted the undertaking for submission of BRC in stipulated time as per provisions laid down under Rule 16A of Customs, Central Excise Duties & Service Tax Drawback Rule, 1995. However, the applicant failed to produce the BRCs within stipulated time in respect of 16 shipping bills for the drawback amount of Rs. 77,28,194/- (Rupees Seventy Seven Lakh Twenty Eight Thousand One Hundred Ninety Four Only) involved therein. Further, in respect of remaining 4 shipping bills, the sale proceeds had been realized beyond the period allowed under Foreign Exchange Management Act, 1999 for which the applicant had not provided any extension granted by RBI. The amount of drawback recoverable under these 4 shipping bills was Rs. 6,75,993/- (Rupees Six Lakh Seventy Five Thousand Nine Hundred Ninety Three Only). Therefore, Show Cause Notice dated 02.04.2013 had been issued to the applicant proposing recovery of the drawback amounting to Rs. 84,04,187/- (Rupees Eighty Four Lakh Four Thousand One Hundred Eighty Seven Only) i.e. (Rs. 77,28,194/- + Rs. 6,75,993/-). The Adjudicating Authority vide Order in Original No. 40/AC/DBK/GPPL/Pipavav/2013-14 dated 14.05.2013 ordered to recover the duty drawback amount of RS. 84,04,187/- along with interest.

3. Being aggrieved by the Order in Original, the applicant filed an appeal before the Commissioner of Customs (Appeals), Ahmedabad. The Appellate

Authority vide Order in Appeal No. JMN-000-APP/292/14-15 dated 24.11.2014 rejected the appeal and upheld the Order in Original. The appellate authority while passing the impugned order in appeal observed that the advocate appearing on behalf of the applicant had stated that all BRCs relating to said exports were submitted before the lower authority. The learned advocate also submitted certain documents said to be BRCs. However, on going through the said documents, the appellate authority found that the documents submitted were not complete BRCs. Those were not BRCs issued by respective banks. In most of the cases, some letters issued by DGFT had been produced. Further, at the time of personal hearing also, no such BRCs had been submitted.

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

- 4.1 The applicant vide their letter dated 19.03.2013 had submitted that they had realized sale proceedings beyond the period allowed under the Foreign Exchange Management Act. Though the sale proceeds realization were received beyond the period of limitation the fact remains that the BRCs are produced.
- 4.2 The requirement of submission of BRCs is only procedural and therefore any delay if any is liable to be condoned.
- 4.3 The show cause notice was clearly barred by limitation.

5. The applicant have also submitted that on receipt of the Order in Appeal dated 24.11.2014, Special Civil Application bearing No. 2810 of 2015 was filed before Hon'ble Gujrat High Court. The Hon'ble Gujrat High Court after considering the submission made had allowed the applicant to withdraw petition with liberty to file Revision Application. The applicant submitted that the delay in filing this application was only on account of the time consumed in disposal of the special civil application. The applicant requested to condone the delay.

6. A Personal hearing in the matter was granted on 12.03.2021. Shri Pravesh Sheth, Advocate appeared online and reiterated earlier submissions. He stated that Rule 16A of Drawback Rules clearly state that where BRC has

been produced, the recovery of Drawback proportionately shall not be made. DGFT has provided all BRCs. Therefore, he submitted that recovery of Drawback is not warranted in the instant case.

7. 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.

8. The Government notes that the impugned order in appeal was received by the applicant on 28.11.2014 and the applicant had presented the Special Civil Application before Hon'ble Gujrat High Court on 27.01.2015. The Hon'ble Gujrat High Court vide Oral Order dated 09.07.2015 dismissed the petition as withdrawn with liberty to file a Revision Application under Section 129DD of the Customs Act, 1962 before the competent authority. The applicant, thereafter, filed the instant Revision Application on 01.09.2015. The Government observes that the applicant has given sufficient cause for not filing the instant Revision Application within a period of three months from the date of receipt of the impugned Order in Appeal, and therefore, condones the delay in filing the same within stipulated period of three months. The Government takes up the case for decision on merits.

9. 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. Further, in the event the exporter fails 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.

10. The Government finds that the applicant had submitted the Statement of Bank Realization issued by the Directorate General of Foreign Trade

through their official Website. The said statements confirm the realization of the export proceeds in respect of shipping bills No. 6714872/17.12.2011, 6729147/19.12.2011, 6868087/28.12.2011, 6396391/25.11.2011, 6289578/18.11.2011, 6322231/21.11.2011, 6623304/12.12.2011, 6529935/05.12.2011, 6679817/15.12.2011, 2800410/14.03.2011, 6229652/14.11.2011, 5851502/15.10.2011, 5892765/18.10.2011 and 6751307/2012.2011. The Statement of Bank Realization gives details such as Bank Realization Certificate No., Date of Realization of money by bank and other relevant details. The Government opines that the Statements of Bank Realization, produced by the applicant along with the instant Revision Application, are available on the website of the Directorate General of Foreign Trade for verification by the competent authority which confirms the realization of the export proceeds. Being corroborative evidence, it is held that the Statement of Bank Realization issued by the DGFT on its website can be taken as corroborative evidence to verify / check whether the export proceeds have been realized in respect of all the relevant shipping bills within the stipulated time or otherwise.

11. Further, the Government holds that the provisions as briefed in para 9 above are prescribed for recovery of drawback where the export proceeds are not realized within the period allowed under Foreign Exchange Management Act, 1999 including any extension of such period granted by the Reserve Bank of India. However, it is observed that the copies of the BRCs / Statement of Bank Realisation submitted by the applicant along with their Revision Application are not self attested. Though, the applicant have not submitted the Statement of Bank Realization in respect of all the shipping bills, it is observed that they have produced the statement of realization in respect of 13 out of 20 shipping bills involved in the instant Revision Application. As such, in the interest of justice, it is opined that a fair chance to be given to the applicant to produce the evidence of realization of export proceeds before original authority for verification. Thus, Government holds that the BRCs / statement of Bank Realization are required to be verified by original authority the 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 matter needs to be remanded

for fresh consideration. Therefore, the applicant are directed to submit the relevant BRCs / Statement of Bank Realization 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.

12. In view of above circumstances, Government sets aside impugned order in appeal No. JMN-000-APP/292/14-15 dated 24.11.2014 passed by the Commissioner of Customs (Appeals), Ahmedabad 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.

13. Revision Application is disposed off in above terms.

  
25/5/21  
(SHRAWAN KUMAR)

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

ORDER No. \33/2021-CUS(WZ) /ASRA/Mumbai DATED 25.05.2021

To,

M/s Vinifine Textile Mills,  
Plot No.4, Dhareshwar,  
GIDC, Jetpur, Gujrat- 360 370.

Copy to:

1. The Commissioner of Customs (Preventive), Jamnagar, 'Sarda House' Bedi Bandar Road, Opp. Panchvati, Jamnagar – 361008.
2. The Commissioner of Customs (Appeals) Ahmedabad, 7th Floor, Mrudul Tower, Off Ashram Road, Near Time of India, Navrangpura, Ahmedabad-380009.
3. The Deputy Commissioner of Customs, Custom House, GPPL, Pipavav New Colony, Pipavav Port, Tal: Rajula, Dist: Amreli- Gujrat- 365660.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.