

REGISTERED  
SPEED POST



**F.No. 373/307/DBK/14-RA**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 22/6/15

**ORDER NO. 14/2015-CX DATED 19.06.2015** OF THE GOVERNMENT OF INDIA,  
PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF  
INDIA, UNDER SECTION 129 DD OF THE CUSTOM ACT, 1962

Subject : Revision application filed, under Section 129 DD of the  
Custom Act, 1962 against the order-in-appeal No.CMB-  
CEX-000-APP-065/2014 dated 5.06.2014 passed by the  
Commissioner of Customs (Appeals), Coimbatore

Applicant : M/s Perel Ritz, Tripur.

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

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## ORDER

This revision application is filed by M/s. Perel Ritz, Tripur (herein after referred to as the applicant) against the Order-in-Appeal No. CMB-CEX-000-APP-065/2014 dated 5.06.2014 passed by the Commissioner of Customs, Central Excise & service Tax (Appeals), Coimbatore with respect to Order-in-Original No. 25/2014 Customs (BRC) dated 08.01.2014 passed by the Assistant Commissioner of Customs, ACC Coimbatore.

2. Brief facts of the case are that the applicant was initially granted drawback of Rs. 81,336/- for exports made by them. Subsequently, Show Cause Notice was issued to the applicant for recovery of already sanctioned drawback on the ground that applicant failed to produce the evidence for realization of export proceeds in respect of impugned exported goods for which they were allowed drawback within the period allowed under Foreign Exchange Management Act, 1999 including any extensions of such period granted by the Reserve Bank of India. Later on, the original authority vide impugned Order-in-Original confirmed the demand of already sanctioned drawback along with appropriate interest under Rule 16 A of Customs, Central Excise & Service Tax, Drawback Rules 1995 read with Section 75A (2) of the Customs Act, 1962 and also imposed penalty under Section 117 of the Act.
3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same.
4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 129 DD of the Customs Act, 1962 before Central Government on the following grounds:
  - 4.1 The impugned order is devoid of merit and in gross violation of the principles of natural justice. The orders have been passed on factually inconsistent reasoning. The subject Order of Recovery pertains to the exports made by the appellants on 24.02.2010 vide Shipping Bill No.5001. The applicant had filed the BRCs for this shipping through the CHA during April 2010 itself. Further on receipt of the show cause notice the applicant submitted Negative Certificate dated 27.12.2012 issued by

the Chartered Accountant as stipulated in Circular No. 5/2009 Cus. dated 02.02.2009. on 11.1.2013, duly acknowledged by the Superintendent, Air Cargo Complex which certifies that no amount is pending realization for the exports made for the half year ending 30.6.2010. Hence it is submitted that applicant had submitted the required documents during April 2010 itself and also on 11.01.2013 which establishes the realisation of the sale proceeds within the time limit. The Adjudicating Authority passed the impugned Order- in - Original without examining the factual position and without causing necessary verification of the records available with his own office and without observing the principles of natural justice by granting the Personal Hearing before the case is decided. Precisely, the orders have been passed in gross violation of the principles of natural justice and without verifying the records of his own office.

4.2 In this case as per the order in original the show cause notice was issued on 28.03.2012. The required documents evidencing the realization of sale proceeds were filed on 11.1.2013. The orders have been passed on 08.01.2014 stating that the applicant did not appear for the personal hearing in spite of offering enough chances. This is factually incorrect and the appellants never received any intimation for personal hearing. Hence the orders have been passed nearly after one and half year from the date of show cause notice. While taking up any issue for a final decision, that too after one and half years in all fairness, the applicant should have been extended an opportunity to explain their stand or to file the documents if any required once again if the documents already filed are not traceable in the office of the Adjudicating Authority for which the appellants cannot be held responsible.

4.3 It is also submitted that deciding any case without even offering chances of Personal Hearings is in gross violation of the principles of natural justice. It is also not out of place to mention that the entire adjudication proceedings have been initiated and completed in haste and without verifying the factual position and records of the respondent's office which is evident from the facts mentioned above. From the finding portion of the order in original, it leads to suggest that Personal Hearings were offered but none represented. This is unbelievable in view of the fact that the applicant have never changed the address and all letters are being received by them and there was no instance of non Receipt. In the instant case, how the Order of

recovery was sent by RPAD has been received by the applicant in time? A mere phone call would have been sufficient to receive the notice or any intimation. In the instant case, it is evident that no such efforts have been taken or there was no justification for deciding the case ex-parte.

4.4 Copy of Shipping Bill, Export Realisation Certificate Issued by State Bank of India, Commercial Invoice, Packing List and Negative Certificate dated 27.12.2012 issued by the Chartered Accountant are attached with this appeal. It is also submitted that the appellants had filed the bank details in the SBI itself and a simple verification with the Bank would have settled the issue as the only concern of the department is the realization of sale proceeds. In the circumstances, it is respectfully submitted that the order is liable to be set aside on merit also.

4.5 All the above irreversible factors were explained to the first Appellate Authority but the applicant did not get justice from the first Appellate Authority as the appeal filed by them was rejected without even taking into consideration of the fact that the applicant had already filed the negative certificate under proper acknowledgement before one year of passing the orders. The orders have been passed without going into the merits of the case. Hence the appellants are filing this appeal before the Honourable Revisionary Authority with a fervent hope of getting justice.

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 the 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 Honorable Revisionary Authority, vide Order No. 51/2013-Cus dated 08.02.2013 in case of M/s Maestro Fashions, Tirupur Vs Commissioner of Customs and Central Excise, Coimbatore.

4.7 In view of the above it is requested to set aside the impugned orders.

5. Personal hearing scheduled in this case on 25.03.2015 was attended by Shri R. Arumngam Consultant, RA Associates on behalf of the applicant, who reiterated the grounds of revision application.

6. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Orders-in-Appeal.

7. Government observes that the applicant was initially granted drawback for exports made by them. Subsequently, show cause notice was issued to the applicant for recovery of already sanctioned drawback on the ground that applicant failed to produce the evidence for realization of export proceeds in respect of impugned exported goods for which they were allowed drawback within the period allowed under Foreign Exchange Management Act, 1999 read with Regulations 2000 and para 2.41 of Export Import Policy 2004-2009 including any extensions of such period granted by the Reserve Bank of India. Later on, the original authority vide impugned Order-in-Original confirmed the demand for recovery of already sanctioned drawback along with interest payable under Rule 16 (A) Sub rule (2) & (3) of Customs, Central Excise Duties and Service Tax Drawback Rules 1995 read with section 75 of the Customs Act, 1962. Penalty was also imposed on the applicant in terms of section 117 of the said Act, *ibid*. Commissioner (Appeals) upheld the impugned Order-In-Original. Now, the applicants have filed this Revision Application on grounds mentioned in para (4) above.

8. Government notes that in this case the demand of already availed drawback was confirmed since the applicant failed to submit Bank Realization Certificates as proof of realization of foreign exchange within the stipulated time limit. The applicant contended that they have submitted Bank Realization Certificates as well as negative certificate of the Chartered Accountant in accordance with the CBEC circular No. 5/2009-Cus. Dated 02.02.2009. In view of rival contention, Government now proceeds to examine the issue in the context of submission of the applicant vis-a-vis. the statutory position.

8.1 The original authority confirmed the demand of drawback availed by the applicant on the ground that the applicant failed to produce proof of realization within stipulated time limit. On the contrary, the applicant has stated that they have submitted negative statement of Chartered Accountant Certificate in accordance

with CBEC's Circular No. 5/2009- Cus. dated 02.02.2009. The relevant paras of the said circular are reproduced as under:-

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2. *In terms of the provisions of Section 75 (1) of the Customs Act, 1962 read with sub-rule 16A (1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, where an amount of drawback has been paid to an exporter but the sale proceeds in respect of such export goods have not been realized within the time allowed under the Foreign Exchange Management Act (FEMA), 1999, such drawback amount is to be recovered. Sub-rule 16A (2) stipulates that if the exporter fails to produce evidence in respect of realization of export proceeds within the period allowed under the FEMA, 1999 or as extended by the Reserve Bank of India (RBI), the Assistant/Deputy Commissioner of Customs shall issue a notice to the exporter for production of evidence of realization of export proceeds, failing which an order shall be passed to recover the amount of drawback paid to the claimant.*

3. *Hitherto, the action to recover drawback was being taken on the basis of Export Outstanding Statement (XOS) received from RBI. The XOS is a consolidated half-yearly Statement giving details of all export Bills outstanding beyond the period prescribed for realization within 15 days from the close of the half year i.e. June / December. However, following the issuance of RBI Circular No. 61 dated 31.1.2004 dispensing with submission of declarations for export of goods of value not exceeding US\$ 25,000, it is observed that a large number of the export consignments presently fall outside the purview of monitoring mechanism through XOS inasmuch as the shipment details of goods valued upto \$ 25,000 are no longer reported through this statement.*

4. *In view of this change, particularly considering that under the statute, the drawback payment is ultimately linked to the realization of export proceeds, it has become necessary for the Department to put in place an in-house monitoring mechanism to monitor the realization of such proceeds for exports made under the Drawback Scheme. Extensive consultations were held with field formations and trade & industry in this regard, and subsequently, the matter was examined by the Board. For monitoring the realization of export proceeds for drawback purposes, the Board has decided that the exporters will submit a certificate from the authorized dealer (s) or chartered accountant providing details of shipment which remain outstanding beyond the prescribed time limit including the extended time, if any, allowed by the authorized dealer/RBI on a 6 monthly basis. Such certificate shall be furnished by the exporter, authorized dealer wise for each port. In order to put the exporters on notice at the time of export itself, an endorsement on the exporter's copy of shipping bill would be made specifying the due date for realization of export proceeds.*

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8.2 From perusal of above circular, it is noted that exporter is required to submit a certificate from authorized dealer or chartered accountant providing details of shipments which remain outstanding beyond the prescribed limit including the

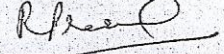
extended time, if any, allowed by the authorized dealer/RBI on a 6 monthly basis. Such certificates are to be forwarded before 7<sup>th</sup> day of January & July in respect of exports, which become due for realization in the previous 6 months in terms of para 5 (d) of the above circular. The said circular in terms of para 7 has been applied retrospectively only in respect of all the drawback shipping bills having LEO dates from 1.1.2004 to 31.12.2007 (separately for each month) period & was required to be submitted within 4 months from issue of the circular. In the present case, Government finds that the goods were exported on 24.02.2010, while Chartered Accountant's Certificate dated 27.10.2012 issued after two and half years from date of impugned export. The Certificate states that export proceeds for exports shipments made during the period 01.01.2010 to 30.6.2010 have been received, but fails to give the details and date of receipt of such remittances. As such, the applicant failed to comply with requirements of said circular. Further, Government notes that the said circular does not give dispensation from production of Bank Realization Certificates as proof of receipt of export proceeds. In this case, the applicant has submitted copy of export collection payment advice dated 08.04.2010 of State Bank of India, Tirupur, and not copy of Bank Realization Certificate in the manner and the format as prescribed by the DGFT. There is no relaxation from submission of BRC in said format. Under such Circumstances, the drawback availed by the applicant is liable for recovery in absence of submission of proof of foreign exchange realization, within the stipulated time limit.

8.3 Government further notes that it is a statutory requirement under Section 75 (1) of Customs Act, 1962 & Rule 16 A (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 there under viz 6 months in this case subject to any extension allowed by RBI. As discussed above, the applicant has failed to fulfill their statutory obligations. Therefore the order for recovery of drawback claim along with interest & penalty cannot be faulted with.

9. In view of above position, Government finds no infirmity in the impugned Order-in-Appeal and hence, upholds the same.

10. The revision application is therefore, rejected being devoid of merit.

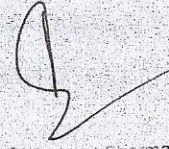
11. So, ordered.



(RIMJHIM PRASAD)

Joint Secretary to the Government of India

M/s. Perel Ritz,  
No.56, Rayapuram Extension,  
1<sup>st</sup>, Street, Tripur-641601



(भागलशम शर्मा/Bhiswal Sharma)  
सहायक वित्त निरीक्षक (अतिरिक्त) Commissioner  
C.B.L.C.-OSU (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार/Govt. of India  
नई दिल्ली / New Delhi

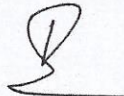


**GOI ORDER NO. 14/2015-CX DATED 19.06.2015**

Copy to:

1. The Commissioner of Customs, Central Excise & Service Tax, Coimbatore.
2. The Commissioner of Customs, Central Excise & Service Tax (Appeals), 6/7  
A.T.D. Street, Race Course Road, Coimbatore-641018
3. The Deputy Commissioner of Customs, Inland Container Depot, Concor  
Tripur.
4. RA Associates , No. 59 (First Floor), 30 Feet Road, Near Kamaraj Statue,  
Krishnaswamy Nagar, Ramanathapuram, Coimbatore 641045
5. ~~Guard File.~~
6. PA to JS (RA)
7. Spare Copy

ATTESTED



(B.P. Sharma)  
OSD (Revision Application)

OUTORDER WILL BE PAID OR DATED 12/22/2012

Copy 1

1. The Commission of Customer/Orders Cases is hereby the Commission

2. The Commission of Customer/Orders Cases is hereby the Commission  
A TO ORDER FOR CASES FROM COMMISSIONER 411512

3. The Deputy Commissioner of Customer/Orders Cases is hereby the Commission  
That

4. The Deputy Commissioner of Customer/Orders Cases is hereby the Commission  
Indefinitely until further Commission 411512

5. Copy 1

6. PA 12 21 (1A)

7. Copy 1

411512

12/22/2012

Commissioner of Customer/Orders Cases