

**REGISTERED  
SPEED POST**



F.No. 375/07 & 09/DBK/13-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue.....*23/8/14*.....

ORDER NO. 159-160/14-Cus DATED 21.05.2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D.P.SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

SUBJECT : Revision Application filed, under section 129 DD of the Customs Act, 196 against the Orders-in-Appeal No. 324 & 325/CUS/APPL/KNP/2012 both dated 27.12.2012 passed by Commissioner(Appeals) Customs, Kanpur.

APPLICANT : M/s Zaz and Zaz Pvt. Ltd., Kanpur.

RESPONDEN : The Commissioner of Customs, Kanpur.

\*\*\*\*\*

ORDER

These revision applications are filed by applicant M/s Zaz and Zaz Pvt. Ltd., Kanpur, against the Orders-in-Appeal No. 324 & 325/CUS/APPL/KNP/2012 both dated 27.12.2012 passed by Commissioner(Appeals) Customs, Kanpur with respect to Orders-in-Original passed by Commissioner of Customs, ICD, Chekeri, Kanpur.

2. Brief facts of the case are that Applicant had exported leather footwear and finished leather goods under drawback shipping bills and duty drawback was paid to them on account of the said exports. As per provisions of rule 16A of the Customs & Central Excise Duties Drawback Rules, 1995, (hereinafter referred to as the "DBK Rules") if the export proceeds are not realized within period allowed under Foreign Exchange Management Act, 1999 (42 of 1999) including any, extension of such period, the duty drawback sanctioned and paid shall be recovered in the manner specified in the Customs Act and the Rule made there under. The Reserve Bank of India vide Regulation 9 of the Foreign Exchange Management (Export of goods and services) Regulation 2000, formed by virtue of powers conferred under Section 7 & 47 of the Foreign Exchange Management Act, 1999 read with Section 8 ibid prescribed the period of realization and repatriation of 6 months from the date of export. The RBI vide A.P. (DIR series) Circular No. 50 dated 30.6.2008 enhanced the period of realization and repatriation of the amount of export value A.P. (DIR series) Circular No. 70 dated 30.06.2009. Thus export proceeds should have been realized within 12 months from the date of export. In the instant case, since the applicant did not submit proof of realization of export proceeds (BRCs) within stipulated time i.e. 12 months from the date export, a notice dated 7.2.2011, was issued by the department to the applicant asking to submit the BRCs within 30 days and also intimating them that in the event of failure, an order for recovery of the sanctioned amount of drawback under the provision of Rule 16A of the Drawback Rules and the interest due thereon in terms of Section 75A(2) of the Customs Act, 1962 and vide impugned Orders-in-Original, the original

authority confirmed the demand of drawback availed by applicants, where export proceeds finally could not realized within stipulated period vide impugned order-in-appeal.

3. Being aggrieved by the said orders-in-original, applicant has filed appeals before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Orders-in-Appeal, the applicant had filed these revision applications under Section 129 DD of Customs Act, 1962 before Central Government mainly on the following grounds:

4.1 The applicant is constantly pursuing the buyer to realize the payment but due to severe recession in the U.K. market, the buyers are seeking some more time from the applicants. The respondent ought to have appreciated the fact that the applicant had informed the adjudicating authority that they have applied to the RBI through their bank namely, ICICI, The Mall, Kanpur, seeking extension of the period in respect of delay in realization of sale proceeds of those exported goods and the RBI has duly ceased of the matter and is making an enquiry from the Bank of the Applicants. The aforesaid compliance by the applicants and the letter dated 28.3.2011 of the RBI clearly shows that request of the applicants for extension of the period is under consideration and pending decision at the hands of the RBI, therefore there was no reasonable cause for initiating proceedings Rule 16A of the Customs Central Excise and Service Tax Drawback Rules, 1995 alongwith interest payable in terms of sub section 2 of Section 75 A of Customs Act 1962 by way of upholding the order passed by the adjudicating authority.

4.2 As per the statutory provisions, the sale proceeds in respect of the export goods should have been realized by or on behalf of the exporter in India within the period allowed under the FEMA, 1999 (42 of 1999), including any extension of such period. The respondent as well as the adjudicating authority have failed to appreciate the

words including any extension of such period, since the Applicant's request to RBI for extension of time period for realization of sale proceeds is still under consideration and pending at the end of RBI, the Adjudicating Authority should have waited for the decision of the RBI either allowing or rejecting the said Applicant's request. However, in contrary, the Adjudicating Authority had proceeded in the most erratic manner and have ordered the Applicants to deposit availed drawback under Rule A of the Customs, Central Excise and Service Tax Drawback Rules, 1995 alongwith interest payable in terms of sub section 2 of Section 75A of Customs Act 1962 and the said order has wrongly been upheld by the respondent.

4.3 The respondent as well as the Adjudicating Authority should have appreciated the provision of Rule 16A (4) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. In terms of Rule 16(4) of the Rule, ibid the Applicant in accordance with law are entitled for benefit of drawback and the impugned orders deserves to be set aside or matter may be remanded to the Adjudicating Authority with necessary directions to keep proceeding in abeyance till disposal of extension Application by the Reserve Bank of India.

5. Government of India vide revision order No.306-307/13-Cus dated 19.12.2013 rejected the revision applications filed by the applicant. Subsequently, the applicant challenged the said GOI order in W.P.No.166/2014 before Hon'ble Allahabad High Court, who vide order dated 13.3.2014 ordered as under:

*"We are of the view that the appropriate order that should be passed in such circumstances would be to direct the Revisional Authority to verify the documentary evidence which has been relied upon by the petitioner for the purposes of establishing the realisation of the export proceeds within the extended period of time as granted by the Reserve Bank of India in respect of the shipping bills covered by the duty drawback which has been received. In order to facilitate this exercise, we set aside the impugned order of the Joint Secretary of the Union Government dated 19 December 2013 and*

*restore the proceedings back to the Revisional Authority for disposal afresh, The Revisional Authority shall verify whether the petitioner has in fact received all the export proceeds covered by the shipping bills in question within the time as extended by the Reserve Bank of India. We would expect that this exercise shall be completed expeditiously and preferably within a period of three months of the production of the certified copy of this order before the Revisional Authority. The petitioner shall, together with a certified copy of this order, produce on affidavit before the Revisional Authority all the material and documentary evidence for the purposes of establishing the realisation of the export proceeds. The Revisional Authority would be at liberty to conduct a further inquiry as may be necessary including production of such information and material as would be necessary for the purposes of determining the correctness of the submissions of the petitioner. The petitioner shall appear before the Revisional Authority with a certified copy of this order on 2 April 2014, failing which the petitioner would lose the benefit of this order and the Union Government would be at liberty to make recovery in accordance with law.*

*The writ petition is, accordingly, disposed of."*

6. In compliance of said order of Hon'ble High Court, Shri Promod Kumar Rai, Manager of the applicant company appeared for hearing on 2.4.14 by JS (RA) and stated that they have submitted E-BRCs for all 13 shipping bills and reiterated the submissions made in their written reply dated 26.3.14. In their letter dated 26.3.14, following submissions were made:

6.1 That ex-post facto extension was granted by the Reserve Bank of India till 31<sup>st</sup> March 2014, which was communicated by the authorized bank i.e. the ICICI Bank vide their letter dated 7<sup>th</sup> March 2014. Attested copy of letter dated 7<sup>th</sup> March 2014 of ICICI Bank intimating about extension of bills of Reserve Bank of India is enclosed.

6.2 It is a trite to state that through the ICICI Bank/authorized bank, the applicant had applied to the Reserve Bank of India for extension of time vide letter dated

11<sup>th</sup> November 2013 wherein the applicants inter-alia had submitted the Certificate of Chartered Accountant alongwith undertaking that no suit had been filed, export certificate and detailed correspondence of the buyer.

6.3 That deeming aggrieved by the impugned order being Order No.306-307/13-Cus dated 19.12.2013 of this Hon'ble Chair, a Writ Petition was preferred before the Allahabad High Court being No.166 of 214, wherein the Hon'ble High Court taking note of the fact that initial extension of time by Reserve Bank of India was granted till 13<sup>th</sup> June 2013 which was subsequently extended till 31<sup>st</sup> March 2014, the Hon'ble Bench passed the said order.

6.4 That Revisionary Authority may be pleased to take the submission on record and pass appropriate orders for verification of the Realization of Export Proceeds and also to pass order for regularization of the claim of drawback in view of the extension of time granted by Reserve Bank of India till 31<sup>st</sup> March 2014.

7. On perusal of records, Government observes that original authority vide impugned Orders-in-Original confirmed the demand of that portions of already availed drawback claim as exporter had failed to submit BRCs evidencing realisation of export sale proceeds in respect of shipping bills in question. Government of India vide GOI Revision Order order No.306-307/13-Cus dated 19.12.2013 has upheld impugned order-in-appeal. Now, in compliance of Hon'ble High Court, the case has been taken up for fresh consideration.

8. This authority requested the original authority to verify the correctness/genuineness of E-BRCs submitted by the applicant claiming realisation of export sale proceeds in respect of shipping bills in question. The Assistant Commissioner of Customs, ICD, Chakeri, Kanpur vide his letter dated 17.4.2014 and

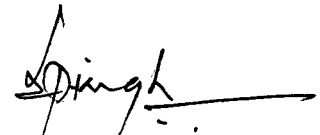
30.4.2014 has stated that all the 13 E-BRCs submitted by the applicant have been verified by the concerned bank and the same may be accepted.

9. Government notes that the applicant was required to submit BRCs relating to impugned exports within stipulated time limit which includes extension of time given by the RBI. In this case, the applicant has submitted that the RBI has granted them extension upto 31.3.14 for realization of export sale proceeds. Government notes that the Reserve Bank, vide letter 1920/13-14 dated 5.3.14 has granted extension upto 31.3.14 subject to the condition that no further extension would be granted. Applicant has submitted 13 E-BRCs in respect of shipping bills in question evidencing realisation of export sales proceeds within extended time limit allowed by the RBI. The Asstt. Commissioner of Customs, ICD, Chakeri, Kanpur has stated that the said E-BRCs have been verified by the concerned bank and the same may be accepted. Under such circumstances, there is no case for recovery of already sanctioned drawback claims. The demand of said sanctioned drawback is not legally sustainable and hence required to be dropped. Government therefore sets aside the said demand of already sanctioned drawback claim.

10. In view of above discussion, Government sets aside the impugned orders and allows revision applications with consequential reliefs.

11. Revision applications thus succeed in above term.

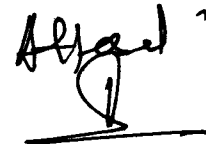
12. So, ordered.



(D.P.Singh)

Joint Secretary to the Govt. of India

M/s Zaz and Zaz Pvt. Ltd.,  
150 Feet Road, Jajmau,  
Kanpur (UP)



(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C B E C - O S D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार/Govt. of India  
नई दिल्ली/New Delhi

**Order.No.159-160/14-Cus Dated 21.05.2014**

**Copy to:**

- 1. The Commissioner, Central Excise & Customs, Kanpur, (Review Branch).**
- 2. The Commissioner (Appeals) Customs, 117/7, Sarvodaya Nagar, Kanpur-208005.**
- 3. The Assistant Commissioner of Customs, ICD, Chekeri, Kanpur.**
- ✓ 4. PS to JS(RA)**
- 5. Guard File.**
- 6. Spare Copy**

**ATTESTED**



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