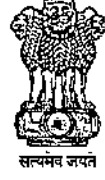


REGISTERED SPEED POST



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

F. NO. 373/162/DBK/15-RA / 397 Date of Issue: 01.02.2022

ORDER NO. 17/2022-CUS (SZ) /ASRA/MUMBAI DATED 25-01-2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDE SECTION 129DD OF CUSTOMS ACT,
1962.

Applicant : M/s Rajwani Exports Pvt. Ltd.

Respondent : Deputy Commissioner of Customs, Tirupur, Coimbatore.

Subject : Revision Applications filed under Section 129DD of
Customs Act, 1962 against Order in Appeal No. CMB-
CEX-000-APP-042-15 dated 09.02.2015 passed by
Commissioner of Customs, Central Excise, & Service
Tax, (Appeals) Coimbatore.

ORDER

This Revision Application has been filed by M/s Rajwani Exports P. Ltd., situated at 113, Navneet Darshan, 16/2, Old Palasia, Indore-452018 (hereinafter referred to as the "applicant") against Order-in-Appeal No. CMB-CEX-000-APP-042-15 dated 09.02.2015 passed by Commissioner of Customs, Central Excise, & Service Tax, (Appeals) Coimbatore.

2. The brief facts of the case are that the applicant was granted drawback amount of Rs. 2,03,158/- on the goods exported through ICD, Tirupur. The applicant failed to produce evidence for realization of export proceeds in respect of the said export goods within the period allowed as per the provisions of Section 75 of Customs Act, 1962 read with the provisions of Foreign Exchange Management Act (FEMA), 1999 including any extension of such period granted by the Reserve Bank of India. Therefore, show cause notice vide C.No. VIII/23/03/2006-ICD-TPR dated 07-01-2009 was issued to the applicant proposing to recover an amount of Rs 2,03,158/- (being the drawback paid to them) in terms of Section 75 of the Customs Act, 1962 read with Rule 16A of the Customs, Central Excise, & Service Tax Drawback Rules, 1995. The Adjudicating authority vide OIO No.1763/2014-AC Customs (BRC) dated 18.07.2014 ordered recovery of amount of Rs.2,03,158/- along with the interest for failing to furnish evidence for realization of export proceeds within the stipulated time.

3. Being aggrieved with the said Order in Original, the applicant filed appeal before Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore on the grounds that the applicant had realized the export proceeds related to the shipping bill no. 19690 dated 15.10.2007 and had submitted the reply to the SCN vide their letter dated 02.12.2009 along with the copy of the BRC. Commissioner (Appeals) vide impugned Order rejected the applicant's appeal holding that the BRCs were not submitted within the stipulated time.

4. Being aggrieved with the impugned Order in Appeal, the applicant filed the instant Revision Applications mainly on the following common grounds:-

4.1 The applicant submitted that the subject Order is violative of law of natural justice in as much as they had submitted all the required evidence along with the appeal filed and the Appellate Authority has overlooked the documentary evidence submitted by the applicant.

4.2 The applicant submitted that they had replied to the SCN vide their letter dated 02.12.2009 intimating that the export proceeds were already realized by them on 23.10.2007 and also enclosed the copy of the BRC along with. At the time of the Personal hearing, though they has explained that the amount was realized on time, the appellate authority did not take cognizance of this fact.

4.3 The applicant relied on the following Judgements wherein it was held that refund has been granted even if there is delay in submission of required evidences of payment:

(i) GOI's Order No. 296/2013-Cus dtd 17-12-2013 in case of M/s Adwaith Lakshmi Industries Ltd.;

(ii) Delhi High Court Order No WP (C) No.6600 of 2008 dated 29-04-2010 in case of M/s Birinder Kaur Bajwa;

(iii) CESTAT, New Delhi's Order No. 1415/2006-SM (BR)(PB) sated 18-09-2006 in case of M/s Seer Fashions; &

(iv) Allahabad High Court Order No WT No. 166 of 2014 dated 13-03-2014 in case of Dr. Dhanajaya Yeshwant Chandrachud, C.J. and Dilip Gupta, J. ZAZ and ZAZ Pvt. Ltd.

4.4 The applicant requested for personal hearing and also requested to set aside the impugned Order-in -Appeal.

5. A personal hearing in these cases was fixed on 26.10.2021. Shri Mihir Turakhia, Advocate appeared for the hearing on behalf of the Applicant. He appeared online and submitted that the BRCs had been submitted and hence the demand does not survive. He further submitted that the BRCs have been again submitted along with the Revisionary application. He requested to drop the matter.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original, Order-in-Appeal, BRC submitted as well as oral and written submissions.

7. Government observes 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, 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 thereunder subject to any extension allowed by RBI.

8. Government further notes that the provisions of recovery of amount of drawback where export proceeds are not realized has been stipulated under Rule 16A of the Customs, Central Excise and Service Tax Duty Drawback Rules, 1995 and the relevant sub-rules (2) and (4) of the Rule 16A reads as under :

Rule 16A. Recovery of amount of Drawback where export proceeds not realised. -

(1) Where an amount of drawback has been paid to an exporter or a person authorized by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realized by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such drawback shall be recovered in the manner specified below.

Provided that the time-limit referred to in this sub-rule shall not be applicable to the goods exported from the Domestic Tariff Area to a special economic zone.

(2) If the exporter fails to produce evidence in respect of realization of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be shall cause notice to be issued to the exporter for production of evidence of realization of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within thirty days of the receipt of the said order :

From perusal of above provision, it is evident that the drawback is recoverable, if the export proceeds are not realized within stipulated time limit or extension given by RBI, if any.

9. Government observes that the applicant has claimed that they had filed BRC in respect of the impugned Shipping Bill viz No. 19690 dated 15.10.2007 along with the reply letter dated 02.12.2009 made to the Show Cause Notice dated 26.11.2009.

10. The copy of the BRC issued by IndusInd bank Ltd., Indore Branch, enclosed along with the Revision application, shows that the applicant has received the sale proceeds on 23-10-2007 in respect of the impugned shipping bill, which is within the stipulated time limit.

11. On examination of Rule 16/16A of the Drawback Rules, the Government finds that drawback amount is recoverable only if the foreign proceeds for export of the goods has not been realized within six months from the export of the goods. But in these cases from the copy of the BRC enclosed, it is evident that export sale proceeds for the

shipments made during the above period have been received/realized within the stipulated period as mentioned in the tables above

12. In view of the above discussion and findings Government sets aside Order in Appeal No.CMB-CEX-000-APP-042-15 dated 09-02-2015 passed by Commissioner of Customs, Central Excise, & Service Tax, (Appeals) Coimbatore and allows the Revision Application filed by the applicant.

13. Revision Application is disposed off in the above terms.


(SHRAWAN KUMAR)

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

ORDER No. 17/2022-CUS (SZ) /ASRA/Mumbai Dated 25.01.2022

To,

M/s Rajwani Exports P. Ltd.,
113, Navneet Darshan,
16/2, Old Palasia,
Indore-452018

Copy to:

1. Pr. Commissioner of Customs, No.6/7, ATD Street, Race Course Road, Coimbatore-641018
2. Commissioner of Customs (Appeals) Coimbatore Customs, No.6/7, ATD Street, Race Course Road, Coimbatore-641018
3. Sr. P.S. to AS (RA), Mumbai
4. ~~Guard file~~
5. Notice Board.