

REGISTERED

SPEED POST



GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

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F. No. 373/428/DBK/14-RA / 5848

Date of Issue : 09.10.2020

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ORDER NO. 180/2020-CUS (SZ) / ASRA / MUMBAI/ DATED 02.09.2020  
OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA ,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY  
TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE  
CUSTOMS ACT, 1962.

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**Applicant** : M/s Sri Vinayaka Garments,  
S.F.No.572, Mannankadu,  
Karuppagoundampalayam,  
Tirupur- 641 604.

**Respondent** : The Commissioner of Customs, Coimbatore.

**Subject** : Revision Application filed, under Section 129DD of  
the Customs Act, 1962 against the Order-in-  
Appeal No.CMB-CEX-000-APP-160/14 dated  
18.09.2014 passed by the Commissioner of  
Customs (Appeals), Coimbatore.

**ORDER**

The Revision Application is filed by M/s Sri Vinayaka Garments, Tirupur (herein after referred to as 'the applicant) against the Order in Appeal No.CMB-CEX-000-APP-160-14 dated 18.09.2014 passed by the Commissioner of Customs (Appeals), Coimbatore.

2. Brief facts of the case are that the applicant had exported the goods under the shipping bill No. 4169 dated 05.12.2009 and received the drawback of Rs. 58,003/- (Rupees Fifty Eight Thousand Three Only). 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, 1999 including any extension of such period granted by the Reserve Bank of India. The adjudicating authority vide Order in Original No. 611/2014 dated 25.02.2014 directed the applicant to pay a sum of Rs. 58,003/- together with interest at the prescribed rate and also imposed the penalty of Rs. 1,000/- under Section 117 of the Customs Act, 1962.

3. Aggrieved by the said order, the Applicant filed appeal before Commissioner (Appeal) on the following grounds :-

3.1 The applicant had submitted the BRCs to the department through their CHA.

3.2 They had neither received the show cause notice nor the letter of personal hearing.

3. They had realised the export proceeds and submitted the BRCs on 07.07.2014.

4. The Appellate Authority vide impugned order in appeal rejected the appeal and upheld the Order in Original. The Appellate Authority while passing the impugned Order in Appeal observed that :-

4.1 The applicant had not submitted the BRC on time.

4.2 The provision under Rule 16(A)(5) of Drawback Rules (inserted w.e.f. 11.04.2011) is not applicable to the applicant as no evidence as prescribed therein was produced by the applicant.

5. The applicant contested the impugned Order in Appeal passed by the Appellate Authority in the instant Revision Application on following grounds :-

5.1 They have realised the export proceeds covered under the shipping bill No. 4169 dated 12.05.2009 on 09.06.2009 i.e. within the time limit stipulated under the FEMA, Act, 1999 and Regulations made thereunder.

5.2 The communication pertaining to the proceedings initiated for recovery of drawback under impugned show cause notice and letter of personal hearing were not received by them. Therefore, the order in original had been passed without following the principles of natural justice. This issue was not considered by the Appellate Authority.

5.3 The technical issue of non submission of BRC has led the department to conclude that there was non realisation of export proceeds.

5.4 The reliance of Appellate Authority in the case of M.L. Balaram Vs. UOI [2006(70)SCL-8(Kar-HC)] is not applicable in the instant case.

5.5 The interest liability could be fastened only in case of default in realisation of export proceeds. In this case, non realisation in export proceeds as alleged in the order has not been established with any conclusive proof. Therefore, the demand of interest is liable to be set aside. The penalty imposed in the order is also not maintainable in the instant case.

5.6 Catena of decisions were rendered by Hon'ble Tribunals and Government of India wherein it has been held that procedural infringements / violations shall not come in the way of substantial benefits available to the assessee and that the technical issue of non submission of the BRC to the Department in this case also deserves to be condoned.

6. Personal Hearing was granted on 28.05.2018, 05.12.2019 and 12.12.2019. Shri Sudesh G. Rajane, Representative of the applicant company attended the personal hearing held on 12.12.2019. He also reiterated the grounds of Revision Application. No one attended the personal hearing on behalf of the department.

7. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the grounds of filing the revision application.

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

9. In the instant case, the Government finds that the applicant had exported goods vide shipping bill No. 4169 dated 12.05.2009 and claimed to have realised the export proceeds on 09.06.2009. The applicant contended that they could not submit copy of the BRC to the department as they thought the submission was to be done through CHA only and as such there might be communication gap. Also, due to non receipt of the show cause notice and personal hearing letter, they could not prove the fact of realisation of export proceeds to the

department in their proceedings. Further, The applicant said to have produced the BRC and Chartered Accountant certificates as proof of realisations to the Appellate Authority.

10. The Government observes that appellate authority decided the case only on the ground that applicant failed to submit impugned BRC within time limit to the appropriate authority. However, the impugned Order in Appeal was passed without any discussion / findings with regard to the contention of applicant about non receipt of the impugned show cause notice as well as personal hearing letter issued thereof. In the absence of discussion on issue pertaining to adherence of principles of natural justice by original authority, the Government opines that the impugned order in appeal cannot be attributed as just and proper.

11. Further, the Government holds that the provisions as briefed in para 8 above are prescribed for recovery of drawback where the export proceeds are not realised within the period allowed under Foreign Exchange Management Act, 1999 including any extension of such period granted by the Reserve Bank of India. In the instant case, the applicant have claimed that export proceeds had been realised within stipulated period and the same appears to be in order as per the self attested copy of BRC enclosed by them with the instant revision application and hence the demand for recovery of the drawback amount in the instant case is not warranted.


12. However, Government opines that the impugned BRC is required to be verified by the original authority to determine the authenticity and validity of the same. Hence, the case deserves to be remanded for fresh consideration.

12.2 The penalty in terms of Section 117 of Customs Act, 1962 will also be re-determined accordingly by the original authority, subject to outcome of the verification.

13. In view of above discussion, Government sets aside impugned order and remands the case back to the original authority for fresh consideration in the light of above observations after giving reasonable opportunity of hearing being offered to the applicant. The applicant is also directed to furnish the original BRCs for verification.

14. Revision Application is disposed off in above terms.

15. So ordered.

  
(SEEMA ARORA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

180  
ORDER No./2020-CUS (SZ) /ASRA/

02.09.2020  
DATED / /

To,

M/s Sri Vinayaka Garments,  
S.F.No.572, Mannankadu,  
Karuppagoundampalayam,  
Tirupur- 641 604.

Copy to:

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.
3. The Assistant Commissioner of Customs, CFS, S.F. No. 129, Poondi Ring Road, Chettipalayam, Tirupur- 641 652, Tamil Nadu.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.