

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  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. NO. 373/154/DBK/15-RA / 2640 Date of Issue: 24.06.2022

ORDER NO. 187/2022-CUS (SZ) /ASRA/MUMBAI DATED 22-06-2022  
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 CUSTOMS ACT,  
1962.

Applicant : M/s Winsome Knit Garments.  
Respondent : The Commissioner of Central Excise and Customs,  
Coimbatore Customs.  
Subject : Revision Applications filed under Section 129DD of  
Customs Act, 1962 against Order in Appeal No. CMB-  
CEX-000-APP-241-2014 dated 21.11.2014 passed by  
Commissioner of Customs, Central Excise, & Service  
Tax, (Appeals-I) Coimbatore.

## ORDER

This Revision Application has been filed by M/s Winsome Knit Garments, situated at 1/1132, K. Chettipalayam, KNP Colony Post, Dharapuram Road, and Tirupur-641608 (hereinafter referred to as the "applicant") against Order-in-Appeal No. CMB-CEX-000-APP-241-14 dated 21.11.2014 passed by Commissioner of Customs, Central Excise, & Service Tax, (Appeals-I) Coimbatore.

2. The brief facts of the case are that the applicant was granted drawback amount of Rs. 16,22,081/- on the goods exported. 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/23/917/2011-ICD/TPR dated 23<sup>rd</sup> December, 2011, was issued to the applicant proposing to recover an amount of Rs 16,22,081/- (being the drawback paid to them) for the export made, under the provisions of Rule 16A of the Customs, Central Excise, & Service Tax Drawback Rules, 1995, alongwith the interest under Section 2 of section 75A of the Customs Act, 1962 and imposing penalty under Section 117 of the Customs Act, 1962. The Adjudicating authority vide OIO No.706/2014-AC-BRC cell dated 20.02.2014 ordered recovery of amount of Rs.16,22,081/- along with the interest and imposed a penalty of Rs. 1000/- under Section 117 of the Customs Act,1962.

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 they had realized all export proceeds as of then and that they had enclosed the evidences of such export realization and also that they had neither received the SCN nor the Personal hearing memo. Commissioner Appeal vide his OIA No.

CMB-CEX-000-APP-241-2014 dated 21.11.2014 rejected the applicant's appeal on the grounds of 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 and also filed a appeal for condonation of delay of 41 days in filing the appeal. The grounds for filing of the condonation of delay and Revision applications are as follows:

4.01 In respect to the condonation of delay application, the CA of the applicant submitted that due to financial year end at the relevant time, they got balance sheets and documents of other clients which was mixed with the applicant's paper and were only traced later. The applicant submitted that the delay was neither wilful nor wanton and requested to condone the delay.

4.02 In respect to the revision application, the applicant submitted that they had realized all export proceeds without fail.

4.03 There is no pending realization of Export proceeds.

4.04 The impugned Order in Original was passed without giving Show cause Notice and a personal hearing. Hence the Order is Null and Void from legal point of view.

4.05 The impugned Order was made on 20-02-2014 and was served to the applicant on 26-06-2014 through ordinary post. Hence this is not a valid Service of OIO and has to be set aside in toto.

4.06 In view of the above, the applicants requested to set aside the impugned Order-in-Original and Order-in-Appeal.

5. A personal hearing in these cases was fixed on 29-03-2022. Shri Vivek, Manager, appeared online for the hearing on behalf of the applicant. He submitted that export proceeds have been realised. He

further submitted that BRCs have been submitted, if required, they will again submit the same. He requested to drop the demand.

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

7. Government observes that there is a delay of 41 days in filing revision application. As per provisions of Section 129DD of Customs Act, 1962 the revision application can be filed within 3 months of the communication of Order-in-Appeal and the delay up to another 3 months can be condoned provided there are justified reasons for such delay. Government, in exercise of power under Section 129DD of Customs Act, 1962 condones the said delay and takes up revision application for decision on merit.

8. 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.

9. Government further notes that the provisions of recovery of amount of drawback where export proceeds not realized has been stipulated 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.

10. Government observes that the applicant has claimed that though the realization of export proceeds in respect of the impugned Shipping Bills pertaining to 2008 and 2009, were received within the prescribed time limit, the same was reported to the Customs Authorities a little late. The applicants have enclosed the copy of some of the relevant BRCs along with the revision application.

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 this case from the copies of the BRCs enclosed and as claimed by the applicant, it is observed that export sale proceeds for the shipments made during the above period have been received/realized within the stipulated period.

12. In this case the applicant has not submitted the Bank Realization certificate in respect of each shipping bill. At the time of personal hearing they have stated that they will submit the same if required. Government directs the applicant to submit the BRCs in respect of each shipping bill to the original adjudicating authority and the adjudicating authority is directed to decide the case based on the above observations within 8 weeks from the receipt of this Order.

13. In view of the above discussion and findings Government sets aside Order in Appeal No.CMB-CEX-000-APP-241-14 dated 21.11. 2014 passed by Commissioner of Customs, Central Excise, & Service Tax, (Appeals) Coimbatore.

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

*Shrawan*  
22/6/22

(SHRAWAN KUMAR)

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

ORDER No. 187/2022-CUS (SZ) /ASRA/Mumbai Dated 22-06-2022

To,  
M/s Winsome Knit Garments,  
1/1132, K. Chettipalayam,  
KNP Colony Post, Dharapuram Road,  
Tirupur-641608.

Copy to:

1. The Commissioner of Customs, Preventive (Tiruchirappalli), No.1, Williams Road, cantonment, Trichurappalli-620001.
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.