

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. 373/146/DBK/15-RA /2022
F. NO. 373/147/DBK/15-RA

Date of Issue: 30.06.2022

ORDER NO. ¹⁹²⁻¹⁹³ /2022-CUS (SZ) /ASRA/MUMBAI DATED 28-06-2022
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 Union Garments.

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

Subject : Revision Applications filed under Section 129DD of
Customs Act, 1962 against Order in Appeal No. CMB-
CEX-000-APP-27-15 and CMB-CEX-000-APP-28-15
dated 12.01.2015 passed by Commissioner of Customs,
Central Excise, & Service Tax, (Appeals) Coimbatore.

ORDER

These two Revision Applications has been filed by M/s Union Garments, situated at S.F. No 137/1, Venkatachalapathi, Nagar Parapalayam Road, Mannarai, Post Tirupur - 641607 (hereinafter referred to as the "applicant") against Order-in-Appeal No. CMB-CEX-000-APP-27-15 and CMB-CEX-000-APP-28-15 dated 12.01.2015 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. 4,06,896/- for the exports made during the period 2007-2009 and an amount of Rs. 39,149/- for the exports made vide shipping bill no. 4640 dated 10.02.2006. 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 Sl. No. 571/2007 in C. No. VIII/23/03/2007-ICD-TPR dated 15-06-2007 and 958/2011 in C. No. VIII/23/858/2011-ICD-TPR dated 23-12-2011 was issued to the applicant proposing to recover an amount of Rs 39,149/- and Rs. 4,06,896/- (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.687/2014-AC Customs (BRC) dated 20.02.2014 ordered recovery of amount of Rs.39,149/- along with the interest and imposed a penalty of Rs.1000/- under Section 117 of the Customs Act, 1962, and vide OIO No.681/2014-AC Customs (BRC) dated 20.02.2014 ordered recovery of amount of Rs.406896/- along with the interest and imposed a penalty of Rs.1000/- under Section 117 of the Customs Act, 1962, for failing to furnish evidence for realization of export proceeds within the stipulated time.

3. Being aggrieved with the afore said Orders 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 relevant shipping bills and had submitted the copy of the BRCs. Commissioner (Appeals) vide impugned Orders 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 they are eligible for the duty drawback amount to that of the exports under the relevant shipping bill detailed in the OIO as the export proceeds of the said shipment were realized in full.

4.2 The applicant submitted that they had submitted the copies of the BRCs. The appellate authorities did not consider the same and dismissed their appeal on the grounds that they have not produced the same within one year from the date of exports.

4.3 The applicant submitted that they were neither negligent nor careless in comply with the demand of the original authority. They could not reply to the SCN as it was not brought to the knowledge of the Managing Partner of the firm as the staff who dealt with the issue had left the company all of a sudden without any notice and hand over the documents properly.

4.4 The applicant submitted that they have proof to the effect that the export proceeds of the exports in issue were realized and hence are entitled to the benefit of duty drawback amount that they have received for the above referred exports

4.5 The applicant requested to accept the BRCs submitted herein and set aside the Order in Appeal and Order in Original.

5. A personal hearing in these cases was fixed on 29.03.2022. Shri R. Jaikrishnan, Advocate appeared for the hearing on behalf of the Applicant. He appeared online and submitted that the BRCs submitted have not been considered. Having realised the export proceeds, he requested to set aside the Order in Appeal.

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 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 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.

9. Government observes that the applicant has claimed that they had realized the export proceeds in respect of the impugned Shipping Bills pertaining to 2006, 2007, 2008 and 2009, within the prescribed time limit. The applicants have stated that they had submitted the copy of the relevant BRCs before the appellate authority, but the same was not considered.

10. 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. The applicant has claimed that

they have received the export proceeds well within the time limit and that they have proof to that effect.

11. In view of the above factual position, Government deems it appropriate to direct 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.

12. In view of the above discussion and findings Government sets aside Order in Appeal No. CMB-CEX-000-APP-27-15 and CMB-CEX-000-APP-28-15 dated 12.01.2015 passed by Commissioner of Customs, Central Excise, & Service Tax, (Appeals) Coimbatore.

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

Shrawan
28/6/22
(SHRAWAN KUMAR)

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

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ORDER No. /2022-CUS (SZ) /ASRA/Mumbai Dated 28-06-2022

To,
M/s Union Garments,
S.F. No 137/1, Venkatachalapathi,
Nagar Parapalayam Road, Mannarai,
Post Tirupur - 641607.

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.