

REGISTERED
SPEED POST



F.No. 373/116/DBK/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue. 10/2/15

ORDER NO. 21/2015-Cus. DATED 10.07.2015 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129 DD OF THE CUSTOM ACT, 1962

Subject : Revision application filed, under Section 129 DD of the Custom Act, 1962 against the Order-in-Appeal No.56/2012 dated 25.09.2012 passed by the Commissioner of Customs (Appeals), Tiruchirappalli

Applicant : M/s Tirupur Sri Sentil Cotton Mills Ltd.

Respondent : Commissioner of Customs, Tuticorin.

ORDER

This revision application is filed by M/s. Tirupur Sri Sentil Cotton Mills Ltd. (herein after referred to as the applicant) against the Orders-in-Appeal No. 56/2012 dated 25.09.2012 passed by the Commissioner of Customs (Appeals), Trichirapalli with respect to Order-in-Original No. 190/2012 dated 23.02.2012 passed by the Assistant Commissioner of Customs, Tuticorin.

2. Brief facts of the case are that the applicant was initially granted drawback for exports made by them under 9 shipping Bills during the year 2006. Subsequently, show cause notice was issued to the applicant for recovery of already sanctioned drawback on the ground that applicant failed to produce the evidence for realization of export proceeds in respect of impugned exported goods for which they were allowed drawback within the period allowed under Foreign Exchange Management Act, 1999 including any extensions of such period granted by the Reserve Bank of India. Later on, the original authority vide impugned Order-in-Original confirmed the demand of Rs.1453144/- already sanctioned drawback under Section 75 of the Customs Act, 1962 along with interest and imposed penalty of Rs. 1,00,000/- under Section 117 *ibid*.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 129 DD of the Customs Act, 1962 before Central Government on the following grounds:

4.1.1 The export proceeds related to the shipping bill for which the order in original was issued have not been realized by us due to certain disputes between us and the buyer. However, we have made negotiations with the buyers who had received the goods through mediators and finally we had concluded settlement. Accordingly the buyer has agreed to pay the same in course of this year on installment basis.

4.1.2 We have also approached RBI for extension to realize the export proceeds under an exceptional situation. We had also made submission to original authority

seeking one year time to produce the export proceeds realization certificate (BRC) which was not considered by the authority.

4.1.3 Our request for granting extension to realize the export proceeds and submit documents there to has been summarily rejected by the original authority which is not justified.

4.1.4 We may be given one year time to produce the BRC evidencing the realization of export proceeds failing which we will be put to irreparable loss and hardship. We also assure to get necessary permission from RBI within a month time. On submission of permission from RBI extending the time period for export proceeds realization, the demand of the original authority will become infructuous.

4.2 Along with Revision Applications the applicant has also filed stay petition, wherein, they also requested for condonation of delay on the ground that they initially filed appeal before CESTAT and that CESTAT rejected their appeal as non-maintainable and that now, they are filing this Revision Application with a delay of 41 days beyond stipulated period.

5. Further the Department vide their written submission dated 28.07.2014 mainly stated as under:-

5.1 There is no provision under the Customs Act, 1962 for the officers to consider the negotiations of buyer and seller for making payment on installment basis or whatsoever. The departmental officers are bound to abide by the acts and rules made there under for recovery of drawback in case of non realization of sale proceeds, within the stipulated time limit under FEMA 1999.

5.2 As per foreign Exchange Management Act 1999, RBI is the proper authority to grant extension of time limit for realization of sale proceeds and not the officers of customs department.

5.3 The exporter, even though it was his duty to realize the sale proceeds within 12 months from the date of export and if it could not be possible, can get extension of time for such realization from RBI, as provided under Foreign Exchange Management Act, 1999, had failed to either realize the sale

proceeds or to get such extension of time from RBI or come forward voluntarily to pay the ineligible drawback amount availed with interest. Even after the 2nd stage appellate forum dismissed party's appeal and the Commissioner (Appeal) upheld the order of Order- in-Original the party not come forward to pay the undue drawback benefit availed already.

6. Personal hearing was scheduled in this case on 15.04.15. Personal hearing was attended by Shri A.P. Velussami, Managing Director on behalf of the Company, who reiterated the grounds of revision application. The Department vide letter dated 24.03.2015 requested that the appeal may be decided based on comments already submitted.

7. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Orders-in-Appeal.

8. On perusal of records, Government observes that the exporter were granted drawback with regard to exports made by them vide Nine (9) shipping bills. Subsequently, demand of drawback already sanctioned was confirmed on the ground that the applicant had failed to furnish proof of having realized sale proceeds in respect of impugned shipping bills within the stipulated period i.e. 6 months in the instant case, nor have they produced any proof of extension of time given by Reserve Bank of India. Commissioner (Appeals) upheld the impugned Order-in-Appeal. Now, the applicants have filed this revision application on grounds mentioned in para (4) above and also filed stay petition, wherein, they have requested for condonation of delay.

9. Government notes that in the impugned case, the applicant claimed to have received copy of impugned Order-in-Appeal dated 25.09.2012 on 18.10.2012, while, the Revision Application was filed on 14.10.2013 i.e. after approximately one year from date of impugned Order-in-Appeal. As such, the Revision Application prima facie appears to be time barred. Government finds that the applicant has filed condonation of delay stating that they initially filed appeal

before CESTAT. Hence, Government first proceeds to discuss the issue of time bar.

9.1 Government finds that applicant filed appeal against impugned Order-in-Appeal before CESTAT on 12.02.2013. CESTAT vide Order No.40301/2013 dated 22.07.2013 held that appeal shall not lie before the Tribunal as order passed by Commissioner (Appeals) is in respect of drawback claim. The appeal was dismissed as non maintainable and appellant was held to be at liberty to file appeal before Government of India who will consider, the condonation of delay in filing appeal under law.

The time calculation for filing revision application is as under:-

A. Date of receipt of impugned OIA	18.10.2012
B. Date of filing appeal before Tribunal	12.02.2013
C. Total time taken for filing appeal before Tribunal A-B=	116 days
D. Date of communication of Tribunal's order 22.07.2013	20.09.2013
E. Date of receipt of Revision application	08.10.2013
F. Time taken to file Revision Application from receipt of Tribunal's order	
	D-E=23 days
G. Total Time taken from date of receipt of Order-in-Appeal in filing Revision Application excluding time lapsed in CESTAT	C+F= 139 days.

As such, after excluding time elapsed before tribunal the applicant filed this revision application in 49 days after initial 90 days period, which falls within condonable limit of 90 days. Hence, Government condones the said delay.

10. Now Government proceeds to examine the Revision Application on merits. Government observes that the provisions of recovery of already sanctioned drawback have been prescribed under Section 75 of the Customs Act, 1962 and Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The relevant provisions are reproduced as under:

"SECTION 75. Drawback on imported materials used in the manufacture of goods which are exported. - (1) Where it appears to the Central Government that in respect of goods of any class or description

manufactured, processed or on which any operation has been carried out in India , being goods which have been entered for export and in respect of which an order permitting the clearance and loading thereof for exportation has been made under section 51 by the proper officer, or being goods entered for export by post under section 82 and in respect of which an order permitting clearance for exportation has been made by the proper officer, a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the manufacture or processing of such goods or carrying out any operation on such goods, the Central Government may, by notification in the Official Gazette, direct that drawback shall be allowed in respect of such goods in accordance with, and subject to, the rules made under sub-section (2).

Provided that no drawback shall be allowed under this sub-section in respect of any of the aforesaid goods which the Central Government may, by rules made under sub-section (2), specify, if the export value of such goods or class of goods is less than the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf :

Provided further that where any drawback has been allowed on any goods under this sub-section and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), such drawback shall except under such circumstances or such conditions as the Central Government may, by rule, specify be deemed never to have been allowed and the Central Government may, by rules made under sub-section (2), specify the procedure for the recovery or adjustment of the amount of such drawback.

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 authorised by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised 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 realisation 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 or Deputy Commissioner of Customs shall cause notice to be issued to the exporter for production of evidence of realisation 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 or Deputy Commissioner of Customs 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:

(In rule 16A, in sub-rule (2) has been substituted vide Notification No. 10/2006 - Customs (N.T.) dated 15/02/2006)

Provided that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds.

(3) Where the exporter fails to repay the amount under sub-rule (2) within said period of thirty days referred to in sub-rule (2), it shall be recovered in the manner laid down in rule 16.

(4) Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or sub-rule (3) and the exporter produces evidence about such


realisation within one year from the date of such recovery of the amount of drawback, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs or Deputy Commissioner of Customs to the claimant.

11. The above provisions provide for recovery of drawback where the export proceeds are not realized 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 present case it is an undisputed fact that the sale proceeds for the goods exported under the 9 shipping bills have not been realized. The applicant has not adduced any evidences showing realization of export proceeds within stipulated time limit of 6 months (as subject Shipping Bills pertain to 2006) from the date of exports in respect of impugned exports. Further, the applicant also failed to submit any extension from Reserve Bank of India regarding time limit for realization of export proceeds. Under such circumstances, Government finds that the applicant has been correctly held as liable to pay back the drawback availed for the reason of failure to realize foreign exchange remittances within stipulated time limit of 6 months or within such extended time period as permitted by Reserve Bank of India, if any. Therefore, the lower authorities have rightly confirmed the recovery of said drawback amount along with interest and imposed penalty.

12. In view of above, Government finds no infirmity in Order of Commissioner (Appeals) and hence, upholds the same.

13. Revision application is thus rejected being devoid of merit.

14. So, ordered.


(RIMJHIM PRASAD)

Joint Secretary to the Government of India

M/s. Tirupur Sri Sentil Cotton Mills Ltd.
S.F.302, Andipalayam,
Mangalam Road,
Tirupur- 641687
Tamilnadu.

Attested

ORDER NO. 21/2015-Cus. DATED 10.07.2015

Copy to:

1. The Commissioner of Customs, Tuticorin.
2. The Commissioner of Customs, & Excise (Appeals), No.1, Williams Road, Contonment, Trichirapalli-620001
3. The Asst. Commissioner of Customs, St. John Inland Container Depot, Tuticorin
4. Guard File.
5. PA to JS (RA)
- ✓ 6. Spare Copy

ATTESTED



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

