

REGISTERED  
SPEED POST



F.No. 375/64/DBK/16-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue... 12/12/18

ORDER NO. 223/18-CUS DATED 7-12-2018 OF THE GOVERNMENT OF INDIA,  
PASSED BY SHRI R.P.SHARMA ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA,  
UNDER SECTION 129 DD OF THE CUSTOMS ACT, 1962.

Subject : Revision Application filed under Section 129 DD of the Customs Act, 1962 against the Order-In-Appeal No. CC(A)/CUS/D-11/ICD/EXP/342/2016 dated 05.04.2016, passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : M/s. Anjal Garments, Noida

Respondent : Commissioner of Customs (Export), Tughlakabad, New Delhi

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**ORDER**

A Revision Application No. 375/64/DBK/2016-RA has been filed by M/s Anjali Garments ( herein after referred to as the applicant) against the order No. (A)/CUS/D-11/ICD/EXP/342/2016 dated 05.04.2016, passed by the Commissioner of Customs (Appeals), New Delhi, whereby the Order-in-Original No. 407/2014 dated 20.11.2014 of the Dy. Commissioner of Customs, ICD, TKD, BRC cell, Delhi, confirming the recovery of Rs. 14,18,630/- against wrongly sanctioned drawback of duty in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995, and imposing penalty of equivalent amount has been upheld.

2. Brief facts of the case are that the applicant had exported goods against the below mentioned shipping Bills and claimed drawback of duty under Customs, Central Excise and Service Tax Drawback Rules, 1995.

S.No	S/Bill No. and Date	Drawback Amt. Paid
1.	1768849 dated 24.09.2007	4,71,980/-
2.	1768822 dated 21.09.2007	4,71,670/-
3.	1768817 dated 24.09.2007	4,74,980/-
	<b>Total</b>	<b>14,18,630/-</b>

3. Since the export proceeds against above Shipping Bills were not realized within one year period as stipulated under the provisions of Foreign Exchange Management Act, 1999 or such extended period allowed by Reserve Bank of India, the Department initiated the proceeding for recovery of the drawback amount along with interest from applicant as per the provisions of Rule 16 A of Customs, Central Excise and Service Tax Drawback Rules, 1995 and its recovery was confirmed by the Assistant Commissioner by passing a speaking

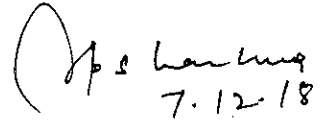
order. Their appeal before Commissioner (Appeals) was also rejected vide his order dated 05.04.2016. Applicant has now filed the instant revision application to challenge the order of Commissioner (Appeals) on the ground that matter is pending before the Hon'ble SCDRC and till it was decided the revision application should have been kept *Pending*.

4. Personal hearing in the matter was attended by Ms. Shruti Iyer, Advocate, on 04.09.2018 for the applicant and reiterated the above grounds which are already made in their Revision Application. However, no one appeared for the respondent and no request for any other date of hearing is also made by them from which it is implied that the respondent is not interested in availing personal hearing in this case.

5. The Government has examined the matter and it is observed that there is no dispute that the export proceeds with respect to the above mentioned shipping bill have not been realized even after 10 years from the date of export and the same is also admitted by the applicant in their revision application also. Therefore, the departmental action under Rule 16 A of Customs, Central Excise & Service Tax Drawback Rules 1995, is maintainable in reference to above mentioned Shipping Bills. As regard the applicant's contention that the matter is pending before the Hon'ble SCDRC, the Government is of the view that Rule 16 A of Customs, Central Excise & Service Tax Drawback Rules 1995, do not bar the departmental authorities from initiating recovery proceedings against the exporter in case the export sale proceeds is not realised within the specified period and any dispute pending before SCDRC can not be a reason for keeping this case in abeyance. However, the Government finds that the penalty of Rs. 14,18,630/- imposed under section 114 of the Customs Act, 1962 is not maintainable as this provision can be invoked only where a person does or omit to do any act because of which the exported goods are rendered liable for confiscation under section 113 of the Customs Act, 1962. Whereas in the instant case no such action or omission on the part of applicant has been pointed out by the department because of which the exported goods could be held liable for confiscation. In fact there is no proposal in the present case for confiscation of the exported goods. On the contrary, it can not be denied that applicant had exported the goods properly and only sale proceeds could not be realized in time for which the applicant has already suffered huge suffered

economic loss. Hence, penalty in the instant case is not at all warranted and accordingly the same is set aside.

6. In view of the above discussion, the Order-in-Appeal is modified and the Revision Application is allowed to the above extent.

  
7.12.18

(R.P.SHARMA)

(Additional Secretary to the Government of India)

M/s.Anjali Garments  
437, Udyog Kendra -II  
Ecotech-III,  
Greater Noida 201301

Order No. 223/18-CUS dated 7-12-2018

Copy to:-

1. Commissioner of Customs (Export), ICD Tughlakabad, New Delh
2. Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi-110037.
3. Assistant Commissioner of Customs, Export, BRC cell, ICD, TKD, New Delhi
4. Shruti Iyer, B-19, Lower Ground Floor, Nizamuddin (East), New Delhi- 110013
5. Guard File.
6. Spare Copy
7. P.S. to AS (RA)

ATTESTED

  
7/12/18

(Nirmla Devi)

Section Officer (REVISION APPLICATION)