

**REGISTERED
SPEED POST**



**F.No. 373/96/DBK/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

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

Date of Issue.....31/1/14

Order No. 23 /14-cus dated 29.1.2014 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. MUM-CUSTOM/AXP-APP/17&18 dated 04-06-2013 passed by the Commissioner of Customs, (Appeals), Mumbai.

Applicant : M/s. G.Text. Inds., No. 19 and 20, 2nd Cross, Nehru Nagar, Sheshadri Puram, Bangalore-560002.

Respondent : Commissioner of Customs, 5th Floor, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Behind S.M. Centre, Andheri (E), Mumbai Zone-400059.

ORDER

This revision application is filed by applicant M/s. G. Tex. Inds., Bangalore against the Order-in-Appeal No. MUM-CUS/AXP-APP/17&18 dated 04-06-2013 passed by the Commissioner of Customs (Appeals), Mumbai with respect to Order-in-Original passed by Assistant Commissioner of Customs DBK (XOS), ACC, Mumbai.

2. Brief facts of the case are that the applicant has obtained a drawback amount of Rs. 2,07,639/- in respect of the exports made by them. Show Cause Notice was issued to applicant demanding the said drawback amount along with applicable interest to on the ground that the exporter have not realized the foreign exchange involved on the goods exported as per rule 16A sub-Rule (1) and (2) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Subsequently, the original authority confirmed demand of erroneously sanctioned drawback.

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 Customs Act, 1962 before Central Government mainly on the following grounds:

4.1 The applicant submit that the Commissioner of Customs (Appeals) has merely gone by the purely observations held by the Assistant Commissioner of Customs in his Order-in-Original dated 03-01-2013 that the applicants failed to attend the hearing and did not submit the relevant document. On the others hands, the facts remain that the applicants had submitted the copies of impugned BRCs, vide their letter dated 06-11-2012, attended that personal hearing held on 08-11-2012 before the Assistant Commissioner of Customs and again submitted copies of the BRCs. The Assistant Commissioner of Customs had perused the copies of BRC's and took objection to the reference numbers and the RBI, AD code appearing

manually on the said BRCs and desired to get the same attested from the AD Bank. Before the documents duly attested by AD Bank in the manner as desired by the Assistant Commissioner of Customs could be submitted to him the assistant Commissioner of Customs passed Order-in-Original dated 03-01-2013 without referring to the submission of the BRCs in the personal hearing held on 08-11-2012 and confirmed the demand of drawback of Rs. 2,07,639/-.

4.2 The applicants submit that the copies of BRCs submitted before the Commissioner of Customs (Appeals) in personal hearing held on 27-02-2013 were not additional fresh documents. These were the same and identical documents as earlier submitted to the Assistant Commissioner of Customs, vide letter dated 06-11-2012 as also in personal hearing held on 08-11-2012 before the Assistant Commissioner of Customs. Therefore, the submission of the BRCs to the Commissioner of Customs (Appeals) as such, is not hit by the restrictions placed in the Customs (Appeals) Rule, as held by the Commissioner of Customs (Appeals).

4.3 The present case, the sale proceeds have been received by the applicant long before 16th July 2010 i.e. the date of issue of Show Cause Notice by the Customs. Therefore, the allegation made in Show cause notice that the applicant has not realized the sale proceeds for exports made against the impugned shipping bills has no legs to stand. There is no dispute other than that the said documentary evidence in support of receipt of sale proceeds by the applicants was not submitted to the Assistant Commissioner of Customs in personal hearing fixed in this regard.

4.4 The applicant do admit that there has been a delay in providing the copies of BRCs to the customs but at the same time, applicants maintain that the said documents were submitted to the customs, vide their letter dated 06-11-2012 as also during personal hearing held on 08-11-2012 before the Assistant Commissioner of Customs. The delay in submission of the documents to the customs is attributable because of the facts that the documents related to the past exports and the documents had to be traced and tracked down at various locations of the applicants, coupled with various festivities in the state of Maharashtra.

5. Personal hearing was scheduled in this case on 30-12-2013. Shri Jagmohan Singh, consultant attended hearing on behalf of the applicant who reiterated the grounds of Revision Application. Nobody attended hearing on behalf of department.

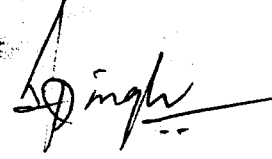
6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that the original authority confirmed the demand of already availed drawback on the ground applicant failed to submit that Bank Realization Certificate. Commissioner (Appeals) upheld impugned Order-in-Original. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government finds that in the present case the demand of erroneously sanctioned drawback was confirmed on the ground that relevant Bank Realization Certificate of realisation of export sale proceeds were not submitted. The applicants have contended that they had submitted the copies of BRC before lower authorities and now again furnished a letter issued by Bank of India which confirms receipt of sale proceeds in time. The said bank letter reveals that sale proceeds were realised within one year's stipulated time period. Government is of considered opinion that if the valid BRC's of export sale proceeds have now been produced then the substantial benefit of impugned drawback cannot be denied to the applicant. The matter is required to be verified at the level of original authority with respect to original case records. If on verification, the said BRC showing receipt of foreign remittances in respect of said export sale proceeds is found in order then the same is required to be accepted and there will not be any reason for recovery of drawback. As such Government sets aside the impugned orders and remands the case back to the original authority for fresh consideration, in terms of above observations. A reasonable opportunity of hearing will be afforded to the applicants.

9. The revision application is disposed off in terms of above.

10. So, ordered.




(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. G.Text. Inds.,
No. 19 and 20, 2nd Cross,
Nehru Nagar, Sheshadri Puram,
Bangalore-560002.

ATTESTED



(टी. आर. आर्य / T.R. ARYA)
अधीक्षक, आर.ए / Superintendent RA
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance, (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Order No. 23 /14-Cx dated 29-1-2014

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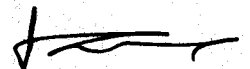
1. Commissioner of Customs, 5th Floor, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Behind S.M. Centre, Andheri (E), Mumbai Zone-400059.
2. The Commissioner of Customs, (Appeals), 5th Floor, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Behind S.M. Centre, Andheri (E), Mumbai Zone-400059.
3. Assistant Commissioner of Customs, DBK (XOS), ACC, Mumbai.
4. Shri Jagmohan Singh, c/o. M/s. G.Tex. Inds., No. 19 and 20, 2nd Cross, Nehru Nagar, Sheshadri Puram, Bangalore-560002.

5. PS to JS(RA)

6. Guard File.

7. Spare Copy

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(T.R.Arya)

SUPRINTENDENT (REVISION APPLICATION)