

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. 371/95/DBK/2019-RA /1084 Date of Issue: 20.02.23

ORDER NO. 243 /2023-CUS (WZ) /ASRA/MUMBAI DATED 17 -02-2023
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 Echjay Industries Pvt. Ltd., Rajkot.

Respondent : Commissioner of Customs (Appeals), Ahmedabad.

Subject : Revision Applications filed under Section 129DD of
Customs Act, 1962 against Order in Appeal No. MUN-
CUSTM-000-APP-294-18-19 dated 21.01.2019 passed
by Commissioner of Customs (Appeals) Ahmedabad.

ORDER

This Revision Application has been filed by M/s Echjay Industries Pvt. Ltd., situated at Lalpari Lake Road, Rajkot-360003 (hereinafter referred to as the "applicant") against Order-in-Appeal No. MUN-CUSTM-000-APP-294-18-19 dated 21.01.2019 passed by Commissioner of Customs (Appeals), Ahmedabad.

2. The brief facts of the case are that the applicant was granted drawback amount of Rs. 1,66,407/- for the exports made vide shipping bill no. 3044059 dated 31.05.2014 and 2770381 dated 17.05.2014. 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 VIII/48-37/BRC/CHM/16-17 dated 07.04.2016 was issued to the applicant proposing to recover an amount of Rs.1,66,407/- being the drawback paid to them in terms of Rule 16A of the Customs, Central Excise, & Service Tax Drawback Rules, 1995 read with Section 75 and 75A of the Customs Act, 1962. The Adjudicating authority vide OIO No. MCH/DC/RT/BRC/107/2018-19 dated 04.05.2018 confirmed the demand of drawback amount of Rs.1,66,407/- along with the interest under Rule 16A of the Customs, Central Excise, & Service Tax Drawback Rules, 1995 read with Section 75 and 75A of the Customs Act, 1962. A penalty of Rs.5000/- was also imposed under Section 117 of the Customs Act, 1962, for non-realization of export proceeds within the stipulated time.

3. Being aggrieved with the aforesaid Order in Original, the applicant filed appeal before Commissioner of Customs (Appeals), Ahmedabad. Commissioner (Appeals) vide his OIA No. MUN-CUSTM-000-APP-294-18-19 dated 21.01.2019 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 That the export proceeds were ultimately realized after one year from the date of let export order, and admittedly there was a delay in realization of the export proceeds. However, the export has been properly completed, and nevertheless the export proceeds were realized; that it is a mere procedural infractions and lapse, beyond the control of the applicant, and therefore the export benefits and incentives available to the applicant as an exporter, should not be denied.

4.2 That the Hon'ble Madras High Court in the case of Ford India Pvt. Ltd. v. Assistant Commr. of C. Ex., Chennai reported in 2011 (272) E.L.T. 353 (Mad.) has held, inter alia, that in the matter of grant of export benefit, liberal interpretation was to be accorded in respect of technical lapses so as not to deny the substantive benefit for procedural infraction/lapse. It is noticed from the said judgment that the Madras High Court approved the views taken by the Government of India in a decision reported in 2006 (204) E.L.T. 632 (in re: Modern Process Printer).

4.3 That it is the settled law in the case of rebate of duty paid on goods exported, that rebate benefit cannot be disallowed on the basis of procedural lapses. Once the fact of export is not deniable, the rebate claim cannot be disallowed merely on the basis of technical/procedural lapses. All the papers/documents produced by the applicant clearly prove the export of the goods. Hence applicant submits that procedure lapses are condonable and rebate cannot be disallowed for procedural lapses. In this context reliance is placed on the following decisions:-

Modern Process Printer - 2006 (204) E.L.T. 632 (G.O.I.)

Barot Exports-2006 (203) E.L.T., 321 (G.O.1.)

CCE v.Indian Overseas Corporation-2001 (137) E.L.T.1136 (T)

Kansal Knitwears v. CCE, Chandigarh - 2001 (136) E.L.T.
467

Non-Ferrous Tech. Dev. Center - 1994 (71) E.L.T. 1081

Ido-Euro Textiles P. Ltd. - 1998 (97) E.L.T. 550

Birla VXL Ltd. v. CCE - 1998 (99) E.L.T. 387

ALPHA Garments v. CCE - 1996 (86) E.L.T. 600 (T) Shantilal
& Bhansali 1991 (53) E.L.T. 558.

4.4 That the prime conditions for the benefit under Drawback Rules, i.e. export is already fulfilled. However, there is certain procedure lapse due to unawareness/beyond the appellant's control. All the relevant documents evidencing export are already filed with the rebate claim. Further, it is settled law that substantial benefit under any notification or scheme cannot be denied just on the basis of procedure lapses. The same ratio applies to the drawback also. They relied upon following judgments:-

Tablets India Ltd. - 2010 (259) E.L.T. 191 (Mad.)

CCE, Bhopal v. Siddharath Food Products GOI Order No.
600/2005, dated 29-11-2005 [2006 (205) E.L.T. 1093 (G.O.I.).

4.5 The applicant further submits that it is the settled law that substantial benefit cannot be denied merely on the basis of procedural lapse. That in the case of Thermex Pvt. Ltd. v. CCE 1992 (61) E.L.T. 352 (S.C.) - it has been held by the Hon'ble Supreme Court that any beneficial legislation is not to be denied merely for the sake of some procedural lapses. Similar view has been taken by the Tribunal in many cases while allowing benefit under various rules/notification. Few citations are as follows:-

Commissioner of Central Excise and Customs, Surat V/s.
Shriram Refrigeration Industries- 1999 (112) E.L.T. 511 (T)

Lupin Laboratories Ltd. V/s. CCE, Bhopal - 1999 (113) E.L.T.
978 (T)

Jay Engg. Works Ltd. V/s. CCE, Calcutta-1-2001 (137) E.L.T.
454

Benara Bearings Pvt. Ltd. v. CCE, Kanpur-1-1999 (105)
E.L.T.398 (Tribunal)

Associated Cement Cos. Ltd. V/s. CCE 1999 (111) E.L.T. 257

Lupin Laboratories V/s. CCE, Indore - 1994 (71) E.L.T. 278 (T)

Nagarjuna Agro Tech. Ltd. V/s. CCE, Hyderabad - 2001
(137)E.L.T. 1106 (T)

Synthetics & Chemicals Ltd. V/s. CCE 1997.(93) E.L.T. 92 (T)

Mangalore Chemicals V/s. UOI reported in 1991 (55) E.L.T.
437.

5.6 That since the submission of the proof of export proceeds was not submitted in time, there is no violation of any of the rules/sections under customs act. Hence, penalty is not imposable under section 117 of the customs act.

5.7 That the confirmation of demands of drawback amounts and the imposition of penalties is not at all sustainable and is liable to be set aside. The applicant requested to set aside the impugned OIA, and to pass necessary orders with consequential relief and thus render justice.

5. A personal hearing in these cases was fixed on 06.12.2022 and 20.12.2022. Shri R. Subramanya, Advocate appeared online and submitted that the BRCs have been received and submitted. He contended that drawback was correctly claimed and he requested to allow the claim.

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 :

9. 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 the stipulated period from the export of the goods. In this cases from the copies of the BRCs enclosed, it is evident that export sale proceeds for the shipments made during the above period have been realized, though there is a delay.

10. Government observes that the applicant has admitted that there was a delay in realization of the export proceeds which was beyond their control. However, they still received the same. Government finds that the Date of Realisation of the Shipping Bills no. 3044059 dated 31.05.2014 was on 31.08.2015 and of 2770381 dated 17.05.2014 was on 14.07.2015, which is rather before the issue of the Show Cause Notice too and the adjudication proceedings. In this case there is no dispute in respect of the export being completed and hence Government holds that the drawback amount sanctioned need not be recovered

11. In view of the above discussion and findings Government sets aside Order in Appeal No. MUN-CUSTM-000-APP-294-18-19 dated 21.01.2019 passed by Commissioner of Customs (Appeals) Ahmedabad and allows the Revision Application filed by the applicant.

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


(SHRAWAN KUMAR)

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

ORDER No. 243/2023-CUS (WZ) /ASRA/Mumbai Dated 17-02-2023

To,

1. M/s Echjay Industry Pvt. Ltd., A/C-2, Lalpari Lake Road, Rajkot-360003
2. The Commissioner of Customs, P.U.B. Building, Mundra, Kutch, Gujarat.

Copy to:

1. Commissioner of Customs (Appeals) Ahmedabad, 7th Floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad-380009
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.