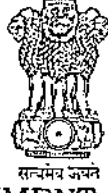


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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

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

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F.No. 373/109/DBK/2015-RA / 6083

Date of Issue: 20/10/2021

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ORDER NO. 261/2021-CUS (SZ)/ASRA/MUMBAI DATED 07.10.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CMB-CEX-000-APP-254-14 dated 12.12.2014 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals-I), Coimbatore.

Applicant : M/s Tulip Clothing Pvt. Ltd.

Respondent : Commissioner of Customs, Coimbatore.

**ORDER**

This Revision Application is filed by M/s Tulip Clothing Pvt. Ltd., No. 5 & 6, M.P. Nagar, Kongu Nagar Extension, Tirupur – 641 607 (hereinafter referred to as “the Applicant”) against the Order-in-Appeal No. . CMB-CEX-000-APP-254-14 dated 12.12.2014 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals-I), Coimbatore.

2. Brief facts of the case are that the Applicant was granted Rs. 7,12,981/- (Rupees Seven Lakhs Twelve Thousand and Nine Hundred and Eighty One Only) as drawback under Section 75 of the Customs Act, 1962 read with the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 for the export(s) made through Air Cargo, Coimbatore. It was noticed that the Applicant had failed to produce/ submit the evidence of realization of export proceeds in respect of the said export of goods within the period allowed under the Foreign Exchange Management Act, 1999 read with Regulations, 2000 and Para 2.41 of Export & Import Policy 2009-14 and Section 75 of Customs Act, 1962 evidencing the realization of sale proceeds in respect of Shipping Bills under which the goods had been exported. Hence, a Show Cause Notice dated 23.12.2011 was issued to the Applicant calling upon to show cause as to why the drawback amount of Rs. 7,12,981/- already paid to them should not be recovered from them. The details are given below:

Sl.No.	SCN Ref.No.	S/B No.	S/B date	Granted Drawback Amount (Rs)
1	VIII/23/849/2011-ICD, TPR dated 23.12.2011	7957	27.05.2008	31,356
2		7958	27.05.2008	26,356
3		8132	29.05.2008	5,439
4		8133	29.05.2008	2,132
5		11989	22.08.2008	3,55,162
6		12735	19.09.2008	1,46,731
7		15438	24.11.2008	1,456
8		15691	28.11.2008	14,769
9		15692	28.11.2008	17,940
10		15693	28.11.2008	27,241
11		15694	28.11.2008	54,073
12		15695	28.11.2008	1,880
13		16835	24.12.2008	6,273
14		922	24.01.2009	7,065
15		1240	03.02.2009	3,453
16		1241	03.02.2009	3,453
17		2425	18.03.2009	2,075

18		2426	18.03.2009	6,127
			total	<b>7,12,981</b>

After due process of law, the adjudicating authority Assistant Commissioner of Customs, BRC Cell, Coimbatore vide Order-in-Original No. 674/2014-AC-BRC Cell dated 26.02.2014 confirmed the demand of Rs. 7,12,981/- along with appropriate interest under Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Section 75A(2) of the Customs Act, 1962. Aggrieved, the Applicant then filed appeal with the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore. The Commissioner(Appeals) vide Order-in-Appeal No. CMB-CEX-000-APP-254-14 dated 12.12.2014 rejected their appeal due to non-compliance of the mandatory provisions of Section 129E of the Customs Act, 1962 and upheld the Order-in-Original dated 26.02.2014.

3. Being aggrieved, the Applicant then filed the current Revision Application on the following grounds:

- (i) The Applicant submitted that as directed by the Commissioner(Appeals) they had made the pre-deposit through Indian Bank, Tirupur who had initially accepted the TR6 Challan and within a couple of days, the Indian Bank, Tirupur had returned the pre-deposit amount that we have deposited by means of a DD and intimated that they cannot accept such pre deposit amount manually. They had been searching the option to pay the amount online which was not materialized. In the meanwhile, they could not appear for the Personal Hearing as the Staff who was looking after the issue left the company without intimation.
- (ii) The Applicant's company has been closed and was facing crucial financial problem, they have no proper officer who are knowledgeable in the customs field to co-ordinate the resort the issue.
- (iii) The appeal rejected for non-compliance of provisions of Sec.129E is not sustainable as the issue for which the Order in Original has been issued are pertaining to the period of year 2008 which is well before the amended Act of Sec.129E. Hence their appeal was rejected without going into the merit of

the case is unjust and the same may be considered for passing orders on merit.

- (iv) The export proceeds related to the shipping bills have been fully realized they had already submitted the Bank Realizations Certificates to the original authority within the stipulated time. Further they have submitted the copy of BRCs along with the revision application.
- (v) They had not received any Show Cause Notice or any PH letter from the original authority and hence could not submit the copies of relevant BRCs
- (vi) As the exports were effected around six years ago, they are not able to submit the relevant proof for having submitted the BRCs to the Customs Authority then. As they have enough proof to the effect that proceeds of the exports in issue was realized, the Applicant is entitled to the benefit of Duty Drawback amount of Rs.7,12,981/-.
- (vii) The Applicant prayed that impugned Order-in-Appeal be set aside and drop the demand of duty drawback.

4. Personal hearing in the case was granted on 05.03.2021, 12.03.2021, 16.07.2021 and 20.07.2021. However, none appeared for the hearing. Hence the case is taken up for decision based on records on merits.

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

6. On perusal of the records, Government observes that the Applicant was issued a Show Cause Notice dated 23.12.2011 as to why the drawback amount of Rs. 7,12,981/- already paid to them should not be recovered from them. After due process of law, the adjudicating authority Assistant Commissioner of Customs, BRC Cell, Coimbatore vide Order-in-Original No. 674/2014-AC-BRC Cell dated 26.02.2014 confirmed the demand of Rs. 7,12,981/- along with appropriate interest under Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Section 75A(2) of the Customs Act, 1962.

Aggrieved, the Applicant then filed appeal with the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore. The Commissioner(Appeals) vide Order-in-Appeal No. CMB-CEX-000-APP-254-14 dated 12.12.2014 rejected their appeal due to non-compliance of the mandatory provisions of Section 129E of the Customs Act, 1962 and upheld the Order-in-Original dated 26.02.2014.

7. Government finds that the Applicant have submitted the Bank Realization Certificate issued by Axis Bank, Tirupur as per the chart in respect of following Shipping Bill:

Sl.No.	S/B No.	S/B date	Axis Bank, Tirupur BRC dated
1	7957	27.05.2008	12.06.2008
2	7958	27.05.2008	12.06.2008
3	8132	29.05.2008	12.06.2008
4	8133	29.05.2008	12.06.2008
5	11989	22.08.2008	06.01.2009
6	12735	19.09.2008	19.09.2008
7	15438	24.11.2008	10.12.2008
8	15691	28.11.2008	10.12.2008
9	15692	28.11.2008	10.12.2008
10	15693	28.11.2008	10.12.2008
11	15694	28.11.2008	10.12.2008
12	15695	28.11.2008	10.12.2008
13	16835	24.12.2008	06.01.2009
14	922	24.01.2009	02.02.2009
15	1240	03.02.2009	19.01.2009
16	1241	03.02.2009	19.01.2009
17	2425	18.03.2009	03.04.2009
18	2426	18.03.2009	03.04.2009

10. Government finds that inspite of evidence of realization of export proceeds as above, the adjudicating authority had confirmed the duty drawback amount along with interest vide Order-in-Original dated 26.02.2014 which is not legal and proper.

11. Government notes that the Applicant had not received the Show Cause Notice nor the PH letter. Hence Government holds that the impugned Order-in-Original dated 26.02.2014 was passed without giving an opportunity of hearing to the Applicant and therefore it could not take into account the fact of realization of export proceeds.

12. It is evident that the Applicant has realized the remittances within the stipulated time in respect of drawback amounting to Rs. 7,12,981/- and non-submission of the same cannot negate the fact of realization. Therefore, Government is of the view that the Applicant's claim of realization of proceeds within due time requires verification from the original authority.

13. Under the circumstances, considering the principles of natural justice, Government sets aside the impugned Order-in-Appeal No. CMB-CEX-000-APP-254-14 dated 12.12.2014 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals-I), Coimbatore and remands back the instance case to the original authority for fresh consideration with the direction to decide the matter on merits after giving opportunity of being heard to the Applicant within eight weeks from receipt of this order.

14. The Revision Application is allowed in above terms.

  
7/10/21  
(SHRAWAN KUMAR)

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

ORDER No. 261/2021-CUS (SZ)/ASRA/Mumbai Dated 07.10.2021

To,  
M/s Tulip Clothing Pvt. Ltd.,  
No. 5 & 6, M.P. Nagar,  
Kongu Nagar Extension,  
Tirupur - 641 607.

Copy to:

- 1) The Commissioner of Customs, 6/7 ATD Street, Race Course Road, Coimbatore - 641 018.
- 2) Sr. P.S. to AS (RA), Mumbai
- 3) Guard file
- 4) Spare Copy.