

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. 373/02/DBK/15-RA / 7393 Date of Issue: 24.12.2021

ORDER NO. 327 /2021-CUS (SZ) /ASRA/MUMBAI DATED 23-12-2021
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s KGI Clothing Private Limited, Chennai.

Respondent : Commissioner of Central Excise & Customs, Coimbatore
Customs.

Subject : Revision Applications filed under Section 129DD of Customs
Act, 1962 against Order in Appeal No. CMB-CEX-000-APP-
238-14 dated 21.11.2014 passed by Commissioner of
Customs, Central Excise, & Service Tax, (Appeals)
Coimbatore.

ORDER

This Revision Application has been filed by M/s KGI Clothing Private Limited, Chennai (hereinafter referred to as the "applicant") against Order-in-Appeal No. CMB-CEX-000-APP-238-14 dated 21.11.2014 passed by Commissioner of Customs, Central Excise, & Service Tax, (Appeals) Coimbatore.

2. The brief facts of the case are that the applicant was granted drawback amount of Rs. 15,37,070/- on the goods exported through ICD, Tirupur. As 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 C.No. VIII/23/218/2011-ICD-TPR dated 29-06-2011 was issued to the applicant proposing to recover: (i) an amount of Rs 15,37,070/- (being the drawback paid to them) under the provisions of Rule 16 and 16A of the Customs, Central Excise, & Service Tax Drawback Rules, 1995 read with the provisions of Section 142 of the Customs Act, 1962; (ii) the interest under Section 2 of section 75A of the Customs Act, 1962 & (iii) Penalty under the provisions of section 117 of the Customs Act, 1962. The Adjudicating authority vide OIO No.400/2014-AC Customs (BRC) dated 25.02.2014 ordered recovery of amount of Rs.15,37,070/- along with the interest and imposed penalty of Rs.1000/- for failing to furnish evidence for realization of export proceeds within the stipulated time.

3. Being aggrieved with the said Order in Original, the applicant filed appeal before Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore on the grounds that they had filed all the BRCs to the department on 05.07.2011 and again on 6.04.2013. Commissioner (Appeals) vide impugned Order 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 The applicant submitted that the Order-in -Original is devoid of merits and violation of principles of natural justice. They had received a total amount of Rs15,37,070/- as drawback in respect of the exports made by them under 24 shipping bills during the period from December 2007 to July, 2008. They had received the sale proceeds of all the said export within the prescribed time limit and had informed the fact to the customs authorities through their CHA.

4.2 The applicant further submitted that after receiving the SCN, they again submitted the BRCs in original to the Superintendent of Customs, ICD, Tirupur on 05.07.2011 which was acknowledged by the Supdt. They sent the copies of the BRCs again on 04.03.2013 by RPAD, on receipt of the department letter dated from 04.03.2013.

4.3 The Adjudicating authority passed the Order in Original without examining the factual position and without causing necessary verification of the records available with his office and had come to a factually incorrect conclusion that the applicant has not filed the evidence of realization of export proceeds.

4.4 The Adjudicating authority failed to verify the relevant records and facts available with his own office and passed the orders of recovery in haste. This leads to suggest that the Adjudicating authority acted in a biased manner in violation of principles of natural justice.

4.5 The applicant submitted that they had not contravened any provisions of law warranting any action on them and the demand of the drawback with interest is unjustifiable, unwarranted and unsustainable. In spite of explaining all these factors and even after submitting the relevant documents, they did not get justice from the First Appellate Authority.

4.6 In a similar case where the BRCs were available with the exporter but could not be produced to the adjudicating authority because neither show cause notice nor the Order in Original specifically mentioned the shipping Bills in relation to which the BRCs were required to be produced, the Hon'ble Revisionary Authority vide Order No. 51/2013-Cus Dated 08.02.2013 in Re: M/s Maestro Fashions, Tirupur, remanded the case back to the Original Authority for considering the issue afresh. In the present case they have already submitted BRCs to the ICD and obtained acknowledgment from the Superintendent on the covering letter. Applying the ratio of the aforesaid order of the Revisionary authority end of the justice will be met if matter is sent back to original authority to verify the BRCs and pass appropriate orders afresh.

5. A personal hearing in these cases was fixed on 12.10.2021. Mr. Ashish Chouhan, Advocate appeared for the hearing on behalf of the applicant. He appeared online and reiterated his earlier submissions. He submitted that BRCs were submitted before Commissioner (Appeals) but he did not consider the same. He stated that all BRCs have been submitted along with RA and requested to set aside the Order of Commissioner (Appeals).

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

From perusal of above provision, it is evident that the drawback is recoverable, if the export proceeds are not realized within stipulated time limit or extension given by RBI, if any.

9. Government observes that the applicant has claimed that they had filed BRCs in respect of the impugned Shipping Bills pertaining to December 2007 to July 2008 through their CHA, vide letter dated

04.07.2011 duly acknowledged by the Supdt. of Customs ICD, Tirupur on 05.07.2011 and through RPAD on 10.04.2013.

10. Also, from the copy of BRC for 24 Shipping Bills issued by State Bank of India, Trade Finance CPC, Chennai, which is claimed to have been submitted by the applicant to the department, shows that the applicant has received the sale proceeds in time in respect of impugned shipping Bills which are tabulated as under:-

Sl. No.	Shipping Bill Number	Date	Amount of Drawback (Rs)	Date of Realization of Export Proceeds
1.	22970	12.12.2007	72119	18.01.2008
2.	23120	13.12.2007	72816	18.01.2008
3.	2972	13.02.2008	39788	05.03.2008
4.	3062	14.02.2008	51523	05.03.2008
5.	3421	21.02.2008	20563	13.03.2008
6.	3702	26.02.2008	97632	14.03.2008
7.	3703	26.02.2008	45725	14.03.2008
8.	3835	28.02.2008	40012	14.03.2008
9.	3841	28.02.2008	27617	14.03.2008
10.	7903	23.05.2008	24708	25.06.2008
11.	8074	29.05.2008	17710	25.06.2008
12.	8505	05.06.2008	42760	01.07.2008
13.	8630	09.06.2008	134599	04.07.2008
14.	8631	09.06.2008	95664	16.06.2008
15.	8663	10.06.2008	79986	07.07.2008
16.	8691	11.06.2008	113869	16.06.2008
17.	8692	11.06.2008	94568	04.07.2008
18.	8845	12.06.2008	107305	04.07.2008
19.	9092	18.06.2008	94923	10.07.2008
20.	9093	18.06.2008	80180	10.07.2008
21.	9475	25.06.2008	62040	30.07.2008
22.	9917	03.07.2008	11469	25.07.2008
23.	10143	10.07.2008	59203	01.08.2008
24.	10159	17.07.2008	50291	05.08.2008
		Total	1537070	

11. 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 six months from the export of the goods. But in these 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 received/realized within the stipulated period as mentioned in the tables above.

12. In view of the above discussion and findings Government sets aside Orders in Appeal No.CMB-CEX-000-APP-238-14 dated 21.11.2014 passed by Commissioner of Customs, Central Excise, & Service Tax, (Appeals) Coimbatore and allows the Revision Application filed by the applicant.

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


23/12/21
(SHRAWAN KUMAR)

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

ORDER No. 325/2021-CUS (SZ) /ASRA/Mumbai Dated 23/12/21

To,

M/s. KGI Clothing Pvt. Ltd.,
No.2, Seethamal Road,
Alwarpet,
Chennai- 600018.

RA Associates, Flat No.7,III Floor, MASCOT,
RAS Subhiksha, Behind Deepam Hospital,
Opp to Alverina Convent, Trichy Road,
Ramanathapuram, Coimbatore-641045

Copy to:

1. Pr. Commissioner of Customs, No.6/7, ATD Street, Race Course Road, Coimbatore-641018
2. Commissioner of Customs (Appeals) Coimbatore Customs, No.6/7, ATD Street, Race Course Road, Coimbatore-641018
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.