

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. 373/01/DBK/15-RA

/ 2412

Date of Issue:

29.12.2021

ORDER NO. 326 /2021-CUS (SZ) /ASRA/MUMBAI DATED^{28.12} -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 New Man Exports.

Respondent : Commissioner of Central Excise & Customs (Appeals),
Coimbatore.

Subject : Revision Applications filed under Section 129DD of
Customs Act, 1962 against Order in Appeal No. CMB-
CEX-000-APP-158-14 dated 18.09.2014 passed by
Commissioner of Customs, Central Excise, & Service
Tax, (Appeals) Coimbatore.

ORDER

This Revision Application has been filed by M/s New Man Export, situated at SF. No, 270, Opp. EB Office, Mangalam Road, Andipalayam, Tirupur-641687 (hereinafter referred to as the "applicant") against Order-in-Appeal No. CMB-CEX-000-APP-158-14 dated 18.09.2014 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. 7,77,509/- 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/23/466/2011-ICD-TPR dated 01-01-2011 was issued to the applicant proposing to recover: (i) an amount of Rs 7,77,509/- (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.468/2014-AC Customs (BRC) dated 10.02.2014 ordered recovery of amount of Rs.7,77,509/- 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 the BRCs in respect to 10 shipping Bills (out of 11) to the department on 09.11.2011 and again on 6.05.2013. BRC of Shipping Bill No.3602 dated 23.02.2008 was not furnished as it did not pertain to the applicant.

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 Orders of the lower authorities were passed without proper application of settled position of law and thus are liable to be set aside.

4.2 The applicant further submitted that they had realised the sale proceeds in foreign exchange in respect of the impugned SBs within the time limit specified under the Foreign Exchange Management Act, 1999 and the regulations made there under in respect of all the 10 SBs that pertain to them while one shipping does not pertain to them.

4.3 The applicant submitted that under the proviso to Section 75(1), only when the sale proceeds are not realised within the time limit stipulated under the FEMA, 1999, action for recovery of such drawback sanctioned could be initiated. In this case the sale proceeds had been realized within the time limit and hence the drawback sanctioned is in Order. Commissioner Appeals while dismissing the appeals of the applicant has failed to appreciate the fact that the applicants have furnished Bank Realization Certificates in respect of the subject 10 shipping Bills that pertains to them.

4.4 Commissioner Appeals while dismissing the appeals of the applicant has failed to appreciate the fact that the applicants have furnished Bank Realization Certificates in respect of the subject 10 shipping Bills that pertains to them. In the instant case the export proceeds were repatriated well within the time limit stipulated and submitted to the adjudicating authority within 30 days of receipt of the

Show cause Notice. Commissioner Appeal failed to appreciate the documentary evidences submitted by the applicant.

4.5 The applicant referred to various decisions of CESTAT and Government of India wherein it has been held that procedural infringements/violations shall not come in the way of substantial benefits available to the assessee.

4.6 The applicant requested to set aside the impugned Orders.

5. A personal hearing in these cases was fixed on 12.10.2021. Shri Arun Ramaswamy, Partner, appeared for the hearing. He appeared online and reiterated his earlier submissions. He submitted that all BRCs are available and the same can be produced to the local authorities for verification. He requested to allow the claim or to remand the matter to the local authority.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original, Order-in-Appeal, BRCs submitted 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 are 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 November 2007 to February 2008 vide letter dated 09.11.2011 duly acknowledged by the Supdt. of Customs ICD, Tirupur on 09.11.2011.

10. Also, from the copy of BRC for 10 Shipping Bills issued by The Lakshmi Vilas Bank, Tirupur Branch, enclosed along with the Revision

application, which is claimed to have been already 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.	21105	06.11.2007	20008	11.01.2008
2.	21278	14.11.2007	16826	18.01.2008
3.	22488	05.12.2007	112294	06.02.2008
4.	22560	06.12.2007	256640	18.01.2008
5.	22880	10.12.2007	12587	18.01.2008
6.	24298	28.12.2007	64198	27.02.2008
7.	57	02.01.2008	107732	04.03.2008
8.	1501	23.01.2008	95202	26.03.2008
9.	2706	08.02.2008	24144	28.02.2008
10.	2707	08.02.2008	44414	05.03.2008
11.	3602	23.02.2008	23464	Does not pertain to them
		Total of Sr No.1 to 10	754045	

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. In respect of the Shipping Bill No. 3602 dated 23.02.2008 Government finds that the applicant has informed that the shipping bill does not pertain to them and that they have not received any drawback in respect of the same.

12. In view of the above discussion and findings Government sets aside Orders in Appeal No.CMB-CEX-000-APP-158-14 dated 18-09-2014 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.


28/12/21

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No.326 /2021-CUS (SZ) /ASRA/Mumbai Dated 28.12.2021

To,

M/s. New Man Exports,
SF No. 270, Opp. EB Office,
Mangalam Road, Andipalayam,
Tirupur-641687

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.