

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. 373/208/DBK/15-RA

7418

Date of Issue:

29.12.2021

ORDER NO. 328 /2021-CUS (SZ) /ASRA/MUMBAI DATED 29 -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 129DD OF CUSTOMS ACT,
1962.

Applicant : M/s Gates Wears, Tirupur.

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-109-15 dated 08.05.2015 passed by
Commissioner of Customs, Central Excise, & Service
Tax, (Appeals) Coimbatore.

ORDER

This Revision Application has been filed by M/s Gates Wears, situated at 362/3A, Pudhupalayam, Kangeyam Road, Tirupur 641606 (hereinafter referred to as the "applicant") against Order-in-Appeal No. CMB-CEX-000-APP-109-15 dated 08.05.2015 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. 1,09,617/- 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/48/05/2005/ICD/TPR dated 13-06-2006 was issued to the applicant proposing to recover an amount of Rs 1,09,617/- (being the drawback paid to them) under the provisions of Rule 16A of the Customs, Central Excise, & Service Tax Drawback Rules, 1995 alongwith the interest under Section 2 of section 75A of the Customs Act, 1962. The Adjudicating authority vide OIO No.03/2014-Customs dated 23.12.2014 ordered recovery of amount of Rs.1,09,617/- along with the interest, 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. 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:-

4.01 The applicant submitted that the Order-in -Original is violation of principles of natural justice and devoid of merits. The Orders have been passed without verifying the office records.

4.02 The applicant further submitted that they did not receive the SCN dated 13.06.2006, they only received letter dated 10.09.2014 asking them to attend the Personal Hearing with attested copies of BRCs or the Negative Certificates. They did not attend the hearing but filed the Negative Certificates issued by the CA, before the date of the personal hearing.

4.03 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.

4.04 The applicant submitted that they received the sale proceeds of all the export within the prescribed time limit and the same was reported to the authorities through their CHA immediately. The issue pertains to the exports made during the year 2005 and the realisation of the sale proceeds were immediately informed to the authorities.

4.05 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.

4.06 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.

4.07 In view of the above the applicants requested to set aside the Orders and pass any other Order as may be deemed fit.

5. A personal hearing in these cases was fixed on 12.10.2021. Shri Sankaranarayana K., Consultant, appeared for the hearing on behalf of the applicant. He appeared online and stated that they were not given opportunity to submit BRCs which are available. He stated that written submission has been submitted and requested to drop the case by setting aside the OIAs.

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 the realization of export proceeds in respect of the impugned Shipping Bills pertaining to August 2005, were received within the prescribed time limit and the same was reported to the Customs Authorities through their CHA. They had subsequently submitted the C.A. Certificate vide letter dated 18.09.2014 on receipt of the letter for personal hearing wherein it was certified that the export proceeds for export made during the period 1.07.05 to 31.12.05 have been received.

10. Also, from the copy of BRC for 2 Shipping Bills issued by The South Indian Bank Ltd., Tirupur, 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.	23686	22.08.2005	22473	10.09.2005
2.	24338	31.08.2005	87144	20.09.2005
		Total	109617	

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 Order in Appeal No.CMB-CEX-000-APP-109-15 dated 08.05. 2015 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.


29/12/21
(SHRAWAN KUMAR)

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

ORDER No. ~~328~~ /2021-CUS (SZ) /ASRA/Mumbai Dated 29.12.2021

To,

M/s Gate Wears,
362/3A, Puthupalayam,
Kangeyam Road,
Tirupur 641606.

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.