

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. 371/151/DBK/2018-RA

1024

Date of Issue: 20.03.2023

ORDER NO. 374/2023-CUS (WZ) /ASRA/MUMBAI DATED 23-03-2023
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 GE Plastics India Ltd. (Now SABIC Innovative
Plastics Pvt.Ltd)

Respondent : Commissioner of Customs (Export), ACC, Mumbai.

Subject : Revision Applications filed under Section 129DD of
Customs Act, 1962 against Order in Appeal No. MUM-
CUSTM-AXP-APP-990-17-18 dated 31.01.2018 passed
by Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This Revision Application has been filed by M/s GE Plastics India Ltd. (Now Sabic Innovative Plastics India Pvt. Ltd.(hereinafter referred to as the "applicant") against Order-in-Appeal No. MUN-CUSTOM-AXP-APP-990-17-18 dated 31.01.2018 passed by Commissioner of Customs (Appeals), Mumbai-III.

2. The brief facts of the case are that the applicant was granted drawback amount of Rs. 9,52,002/- for the exports made vide Shipping Bill Nos. 5235541,5235542,5235543 &5235544 all dated 30.01.2014. The applicant had not produced any evidence to show sale proceeds [Foreign Exchange] in respect of goods for which it had obtained drawback, within the time limit stipulated by the Foreign Exchange management Act, 1999. Therefore the applicant was issued a Demand-Cum-Notice to Show Cause F. No. S/3/MISC/DBK-XOS-1474/2010-11 ACC dated 17.07.2010 under Rule-16(A) Sub Rule (1) & (2) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with section 75A(2) of the Customs Act, 1962, wherein it was demanded that the applicant refund the drawback amount of Rs. 9,52,002/- along with interest which it had obtained for export of goods under Shipping Bill Nos. 5235541,5235542,5235543 &5235544 all dated 30.01.2014. The advocate submitted copies of four Bank Realization Certificates for the export of goods under the said shipping Bills and also submitted that the name of appellant company has changed to Sabic Innovations Pvt Limited. But the Adjudicating Authority found that the export proceeds were realized after 8 months of the exports and not within stipulated time period of six months. The applicant had also not produced any proof of extension of time limit granted by Reserve Bank of India in this regard before the Adjudicating Authority. The Adjudicating Authority vide his OIO No.AC/HKT/DBK/XOS/163/2014-15/ACC dated 09-07-2014 confirmed the demand of drawback of Rs. 9,52,002/- with applicable interest under Rule 16[A] Sub-Rule [1] & [2] of Customs,

Central Excise duties and Service Tax Drawback Rules, 1995 read with Section 75[A] & Section 28AA of the Customs Act, 1962.

3. Being aggrieved with the aforesaid Order in Original, the applicant filed appeal before Commissioner of Customs (Appeals), Mumbai-III. Commissioner (Appeals) vide his OIA No. MUM-CUSTM-AXP-APP-990-17-18 dated 31.01.2018 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 in respect of all the 4 Shipping Bills dated 30.1.2004, the export proceeds was realized on 22.4.2004 that means just within period of 3 months and not even 6 months, which is the permissible limit.; that the Applicant have actually and physically exported the goods and have received the foreign exchange remittance also at appropriate time. Necessary proof of realization of foreign exchange has also been submitted by the Applicant to the Customs Department.

4.2. That the Adjudicating Authority had incorrectly recorded that the Applicant had not submitted any documents regarding Change of Name of the Company. As per their Advocate's letter dated 28.10.2013, the Applicant had submitted the following documents to substantiate the fact and records about Change of Name:

- a) Copy of scheme of Arrangement and De-merger between M/s GE India Industrial Pvt. Ltd. and M/s Enduring Plastics Pvt. Ltd.
- b) Order dated 29.8.2007 passed by the Hon'ble High Court of Gujarat in Company Petition No.157 of 2007 connected with Company Application No.234 of 2007 sanctioning the aforesaid Arrangement and De-merger scheme.
- c) Certificate of Incorporation No.U25202GJ2007PTC050658 dated 25.4.2007 in the name of M/s Enduring Plastics Pvt. Ltd.

- d) Fresh Certificate of Incorporation consequent upon change of name dated 18.9.2007 certifying change of name from M/s Enduring Plastics Pvt. Ltd. to M/s SABIC Innovative Plastics India Pvt. Ltd.

4.3. That when foreign exchange has been realized as per the BRCs, the Department does not have any power to recover the duty drawback. Rule 16(A)(1) & (2) of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 read with Section 75A(2) and Section 28AA of the Customs Act, 1962 which is invoked, does not contemplate recovery of duty drawback on the sole ground of alleged (wrongly) late realization of foreign exchange.

4.4. That the exports have been effected under the cover of subject Shipping Bills. The number and date of the Shipping Bills are reflected in the Bank Realization Certificates. It is thus manifest that the export proceeds which have been realized were in respect of exports made by M/s. GE Plastics Ltd. and the subject BRCs indicated the new name of the Applicants only because of the reason of change in name to M/s. SABIC Innovative Plastics Ltd.

4.5. That the impugned order is also contrary to the provisions of the Customs Act, 1962 and the Rules made thereunder and also the provisions of the other laws applicable to the issues involved in the appeal.

4.6. In view of the above 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 Subramanyam Kaza, Advocate appeared online and submitted that the BRCs have been submitted but the same have not been looked into by the adjudicating or appellate authority. He further

submitted that demand has been confirmed even though foreign exchange has been realised. He requested to allow the application.

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.

10. Government finds that the Adjudicating Authority has observed in his Order that the BRCs indicate that the export proceeds were realized in all the four cases on 29-9-2004 when the export was on 21-01-2004 i.e not within the stipulated period of six months. Government finds that the Date of Realisation of the export proceed were on 29-09-2004, which is rather quite before the adjudication proceedings and issue of the Show Cause Notice too. 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. MUM-CUSTOM- AXP-APP-990-17-18 dated 31.01.2018 passed by Commissioner of Customs (Appeals) Mumbai-III and allows the Revision Application filed by the applicant.

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

Shrawan
23/3/23
(SHRAWAN KUMAR)

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

ORDER No. *371*/2023-CUS (WZ) /ASRA/Mumbai Dated *23*-03-2023

To,

1. M/s GE Plastics India Ltd. (Now Sabic Innovative Plastics India Pvt. Ltd.), Plastics Avenue, P.O. Jawaharnagar, Dist. Vadodra-391 320.
2. The Pr. Commissioner of Customs (Export), Air Cargo Complex, Sahara, Andheri (East), Mumbai -400099

Copy to:

1. Commissioner of Customs (Appeals) Mumbai-III, Awas Corporate Point, (5th Floor), Makwana Lane, Behind S.M.Centre, Andheri-Kurla Road, Mumbai-400059
2. The A.C. Drawback (XOS), ACC, Mumbai, Andheri (East), Mumbai -400099
3. Sr. P.S. to AS (RA), Mumbai,
4. Guard file
5. Notice Board.