

SPEED POST
REGISTERED 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, Cuff Parade,
Mumbai- 400 005

F. NO. 371/152/DBK/2018-RA | 1831

Date of Issue: 29.03.2023

ORDER NO. 391 /2023-CUS(WZ) /ASRA/Mumbai DATED 29.03.2023
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.

Applicant : M/s Fairdeal Filaments Ltd. (Now M/s Shahlon Silk
Industries Ltd).

Respondent : The Commissioner of Customs (Appeals), Ahmedabad.

Subject : Revision Applications filed, under Section 129DD of the
Customs Act, 1962 against the Orders-in-Appeal No. MUN-
CUSTM-000-APP-378-17-18 dated 17-02-2018, passed by
the Commissioner of Customs (Appeals), Ahmedabad

ORDER

This Revision Application is filed by M/s Fairdeal Filaments Ltd (now M/s Shahlon Silk Industries Ltd (hereinafter referred to as "the applicant") against the Order-in-Appeal No. MUN-CUSTOM-000-APP-378-17-18 dated 17-02-2018 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. The brief of the case is that the applicant had exported goods under the shipping bills and claimed drawback, as incorporated in Chapter X of Customs Act, Section 75 of the Customs Act, 1962 read with Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, The applicant was paid Drawback of Rs.2,32,903/- in respect of the shipping bills 8296651/ 11.3.2015 & 8722770/ 31.3.2015 and as per the XOS issued by RBI, the realization of drawback was outstanding. As per Rule 16A(2) of the Duty Drawback Rules, 1995, 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/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, thirty days, the Assistant Commissioner/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. Accordingly, a show cause notice was issued for recovery of drawback along with interest under Rule 16A of the Drawback Rules, 1995, read with Section 75 and 75A of Customs Act, 1962 and Penalty under Section 117 of Customs Act, 1962, was also imposed for violating the provisions of Section 75 of the Customs Act, 1962 read with Rule 16A of Customs and Central Excise duties drawback Rules, 1995. After following the due process, the adjudicating authority viz Deputy Commissioner, Customs (BRC), Customs House, Mundra vide Order-In-Original No

MCH/DC/DG/BRC/677/2016-17 dated 26.12.2016 and issued on 20.1.2017 confirmed the demand of drawback of Rs.2,32,903/- along with interest under Rule 16A of the Drawback Rules, 1995 read with Section 75 and 75A of the Customs Act, 1962 and a Penalty of Rs.25,000/- was imposed on the appellant under Section 117 of the Customs Act, 1962.

3. Being aggrieved by the Order in Original, the applicant filed an appeal before the Commissioner of Customs (Appeals-I), Ahmedabad. The Appellate Authority vide Order in Appeal No. MUN-CUSTOM-000-APP-378-17-18 dated 17-02-2018 rejected the appeal and upheld the Order in Original.

4. Being aggrieved with the impugned Order in Appeal, the applicant has filed this Revision Application on the following grounds that:

4.1. That the non-realized export proceeds compensated by the ECGC may be treated as realized export proceeds.

4.2 That, it is not in dispute that the goods have been exported by the Appellants and that drawback would be granted to the exporter only when export have been taken place from any port of India. Thus, such demand of drawback amount is clearly a grave injustice to the exporter when it is proven that exports have been made but export proceeds not realized due to default of overseas buyer and the same have been compensated by insurance authority (Export ECGC) as a part of insurance claim.

4.3 That the Public Notice No. 47 (RE-2013)/2009-14 dated 08.01.2014 issued by DGFT, states that the claim settled by insurance agency ECGC would be termed as realization of export proceeds. This fact was brought to the knowledge of the Commissioner (Appeals) and that squarely applicable to the facts of the instant case.

4.4 That the adjudicating authority in para 7.2.1 has mentioned about applicability 'Power to Relax' as per Rule 17 of Drawback Rules, 1995 which read as "If the Central Government is satisfied that in relation to the export of any goods, the exporter or his authorised agent has, for reasons beyond his control, failed to comply with any of the provisions of these rules, and has thus been entitled to drawback, it may, after considering the representation,

if any, made by such exporter or agent, and for reasons to be recorded in writing, exempt such exporter or agent from the provisions of such rule and allow drawback in respect of such goods." However, the Adjudicating and the Appellate Authority refrained themselves from keeping the matter in call book and forwarding their submissions to the Central Government so that the non-realization of the export proceeds could be equated with compensated of such proceeds by ECGC. The Applicants requested to permit them for making application to the Central Government for allowing the ECGC realization towards fulfilment of export proceeds realization.

4.5. That the applicants are continuously making correspondence with Embassy, Ministry and Bank for issuing necessary certificate but till date nothing been heard from their side.

4.6. That when no duty is demandable or there is no violation of law, no interest can be demanded and penalty cannot be imposed.

4.7. In view of the above facts and circumstances, the Applicants requested to kindly set aside the impugned OIO as well as OIA by allowing the appeal in full with consequential relief to the Appellants.

5. A Personal hearing in the matter was granted on 15-11-2021, 19-11-2021, 13-12-2022 and 10-01-2023. Shri Santosh Soni, Consultant appeared online on 10-01-2023 and submitted that DBK was disallowed as remittance was not received. He submitted that ECGC has reimbursed foreign remittance. He further submitted that Commissioner Appeal has not considered this. He requested to allow their claim.

6. 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.

7. The Government notes 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 199 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 there under viz within six months in this case 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 :.....

(5) Where sale proceeds are not realised by an exporter within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but such non- realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale

proceeds from the buyer, the amount of drawback paid to the exporter or the claimant shall not be recovered.

9. From perusal of provision 16(A) (5), it is evident that the drawback is not recoverable even if the Sale proceeds have not been realized by the exporter within the period allowed under FEMA, 1999, under the following circumstances:

- i) Non realization is compensated by ECGC of India Ltd under an Insurance cover;
- ii) Reserve Banks writes off the sale proceed on merit; &
- iii) Foreign Mission of India issues a Certificate as to the non-recovery of the sale proceeds from the buyer.

10. The careful reading of above provisions make it clear that all the conditions have to be fulfilled, then only the relaxation is available. Though, the applicant has claimed that they have received the ECGCG Insurance, they have neither submitted any letter from the Reserve Bank writing off the Export proceeds nor the Certificate issued by the Foreign Mission certifying non-recovery of the sale proceeds from the buyer. Hence the said provision was not applicable to the applicant as no evidence as prescribed above was produced. Further Government observes the following points:

- a) The applicant has submitted that they had exported the goods to their overseas buyer but not received any export proceeds from their overseas buyer, within 180 days and so they approached ECGC for compensation of non-realization of export proceeds and ECGC settled the claim. The copy of the ECGC letter is dated 8-8-16.
- b) The letter 03.08.2016 of the Branch Manager, ECGC, Mumbai Branch addressed to M/s. Farideal Filaments Ltd., on the subject matter of claim under Policy No.SCR 0570000224 in respect of shipment/s to M/s.1000575171 Tunisia, states that the ECGC had proposed to pay to the exporter, Rs.1,96,85,100/- Le. 75% of the amount of admissible loss, in full and final settlement instead of 80 /90% ie the amount of export proceeds in respect of impugned

- shipping bills, claimed to have been settled is not for full amount of export proceeds but only for 75% of the amount of export proceeds.
- c) They have submitted copies of letter written to Foreign Mission for the Certificate; The applicant has attached the copy of the letter wherein they have requested the Second Secretary, Embassy of India in Tunisia requesting to provide the certificate to the Exporter;
 - d) The goods were exported vide Shipping Bills No. 8296651 dated 11-03-2015 and 8722770 dated 31-03-2015 i.e in the year 2015. It is observed that till date they could neither obtain the Letter from RBI writing off the sale proceeds on merit nor the certificate issued from the Foreign Mission;
 - e) The applicant has only submitted the copy of the ECGC letter dated 08-08-2016;
 - f) The applicant has submitted that the in view of Public Notice No. 47 (RE-2013)/2009-14 Dated 8/1/2014, the claim settled by insurance agency ECGC would be termed as realization of export proceeds. Government finds that the said notice is for Processing of claims by the DGFT where an exporter gets payment by Insurance Agencies (not through banks). The applicant has not submitted any document evidence about the compliance of the said procedure. In this case the claim is settled only for 75% of the amount of export proceeds and not for the full amount of export.

11. In view of the above, Government finds that the appellate authority has correctly held that in terms of Rule 16A of the Drawback Rules, 1995, the exporter is required to pay the drawback amount which represents the proportion of export proceeds not realized. Further Government observes that the lower authorities have addressed to all the points submitted in the grounds of appeal. The applicant has neither put forth any new grounds nor any new documents evidencing realization of export proceeds. Commissioner Appeal in his OIA has summarized as under:

"16. I find that Rule 16A of the Customs, Central Excise duties and service Tax drawback rules, 1995, allows recovery of amount of drawback where export proceeds not realized. I find that Section 75 of the Customs Act, 1962, provides that where any drawback has been allowed on any goods under this sub-section and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the FEMA, 1999, such drawback shall [except under such circumstances or such

conditions as the Central Government may, by rules, specify] be deemed never to have been allowed and the Central Government may, by rules made under sub-section (2), specify the procedure for the recovery or adjustment of the amount of such drawback. I find that the adjudicating authority has dealt with this issue in the impugned order in para 7.3.2 and has observed that - in terms of Rule 16A of the Drawback Rules, 1995, the exporter is required to pay the drawback amount which represents the proportion of export proceeds not realized. He also observed that since demand of drawback is confirmed hence demand of interest also gets confirmed under the provisions of Section 75A of Customs Act, 1962. The interest is liable to be paid under Section 75A, at the rate fixed under Section 28AA of the Customs Act, 1962. The case relied by the appellant therefore, is not applicable in the matter as the provisions invoked by the adjudicating authority are proper.

17 Appellant has contended that the penal provisions could not be attracted in the case as the non-realization of export proceeds from overseas buyer were beyond the control of the appellants, therefore, the penalty imposed to be set aside. The adjudicating authority in para 7.4.3 of the impugned order has observed that in respect of the said Shipping bills, no export proceeds were realized. As per the provisions of FEMA and instructions issued by RBI, as discussed in the impugned order, the export proceeds should have been realized within stipulated period from the date of export, however, the export proceeds in the instant case was not received by the exporter within due date. Neither any proof was produced by the exporter showing extension given by RBI for realization of export proceeds. I find that the exporter has still not submitted any documents from the concerned Foreign Mission of India as required in terms of Rule 16A(5) of the Drawback Rules, 1995. I find that in the decision of the M/s Roop Dyes & Intermediates passed by the same adjudicating authority vide Order-in-Original No.MCH/DC/DG/BRC/673/16-17 dated 26.12.2016, where the material facts were similar the adjudicating authority in the impugned order had imposed penalty of Rs.5000/- for wrong availment of drawback claim of Rs.253458/-. In the instant case, the wrong availment of drawback amounts to Rs.232903/-, therefore, I find that ends of justice would meet if the penalty of Rs.25,000/- imposed under Section 117 of the Customs Act, 1962, on the said appellant is reduced.

18. In view of the above, the appeal is partly allowed to the extent it reduces the penalty on the said appellant to Rs.5000/- (Rupees five thousand only) imposed under Section 117 of the Customs Act, 1962, and rest of the appeal is rejected. The order of the lower authority is modified to the extent mentioned above."

12. In view of the above Government does not find any infirmity in the Commissioner Appeal's impugned OIA No MUN-CUSTOM-000-APP-378-17-18 dated 17-02-2018 and rejects the applicant's appeal.

13. Revision Application is disposed off in above terms.

Shrawan Kumar
24/3/23
(SHRAWAN KUMAR)

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

ORDER No. *391*/2023-CUS(WZ) /ASRA/Mumbai DATED *24* 03.2023.

To,

1. M/s Fairdeal Filaments Ltd. (now Shalon Silk Industries Ltd.) 3rd Floor, Dawar Chambers, Near Sub Jail, ring Road, Surat-395002, Gujarat.
2. The Principal Commissioner of Customs, Custom House, Mundra , Kutch, Mundra Port & Spl Economic Zone, Mundra-370421.

Copy to:

1. The Commissioner of Customs (Appeals), Ahmedabad, 7th floor, Mrudul Towers, Behind Times of India, Ashram Road, Ahmedabad-380009.
2. The Deputy Commissioner (BRC) Custom House, Mundra , Kutch, Mundra Port & Spl Economic Zone, Mundra-370421.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Notice Board.