

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. 371/156/DBK/18-RA 1857

Date of Issue: 29.03.2023

ORDER NO. 397 /2023-CUS (WZ)/ASRA/MUMBAI DATED 28.03.2023
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. Roop Dyes & Intermediates

Respondent: The Pr. Commissioner of Customs, Mundra, Kutch.

Subject : Revision Applications filed, under Section 129DD of the Customs
Act, 1962, against the Order-in-Appeal No. Mun-Custm-000-
App-246-17-18 dated 06.11.2017 passed by the Commissioner
of Customs(Appeals),Ahmedabad.

ORDER

This Revision Application has been filed by M/s. Roop Dyes & Intermediates (hereinafter referred to as "the applicant"), against the Order-in-Appeal No. Mun-Custm-000-App-246-17-18 dated 06.11.2017 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Brief facts of the case are that the applicant had exported goods under the shipping bills and claimed drawback under section 75 of the Customs Act, 1962 read with Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The details are as:

Sr. No.	S/B No. & Date	Invoice Amount	Realized Amount	DBK Claimed	DBK to be Recovered
1	7205065/20.01.2012	2546229	0	80304	80304
2	9589247/27.06.2012	3136477	0	91826	91826
3	8924536/15.05.2012	2932265	0	81328	81328

3

In all the three shipping bills, buyer defaulted in payment. Applicant received the export proceeds from ECGC under insurance cover for non realization of the export proceeds. Accordingly, a show cause notice was issued to the Applicant for recovery of drawback along with interest and penalty. Adjudicating Authority vide OIO No. MCH/DC/BRC/673/2016-17 dated 26.12.2016 confirmed the demand. Being aggrieved by the aforesaid order-in-original the applicant filed appeal before Commissioner of Customs (Appeals), Ahmedabad, who vide Order-in-Appeal No. Mun-Custm-000-App-246-17-18 dated 06.11.2017 rejected their appeal.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application under Section 129 DD of the Customs Act, 1962 before the Government on the following grounds:

- i. despite of best effort made by the applicant, the sale proceed was not realized from the buyer and later-on the sale proceeds was compensated

- by the Export Credit Guarantee Corporation of India Ltd. (ECGC) under an insurance cover.
- ii. the applicant has also provided the Copy of certificate issued by the concerned Banker that the amount against the shipment in question was written off by the Banker as per Guidelines.
 - iii. Government has provided relaxation from recovery of the Drawback Amount from the exporter in case of non-realisation of sale proceeds, the condition of Sub-Rule 5 of Rule 16A of Drawback Rules, 1995 is fulfilled by the applicant. However, in the applicant case, applicant has complied the 2 condition out of 3 conditions provided by the Govt.. However, towards the 3rd Condition, the applicant has approached to the concerned Foreign Mission of India for the required certificate towards the fact of non-recovery of sale proceeds from the buyer, but the concerned Foreign Mission of India did not respond and did not provided such certificate. The correspondence made by the Applicant to this effect is already enclosed under RA Application.
 - iv. that being an exporter, the applicant only can made a request to concerned Foreign Mission of India and cannot compelled to do so, hence, non receipt of required certificate for non-realisation from concerned Foreign Mission of India is beyond the control of Applicant. However, the applicant has given their best effort by sending the request and follow-ups by different mails which is already attached with the RA.
 - v. there were some delay in the filing of Revision Application (condonable period) was also happened due to waiting of the certificate from the concerned Foreign Mission of India but when the applicant did not get the response from the concerned Mission, they choose to file RA with request to condone the delay in filing of the Revision Applicant.
 - vi. In view of above, Applicant requested to
 - i. to set aside the impugned Order-in-Appeal.
 - ii. not to impose penalty
4. Personal hearing in the case was held on 15.11.2022, the hearing was attended online by Shri Dharmendra Kr. Singh, Advocate on behalf of the

Applicant and submitted that recovery of drawback has been confirmed. He submitted that applicant has obtained a write off from bank as per drawback rules 16A(5). He also drew attention to Rule 17 of Drawback rules. He also submitted a written note and requested to allow the application.

5. Government has carefully gone through the relevant case records available in case files, perused the impugned Order-in-Original, Order-in-Appeal.

6. It is observed that the applicant is aggrieved by Order-in-Appeal No. Mun-Custrm-000-App-246-17-18 dated 06.11.2017 wherein their appeal was rejected on ground of non submission of certificate from foreign mission as required in terms of Rule 16A(5) of Drawback Rules,1995. Therefore, the issue to be decided in the instant case is whether non submission of such certificate can be a reason to deny the drawback.

7. The Government notes that the impugned order in appeal was received by the applicant on 10.11.2017 and the instant Revision Application was filed on 07.05.2018. The Government observes that the applicant has given sufficient cause for not filing the instant Revision Application within a period of three months from the date of receipt of the impugned Order in Appeal. Government first proceeds to discuss issue of delay in filing this revision application. The chronological history of events is as under:

(a)	Date of receipt of impugned Order-in-Appeal dated 06.11.2017 by the applicant	10.11.2017
(b)	Date of filing of revision application by the applicant	07.05.2018

From the above position, it is clear that applicant has filed this revision application after 178 days after the receipt of impugned OIA. As per provisions of Section 129DD of Customs Act,1962 the revision application can be filed within 3 months of the communication of Order-in-Appeal and the delay up to another 3 months can be condoned provided there are justified reasons for such delay. Government, in exercise of power under Section 129DD of Customs Act,1962 condones the said delay and takes up revision application for decision on merit.

8. Government observes that provisions of recovery of already sanctioned drawback have been prescribed under Section 75 of Customs Act, 1962 and Rule 16A of Customs and Central Excise duties drawback Rules, 1995. In the present case, the point of contention is that the Applicant could not submit the certificate from foreign mission as required in terms of Rule 16A(5) of Drawback Rules, 1995 which is reproduced as under :

"(5) Where sale proceeds are not realized by an exporter within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but such non-realization 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 realization 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"

From the above it is clear that in order to avail the benefits stipulated under the Rule 16 A(5) of the Drawback Rules, 1995, the exporter is required to fulfill following three conditions:

- i. Non realization of sale proceeds is compensated by the ECGCI.*
- ii. To submit proof showing the requirement of realization of sale proceeds being written off by the Reserve Bank of India on merits and*
- iii. To produce a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer*

Government finds in the instant case that sales proceeds have been compensated by ECGCI, Applicant have adduced the copy of certificate issued by the concerned banker wherein it is acknowledged that amount against the shipment in question was written off by the Banker as per guidelines. In respect of the certificate from the concerned Foreign Mission, Applicant submitted that they have made their best efforts to get the certificate and have made a written request, followed up the same but could not obtain the certificate as Mission did not respond to their request despite their several follow-ups. They further submitted the copies of correspondences made to the

concerned Foreign Mission in support of their argument. Government finds that Applicant had done whatever he could do in his capacity to obtain that certificate from the concerned Foreign Mission. It is also clear from the Banker's Certificate submitted by the Applicant that this non recoverable amount from the client has also been written off by the Bank. Furthermore, the Applicant was compensated by the ECGC against that non realization of export proceeds. Therefore, considering the facts of the case, Applicant can not be denied the benefits of Drawback claim under the provisions of Rule 16A(5) of Drawback Rules,1995.

9. In view of above, Government sets aside the Order-in-Appeal No. Mun-Custm-000-App-246-17-18 dated 06.11.2017 passed by the Commissioner of Customs(Appeals),Ahmedabad and allows this revision application.


28/3/23
(SHRAWAN KUMAR)

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

ORDER No. 397 /2023-CUS (WZ)/ASRA/Mumbai DATED 28.03.2023

To,

1. M/s. Roop Dyes & Intermediates, 65/P3, GIDC Estate, Wadhwan City, Gujrat- 363035.
2. The Pr. Commissioner of Customs, Custom House, Mundra Kutch, Mundra Port & SPL Economic Zone, Mundra, Kutch, Gujrat-370421.

Copy to:

1. Commissioner of Customs (Appeals),Mrudul Tower, B/H Times of India, Ashram Rd., Ahmedabad-380009.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.