

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. 371/248/DBK/2018-RA

/2065

Date of Issue:

12/04/2023

ORDER NO. H2A/2023-CUS (WZ) /ASRA/MUMBAI DATED 05-04-2023
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 CUSTOMS ACT,
1962.

Applicant : M/s Burlington Exports.

Respondent : Commissioner of Customs (Appeals), Mumbai Zone-III

Subject : Revision Applications filed under Section 129DD of
Customs Act, 1962 against Order in Appeal No. MUM-
CUSTM-AXP-APP-90-18-19 dated 15-05-2018 passed
by Commissioner of Customs (Appeals) Mumbai
Customs, Zone -III.

ORDER

This Revision Application has been filed by M/s Burlington Exports (hereinafter referred to as the "applicant") against Order-in-Appeal No. MUM CUSTM-AXP-APP-90-18-19 dated 15-05-2018 passed by Commissioner of Customs (Appeals) Mumbai Customs Zone-III.

2. The Brief facts of this case is that the applicant was granted a drawback amount of Rs.70,14,319/- on the goods exported. 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. Hence a Demand-Cum-Notice to Show Cause dated 12.05.2010, was issued to raise a demand of Rs.70,14,319/- being the drawback amount obtained by the applicant for the exports made under the 644 Shipping Bills mentioned in the annexure attached thereto. The exporter did not appear for PH on any of the given days to present their case and also failed to produce the evidence of remittance of sales proceeds in foreign currency. The case was adjudicated and demand of drawback alongwith applicable interest was confirmed vide Order-in-Original No. CAO No. AC/SY/3214/2012-13/ADJ/ACC dated 31.10.2012. Aggrieved by the said order, the applicant filed an appeal with Commissioner (Appeals). The Commissioner Appeal vide Order-in-Appeal No. Mum-Custm-AXP-696 & 697/13-14 dated 25.03.2014 directed the applicant to submit to the department for verification, the original/certified copies of the documents evidencing timely receipt of export proceeds and also Dy./Asstt. Commissioner (Drawback) was directed to pass an order after due consideration of documents submitted by the applicant and allowing him an opportunity of being heard.

3. Accordingly, the applicant was given personal hearing and Deputy Commissioner, Drawback (XOS), ACC, Mumbai vide his OIO No.

DC/Vivek/901/14-15/ACC dated 31-03-2015 confirmed the demand of Rs.18,35,336/- for 157 shipping Bills enlisted in the Order along with the interest payable and dropped the proceedings initiated against the exporter for the rest of the shipping bills mentioned in the Annexure to the SCN. Aggrieved by the impugned Order dated 31-03-2015, the applicant filed appeal with the Commissioner of Customs (Appeal) Mumbai Zone-III who vide OIA No. MUM CUSTM-AXP-APP-90-18-19 dated 15-05-2018 upheld the Order in Original.

4. Being aggrieved with the impugned Order in Appeal, the applicant filed the instant Revision Applications mainly on the following common grounds:-

4.1 CBEC Circular No.05/2009 dated 2.2.2009 and Public Notice No.05/2009 dated 07.03.2009 clarifies that certificate from Chartered Accountant is a valid evidence for substantiating the realization of export proceeds. The Applicants have submitted certificate dated 28.04.2017 issued by Dayal & Lohia, Chartered Accountants, certifying therein that the Applicants have realized export proceeds for shipments covered under 132 shipping bills forming part of the said certificate. It has also been certified by the Chartered Accountant that the realizations of the amount against the said exports were also supported by bank realization certificates. The Annexure to the said CA Certificate provides details of shipping bills, corresponding foreign bill transaction advice, invoices, airway bill, etc. The said CA certificate fulfils the requirement stipulated under CBEC Circular No. 05/2009 dated 2.2.2009 and Public Notice No.05/2009 dated 07.03.2009.

4.2 That D.C, while adjudicating the matter in denovo proceedings, has accepted the Foreign Bill Transaction Advice (FBTA) issued by Vijaya Bank as proof of realization but holds that these are not valid documents as the same do not reflect the shipping bill numbers for co-relation. That illustrative 11 sets of copies of documents were submitted which showed the shipping bill numbers on the copies of Foreign

Documentary Bill for Negotiation (FDBN), which is an application by the Exporter M/s Burlington Exports to the Vijaya Bank, on the basis of which the Vijaya Bank issued the FBTAS. That there are copies of the Invoices and the Airway Bills which correspond to the respective Shipping Bills. That a set comprising of all these documents would show the linkage and the co-relation with the Shipping Bills. That a comprehensive statement/chart showing details of shipping bills, FBTAS, FDBNs, Invoices and Airway Bills establishing clearly shipping bill-wise linkage as well as co-relation, duly certified the Chartered Accountant viz.M/s Dayal & Lohia, was submitted.

4.3 That in respect of 26 Shipping Bills in which case no documentary evidence has been produced, the practical factual position of closure of the units, shifting of the office and other records etc. were explained and more particularly, it was emphasized that in spite of the difficult circumstances, the Applicants did obtain certificates from the Chartered Accountant on the basis of the other Books of Accounts certifying that the export proceeds were realized.

4.4 It is not in dispute that the goods have been exported under the disputed 157 Shipping Bills. The applicants submitted that it is not in dispute that the Exporter have received the export proceeds in their account of Vijaya Bank through which the export documents were negotiated in respect of these 157 Shipping Bills.

4.5 The Applicants submitted that in respect of 26 Shipping Bills for which no documents were allegedly submitted, it is submitted that the same were not readily traceable due to closure of the Exporter's unit and shifting of Exporter's office. However, the books of accounts so maintained by the Exporter could be very much traced and the Chartered Accountant of the Exporter, after verifying the same and after getting satisfied, has certified the realization of the export/sale proceeds. Further, in all the proceedings involving accounts, a

certificate of the Chartered Accountant is considered as valid document. The Exporter has accordingly submitted the same as evidence in token of having realized of the sale proceeds.

4.6 The Appellants submit that in respect of 131 Shipping Bills, the documents namely Foreign Bill Transaction Advice and Statement of Accounts issued by the Vijaya Bank through which the export documents were negotiated, were submitted which was not accepted by the Appellate Authority on the grounds that these documents do not bear the details of the Shipping Bills against which the remittance has been realized.

4.7 The Appellants submit that there are no other grounds for not accepting these documents except that there is no co-relation with the respective Shipping Bills and that all such documents did bear the linkage with the respective Shipping Bill. The Applicants submitted the illustrative sets of documents wherein each such set showed the Invoice details, AWB, and Foreign Bills Transaction Advice associated with important document namely FOREIGN DOCUMENTARY BILL FOR NEGOTIATION and submitted that the Shipping Bills Numbers are very much shown clearly therein with date and the amount..

4.8 In view of the above, the applicants requested to set aside the impugned OIA and to hold that the Applicants have realized export proceeds of the goods exported covered under shipping 131 shipping bills involving drawback of Rs.17,62,582/-, as evidenced from Foreign Bill Transaction Advice, Statement of Account issued by Vijaya Bank as proof of realization and Certificate of Chartered Accountant and to hold that the Applicants have also realized export proceeds of the goods exported covered under shipping 26 shipping bills involving drawback of Rs.72,754/-, as evidenced from Certificate of Chartered Accountant.

5. A personal hearing in these cases was scheduled on 12.10.2021. Mrs Padmavati Patil, Advocate ad Mr. Anil Wani, Advocate, appeared for the hearing on behalf of the applicant. They informed that they have submitted a reconciliation letter from the Bank and a CA Certificate confirming receipt of foreign exchange remittances. They also referred to their letter date 17-01-2023 in which CA Certificate has been submitted confirming receipt of remittances. They requested to allow their 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 :

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. 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 in this case the Adjudicating authority has not accepted the proof of export realisation of 131 shipping bills on the ground that the FBTA (issued by Vijaya Bank) submitted by the applicant cannot be correlated with the Shipping Bills and in respect of 26 Shipping bills on the grounds that no documentary evidence has been produced.

10. Government observes that CBEC Circular 5/2009 has held as under

“5. In the light of decisions taken by the Board, the Directorate General of Systems has developed a BRC (Bank Realization Certificate) Software for ICES, the salient features of which are the following:-

(a) The exporters filing Shipping Bills (S/Bs) under drawback shall furnish a declaration to the Assistant Commissioner /Deputy Commissioner(Drawback).....

(b) The system would generate on all Drawback Shipping Bills, the due date for submission of BRCs.....

*(c) The exporter shall submit a certificate from the Authorized Dealer(s) in respect of whom declaration has been filed containing details of the shipments which remain outstanding beyond the prescribed time limit, including the extended time, if any, allowed by AD/RBI. **Such a certificate can also be provided by a Chartered accountant in his capacity as a statutory auditor of the exporter's account. A proforma for furnishing such negative statement is enclosed as Annexure.** Further, the exporters also have the option of giving a BRC from the concerned authorized dealer(s)".*

The applicant has submitted the copy of Certificate dated 28-04-2017 wherein they have certified that duty drawback totaling to Rs.18,02,232 for 132 shipments have been realized. They again submitted Certificate dtd 16.01.2023, issued by the Chartered Accountant certifying that export proceeds made against the aforesaid 132 Shipping Bills have been realized and that there are no outstanding export proceeds against any of the exports made by M/s Burlington Exports against the said 132 Shipping Bills. In view of the aforesaid Circular the CA Certificate submitted by the applicant is a relevant document. Further Government observes that the applicant have enclosed the FBTA (issued by Vijaya Bank) alongwith the Invoices, Airway Bills etc and have claimed that these documents show the correlation with the shipping bill.

11. In this case though the applicant has submitted the Chartered Accountant's certificate, the details of realization of the export proceeds needs to be verified. Government directs the applicant to submit all the relevant details to the original adjudicating authority and the

adjudicating authority is directed to reexamine the issue and decide the case based on its merits.

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


5/4/23
(SHRAWAN KUMAR)

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

ORDER No. H24/2023-CUS (WZ) /ASRA/Mumbai Dated 05-04-2023

To,

1. M/s. Burlington Exports, C/o Treasures of India, Block D, Office No.7, Fhanraj Mahal Building, Apollo Bunder Road, Near Gateway of India, Mumbai-400001.
2. Commissioner of Customs (Export), ACC, Sahar, Andheri (East), Mumbai-400099

Copy to:

1. Commissioner of Customs (Appeals) Mumbai-III, Awas Corporate Point (5th Floor), Makwana Lane,, S.M.Centre, Marol, Mumbai-400059.
2. D.C. (Export), ACC, Sahar, Andheri (East), Mumbai-400099
3. Sr. P.S. to AS (RA), Mumbai
- ✓ 4. Guard file
5. Notice Board.