

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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. NO. 371/241/DBK/2019-RA  
F. NO. 371/242/DBK/2019-RA  
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Date of Issue: 12.04.2023

ORDER NO. <sup>M27-</sup>429 /2023-CUS (WZ) /ASRA/MUMBAI DATED 13-03-2023  
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 : 1. M/s Rainbow Export  
2. M/s Rainbow Industries  
3. M/s Rainbow Export

Respondent : Commissioner of Customs (Appeals), Ahmedabad.

Subject : Revision Applications filed under Section 129DD of  
Customs Act, 1962 against Order in Appeal No. MUN-  
CUSTM-000-APP-296-298-18-19 dated 24.01.2019  
passed by Commissioner of Customs (Appeals)  
Ahmedabad.

**ORDER**

These Revision Applications have been filed by M/s Rainbow Export & Rainbow Industries (hereinafter referred to as the “applicants”) against Order-in-Appeal No. MUN-CUSTOM-000-APP-296-298-18-19 dated 24.01.2019 passed by Commissioner of Customs (Appeals), Ahmedabad as detailed below:

Sl No	Applicant Name	Order-in-Original Number	Order-in-Original Date	Amount involved
1	2	3	4	
1	Rainbow Export	MUN-CUSTOM-000-APP-296-298-18-19 dated 24.01.2019	MCH/DC/RT/BRC/534/2017-18 20.03.2018	38407
2	Rainbow Industries		MCH/DC/RT/BRC/532/2017-18 20.03.2018	136851
3	Rainbow Export		MCH/DC/RT/BRC/533/2017-18 20.03.2018	88681

2. The brief facts of the case are that the applicant was granted drawback amount of:

- i) Rs. 38,407/- for the exports made vide shipping bill no. 2634876 dated 17-11-2012;
- ii) Rs. 86,681/- (Rs.55,891/- and Rs. 30,790/- for the exports made vide shipping bill no. 5028374 dated 16-09-2014 and 4430770 dated 14.08.2014);
- iii) Rs.1,36,851/- for the exports made vide Shipping Bills no.4835347 dated 05.09.2014, 4338028 dated 09.08.2014, 5250016 dated 27.09.2014 and 1448345 dated 06.03.2014.

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 Notices F.NO. VIII/48-10/BRC/CHM/15-16 dated 09.02.2016, VIII/48-81/BRC/CHM/16-17 dated 18.04.2016 and VIII/48-82/BRC/CHM/16-17 dated 18.04.2016 were issued by the Deputy Commissioner (BRC), Custom House, Mundra to the aforesaid Applicants to show cause as to why:

- i. the amount as indicated above, received by them as drawback, along with the appropriate interest, should not be recovered from them under Rule 16A of the Drawback Rules 1995, read with Section 75 and 75A of the Customs Act, 1962 read with Section 142 of the Customs Act, 1962.
- ii. Penalty should not be imposed on them under section 117 of the Customs Act, 1962 for violating the provision of Section 75 of Customs Act, 1962 and Rule 16A of the Customs & Central Excise Duties Drawback Rule, 1995.

The adjudicating authority had vide above mentioned impugned orders confirmed the demands of drawback as mentioned in above tables, along with interest under Rule 16A of the Drawback Rules 1995, read with Section 75 and 75A of the Customs Act, 1962 and imposed penalty under Section 117 of the Customs Act, 1962 on the applicant, as the export proceeds have not been realized within the period permitted under the FEMA Rules/Regulations.

3. Being aggrieved with the aforesaid Orders in Original, the applicants filed appeal before Commissioner of Customs (Appeals), Ahmedabad. Commissioner (Appeals) vide his OIA No. MUN-CUSTOM-000-APP-296-298-18-19 dated 24.01.2019: i) upheld the Orders-in-Original No. MCH/DC/RT/BRC/534/2017-18 dated 20.03.2018 and MCH/DC/RT/BRC/532/ 2017-18 dated 20.03.2018 and rejected the applicant's appeal in respect of holding that the BRCs were not submitted within the stipulated time & ii) partially set aside the Order-in-Original No. MCH/ DC/RT/BRC/533/2017-18 dated 20.03.2018.

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 the applicant is a bonafide businessman who had tried all efforts to get export sale proceeds from their overseas buyers but for reasons beyond control, overseas buyer had delayed payment of proceeds for exports under one or the other reason. That they continuously followed the issue and made adequate efforts to get sale proceeds of exports made by them. Applicant has been successful in getting the sale proceeds in respect of the said shipping Bills. However, E-BRC could not be issued by Bank in the permitted time limit. The applicant had also taken up the matter with RBI for allowing extension of the time for producing E-BRC in respect of Shipping Bills referred to in O-1-Os. That the RBI had extended time limit upto 30-09-2018 under FEMA 1999 for securing the export sales proceeds and producing E-BRC.

4.2 That "substantive benefit" available otherwise should not be denied on procedural/technical lapses. Non receipt of sales proceed and producing BRC is a technical violation relating to procedural lapse by the Appellant beyond their control. This may be condoned. In this regard, the applicant relied on the following case laws:

- a) Suksha International v. UOI 1989 (39) E.L.T. 503 (S.C.),
- b) Union of India v. A.V. Narasimhalu 1983 (13) E.L.T. 1534 (S.C.),
- c) Formica India v. Collector of Central Excise - 1995 (77) E.L.T. 511 (S.C.),
- d) Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner 1991 (55) E.L.T. 437 (S.C.).

This view of condoning procedural infractions in favour of actual export having been established has been taken by Tribunal/Govt. of India in a catena of orders, including Birla VXL Ltd. - 1998 (99) E.L.T. 387 (Tri.),

Alpha Garments - 1996 (86) E.L.T. 600 (Tri.), T.I. Cycles 1993 (66) E.L.T. 497 (Tri.), Atma Tube Products 1998 (103) E.L.T. 270 (Tri.), Creative Mobus - 2003 (58) RLT 111 (GOI), Ikea Trading India Ltd. - 2003 (157) E.L.T. 359 (GOI) and a host of other decisions on this issue.

4.3 The impugned OIOs and O-I-As requires to be set aside, when the goods are exported and the sale proceeds have also been received in India in extended time limit. Fact is that when RBI has extended time limit till 30-09-2018, this recovery order becomes contrary to the facts of export and realization of export sales proceeds within permitted time limit.

4.4 Relied upon the case reported in 2015 (329) E.L.T. 747 (G.0.1.)- IN RE: ZAZ AND ZAZ PVT. LTD., KANPUR, in a similar case of recovery of Drawback sanctioned, it has also been held that Drawback - Duty Drawback - Recovery of - Export proceeds- Non-realization of - Time limit for realization of export sale proceeds extended by Reserve Bank of India - E-BRCS in respect of shipping bills evidencing realization of export sales proceeds within extended time limit verified by department from concerned bank and found acceptable No case for recovery of already sanctioned drawback claims - Impugned order set aside - Rule 16A of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. [para 9]. Application allowed. Present case is still on a better footing.

4.5 The applicant has exported goods undisputedly and received sale proceeds also within time limit extended upto 30-09-2018, there is no case for any recovery of drawback sanctioned till 30-09-2018 and imposition of penalty.

4.6 In view of the above submissions considering facts and circumstances of the case, OIOs and the OIAs are not sustainable and requested to set aside the same and to pass necessary orders with consequential relief and thus render justice.

5. A personal hearing in these cases was fixed on 17-11-2022, 1-12-2022 and 05.01.2023. Shri Bhavin Patel Proprietor appeared online and submitted that Bank has given them permission to realise export proceeds till 2018. He further submitted that all the export proceeds relevant in these applications have been received. He requested allow the applications.

6. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original, Orders-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, though there is a delay.

10. Government observes that the applicant has admitted that there was a delay in realization of the export proceeds which was beyond their control. However, they still received the same. The applicant along with

the appeal, has submitted the copies of the BRCs, letter from Bank of Baroda issued to the Applicants asking them to submit the documentation/realisation details of export proceeds in respect of the shipping bills pending for more than two years in EDPMS and that *'the deadline for exemption from provisions relating to caution listing of exporters has been extended till **September 30, 2018**'*. It can be concluded from this letter from the Bank that the applicant has been granted time limit till 30<sup>th</sup> September, 2018 to submit the realization of export proceeds. The shipping bills pertaining to OIOs no MCH/DC/RT/BRC/532/2017-18 and MCH/DC/RT/BRC/533/2017-18 dated 20.03.2018 are appearing in the said list. The copy of the BRCs enclosed show that the export proceeds have been realized before 30<sup>th</sup> September 2018 in respect of all the Shipping Bills. Though the shipping bill pertaining to OIO No. MCH/DC/RT/BRC/533/2017-18 dated 20.03.2018, is not appearing in the Bank's letter, the applicant has enclosed the copy of the BRC which shows that the export proceeds has been realized. Government finds that in all these cases, there is no dispute in respect of the export having been completed.

11. Government observes that the applicant has submitted copies of realization details and the verification of documents would be essential in this case. Hence Government finds that the original authority needs to decide the matter after due verification of documents in terms of extant Drawback Rules and Rule 16[A] of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The applicant should be given opportunity to provide all the documents evidencing receipt of foreign remittances. The Original Adjudicating Authority is directed to pass appropriate Order in accordance with law after following principles of natural justice.

12. In view of the above discussion and findings, Government sets aside Orders in Appeal No. MUM-CUSTOMS-APP-296-298-18-19



dated 24.01.2019 passed by the Commissioner of Customs (Appeals),  
Mumbai Zone-III.

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

  
(SHRAWAN KUMAR)

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

ORDER No. <sup>H27-</sup>~~H29~~/2023-CUS (WZ) /ASRA/Mumbai Dated 13-03-2023

To,

1. M/s. Rainbow Exports, 1 Floor, Patel Shivabhai Ambaramdas, Unjha-384170
2. M/s. Rainbow Industries, 1 Floor, Patel Shivabhai Ambaramdas, Unjha-384170
3. The Commissioner of Customs, P.U.B. Building, Mundra, Kutch, Gujarat.

Copy to:

1. Commissioner of Customs (Appeals) Ahmedabad, 7<sup>th</sup> Floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad-380009
2. Sr. P.S. to AS (RA), Mumbai
- ~~3. Guard file~~
4. Notice Board.