

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. 373/71/DBK/15-RA /5469

Date of Issue:- 28/11/19

ORDER NO. 46/2019-CUS(SZ)/ASRA/MUMBAI DATED 18.11.2019  
OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS  
ACT, 1962.

Sl. No.	Revision Application No.	Applicant	Respondent
1	373/71/DBK/15-RA	M/s Sri Hari Knitters, Tiruppur	Commissioner, Customs, Chennai.

**Subject:** Revision applications filed under Section 129DD of the Customs Act, 1962, against the Order in Appeal No. 106/2014 dated 09.09.2014 passed by the Commissioner of Customs (Appeals), Trichy.

**ORDER**

This Revision application is filed by M/s Hari Knitters, 46B, Radhakrishnan Street, Rakkiapalayam, P.O., Tiruppur- 641 652 (hereinafter referred to as the 'applicant') against the Orders-In-Appeal 106/2014 dated 09.09.2014 passed by the Commissioner of Customs (Appeals), Trichy.

2. The Brief facts of the case are the applicant had exported goods through Custom House Tuticoin and availed drawback amount of at Rs. 1,88,15,284/- for the period from 01.01.2004 to 31.12.2008. The impugned goods were exported under drawback scheme at All Industry Rates under Section 75 of the Customs Act, 1962. The exporter was sanctioned and paid the drawback amount of Rs. 1,88,15,284/- (Rupees One Crore Eighty Eight Lakh Fifteen Thousand Two Hundred and Eighty four Only). However, the applicant did not produce Bank Realisation Certificates for export proceeds received in respect of goods exported. As such, Show Cause Notice No. VIII/20/1015/2010 dated 07.05.2010 was issued to the applicant demanding the said drawback amount sanctioned and paid to them along with interest and penalty. The Assistant Commissioner (DBK), Tuticorin confirmed the demand vide order in original No.1996/2013 dated 05.09.2013.

3. Aggrieved by the said Order in Original, the applicant filed an appeal before Commissioner (Appeals), Trichy. The Appellate Authority rejected the appeal via Order in Appeal No. 106/2014 dated 09.09.2014 and upheld the order in original. The Appellate Authority observed that :

3.1 The availment of drawback is subject to satisfaction of the conditions imposed under proviso to Section 75 (1) of the Customs Act, 1962. Any failure to do so, would render the drawback paid, recoverable under Rule 16A of the Customs, CEX Duties and Service Tax Drawback Rules, 1995.

3.2 Since the conditions imposed by Second proviso to Section 75(1) of the Act have not been complied with, the drawback amount paid to the applicant is recoverable under Rule 16A of Customs, CEX Duties and Service Tax Drawback Rules, 1995.

3.3 Since the appellants have not produced the relevant BRCs within the stipulated period of one year from the date of export as specified under Rule 16A of the Customs, CEX Duties and Service Tax Drawback Rules, 1995 read with Rule 9 of Foreign Exchange Management Regulation, 2000, the applicants are liable to pay the ineligible drawback with interest along with penalty.

4. The applicant, being aggrieved by the order in appeal, filed instant revision application on the following grounds :-

4.1 The show cause notice was not served on them and on this ground the order in original is liable to be quashed.

4.2 The Ld. Commissioner (Appeals) has erred in holding that the appellant had not furnished the correct postal address to the department.

4.3 As per sub-section 153 of the Customs Act, 1962 only the delivering the order/decision/ in post for onward transmission by registered post is not sufficient proof.

4.4 The unit was closed in the end of the year 2009 as there was partnership problem and was not in existence at the then address to which the show cause notice was served.

4.5 The applicant has furnished the details of bank realisation certificates available with them in tabular form for the F.Y. 2003-2004 to 2008-2009.

4.6 The applicant was not given proper opportunity to produce the proof of export realisation since the proceeds were actually realised.

4.7 The corrigendum dated 17.09.2013 issued to the order in original No. 1996/2013 dated 05.09.2013 deleting the portion regarding the value of goods exported, shows that the department did not have the details of the FOB value of the Shipping bill for which the drawback is sought to be recovered.

4.6 There is sufficient cause for non production of the BRCs for the verification of the Department in the circumstances of closure of the applicant company. In the circumstances, the applicant may be permitted to produce the BRCs to the lower authorities.

4.7 The applicant submits that the BRCs are available with them. If the details of the drawback sought to be recovered from them is furnished shipping bill wise, they would be in a position to furnish all BRCs to the Department.

4.8 The export proceeds were realised within the statutory time limit of one year and only procedural compliance of submitting the BRCs to the Department was not complied with. The production of BRC was delayed due to misunderstanding between the partners and mismanagement and due to the closure of the unit.

5. The Department vide their reply dated 01.10.2019 submitted that :

5.1 The Show Cause Notice dated 07.05.2010 was issued to the Old Address of the applicant and the same was dispatched through RPAD on 21.05.2010. The officers of the DRI, Coimbatore have visited the same premises and recorded a statement of Shri K. Balkrishnan, Partner of the applicant firm. It shows that the factory / company was readily available at the said address during the material period of time. Simply SCN was not received is not correct. The exact date of shifting of their premises is not known to the Department.

5.2 As per Section 153 of the Customs Act, 1962, any order or decision passed shall be served by tendering the order, notices by sending it by

Registered Post to the person or to his agent. In the instant case the SCN was dispatched through RPAD only.

5.3 The applicants had not supported their contention with BRC issued by Bank.

5.4 The applicant had responded to the Department's letter dated 11.06.2013 vide their letter dated 20.06.2013 for fixing the second Personal Hearing. The applicant had not stated that they had not received the SCN.

6. In the instant case, Shri K. Balakrishnan, Partner in the applicant firm vide letter dated 10.09.2019 informed that a coercive action was being taken by the Department for recovery of the dues and since the Revision Application was pending decision, the applicant approach Hon'ble High Court of Madurai and filed Writ Petition to get relief in the matter. The Hon'ble High Court of Madurai passed an order in W.P. No. 2130/2019 dated 29.07.2019 directing to dispose the instant Revision Application within a period of Six weeks from the date of receipt of a copy of the said order. A Personal Hearing was held in matter on 01.10.2019. Shri K. Balakrishnan, Partner and Shri N. Manickam, Advocate attended the same on behalf of the applicant. Shri A.M. Nandkumar, Assistant Commissioner attended the personal hearing on behalf of the Department.

7. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government observes that the applicants were initially granted drawback for exports made by them during the period from 01.01.2004 to 31.12.2008 by them. The Drawback Sanctioning Officer had sanctioned the drawback amount of Rs. 1,88,15,284/- to the applicant. Subsequently, a Show Cause Notice No. VIII/20/1015/2010 dated 07.05.2010 was issued to the applicants for recovery of already sanctioned drawback on the grounds that applicants failed to produce the evidence for realisation of export proceeds in respect of impugned exported goods for which they were allowed drawback within the period allowed

under Foreign Exchange Management Act, 1999. The Original Authority vide the impugned Order-in-Original confirmed the demand of already sanctioned drawback along with interest and also imposed penalty. The said Order in Original was upheld by the Appellate Authority vide impugned Order in Appeal. Now, the applicants have filed this Revision Application on ground mentioned in Para (4) above.

9. The Government finds that the show cause notice was said to have been issued on 07.05.2010. However, the applicants claimed that they have not received the same. Further, the adjudicating authority confirmed the demand vide order in original No.1996/2013 dated 05.09.2013. Hence the order has been passed after 3 years from the date of show cause notice. The Government holds that while taking up any issue for a final decision, in all fairness, the applicants should have been extended another opportunity to explain their stand or to file the documents if any required in this regard. Government also observes that sufficient chances of Personal Hearings were not given the applicant as requested by them which is in gross violation of the principles of natural justice. In the light of the above discussions and the fact that there is no acknowledgement produced by the Department, though it may be a fact that the impugned order has been dispatched to the applicant at the then registered address, the Government is of the view that the applicant should be given one more opportunity.

10. Further, Government notes that it is mandatory 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 Foreign Trade Policy 2005-2009 that export proceeds need to be realised within time limit provided there under subject to any extension allowed by competent authority.

11. The provision for recovery of amount of drawback where export proceeds not realised are stipulated under Rule 16A of the Customs, Central Excise &

Service Tax Duty Drawback Rules, 1995 and the relevant sub rule (2) and (4) of the Rule 16A read as under :

**“16A. Recovery of amount of Drawback where export proceeds not realised -**  
(2) If the exporter fails to produce evidence in respect of realisation 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 or Deputy Commissioner of Customs shall cause notice to be issued to the exporter for production of evidence of realisation 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 or Deputy Commissioner of Customs 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 :

*(In rule 16A, in sub-rule (2) has been substituted vide Notification No. 10/2006-Customs (N.T.), dated 15-2-2006)*

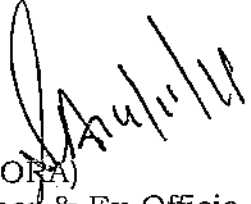
Provided that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds.

(4) Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or sub-rule (3) and the exporter produces evidence about such realisation within one year from the date of such recovery of the amount of drawback, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs or Deputy Commissioner of Customs to the claimant.”

12. The Government holds that the drawback is recoverable, if the export proceeds are not realised within stipulated time limit or extension given by the competent authority. In the absence of relevant BRCs, it cannot be concluded that realisation of export proceeds were made by the applicant and were made within stipulated time limit. However, the applicants affirm that they are in possession of relevant BRCs but they could not submit the same to department since the Show Cause Notice / Order in Original does not mention the relevant Shipping Bill number. The Government, therefore, holds that the applicant should be given fair chance to produce relevant BRCs to the Department.

13. In view of above discussion, Government holds that the order of the Commissioner (Appeals) is liable to be set aside and case be remanded to the original authority for causing verification as stated in foregoing paras. The applicant is also directed to submit all the relevant BRCs with respect to all concerned Shipping Bills for verification. The original authority will complete the requisite verification expeditiously and pass a speaking order within eight weeks of receipt of said documents from the respondent after following the principles of natural justice.

14. Revision application is disposed off in above terms.

  
(SEEMA ARORA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

To

M/s Sri Hari Knitters,  
46B, Radhakrishnan Street,  
Rakkiapalayam Road,  
Ammapalayam. Tiruppur - 641 652.  
Tamil Nadu.

Copy to :

1. The Commissioner of Customs, Customs House, New Harbour Estate, Tuticorin - 628 004.
2. The Assistant Commissioner of Customs (Drawback), Customs House, New Harbour Estate, Tuticorin - 628 004.
3. Sr. P.S. to AS (RA), Mumbai.
- ✓ 4. Guard File.
5. Spare copy.