

F.No.373/342/DBK/14-RA

Order NO. 06/15-Cus dated 29.5.2015

REGISTERED
SPEED POST



F.No.373/342/DBK/14-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue... 29.5.2015

ORDER NO. 06/15-Cus DATED 29.5-2015 OF THE GOVERNMENT OF INDIA,
PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF
INDIA, UNDER SECTION 129 DD OF THE CUSTOM ACT, 1962.

Subject : Revision Application filed under Section 129 DD of the
Custom Act, 1962 against the Order-In-Appeal No.
038/2014 dated 25.8.14 passed by the Commissioner of
Custom & Central Excise (Appeals), Tiruchirapalli

Applicant : M/s Menino Blinds, Tamilnadu

Respondent : Commissioner of Customs, Tiruchirappalli

Order No. 06/15-Cus dated 29-5-2015 F.No.373/342/DBK/14-RA

ORDER

This revision application is filed by the applicant M/s Menino Blinds, Tamilnadu (hereinafter referred to as applicant) against the Order-In-Appeal No. 038/2014 dated 25.8.14 passed by the Commissioner of Custom & Central Excise (Appeals), Tiruchirapalli with respect to Order-in-Original No.32/2013 dated 28.11.13 passed by the Assistant Commissioner of Customs, Customs Division, Tiruchirappalli.

2. Brief facts of the case are that the applicants have been sanctioned and paid Drawback amount of Rs.1,08,172/- in respect of the drawback claims for the Shipping Bill No.7782648 dated 28.02.2012 but the export proceeds have not been realized within the stipulated period as specified under Rule 16A of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Regulation 9 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000 as amended and Reserve Bank A.P. (DTR Series) Circular No.50 dated. 03.06.2009. As per Rule 16A of Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, where an amount of drawback has been paid to an exporter or a person authorized by the exporter, but the sale proceeds in respect of such export goods have not been realized by them on behalf of the exporter in India within the period allowed, under the Foreign Exchange Management Act, 1999 including any extension of such period, such drawback shall be recovered in the manner specified under Rule 16A(2) of Customs and Central Excise Duties and Service Tax Drawback Rules, 1995. Since the applicant could not produce the relevant Bank Realization Certificates for the export of the said goods, the adjudicating authority demanded the ineligible duty drawback of Rs.108172/- with interest and imposed penalty of Rs.6000/- under Section 117 of the Customs Act, 1962 for non-realization and non-submissions of Bank Realization Certificate as proof of realization of export proceeds.

3. Being aggrieved by the said Order-In-Original, applicant filed appeal before Commissioner (Appeal), who rejected the same on the grounds that the sale proceeds were realised beyond the stipulated period.
4. Being aggrieved by the impugned Order-In-Appeal, the applicant has filed this revision application, under section 129 DD of Customs Act, 1962 before Central Government on the following grounds:
- 4.1 The Commissioner (Appeals) ought to have appreciated the simple fact that the applicants, in fact have realized the export proceeds covered under the subject shipping bills well within the time limit stipulated under the Foreign Exchange Management Act, 1999 and the Regulations made thereunder.
- 4.2 The Commissioner (Appeals) ought to have appreciated the provisions of law, viz., Section 75 of the Customs Act, 1961 read with Rule 16A(2) of the Customs, Central Excise Duties and Service tax Drawback Rules, 1995, wherein the substantive ground for initiating proceedings for recovery of drawback could be done only when the export proceeds are not received within the time limit prescribed and not for mere non-furnishing the proof of realization of export proceeds.
- 4.3 The Commissioner (Appeals) ought to have appreciated the fact that the applicants have indeed received the export proceeds covered in the subject Shipping Bills, well within the time limit prescribed fulfilling the substantial obligation cast on the applicants, the learned Commissioner (Appeals) ought to have known the ratio of the decision of Hon'ble Apex court, in 1989 (39) ELT 503 (S.C.), where the Hon'ble Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other and ought to have allowed the appeals of the applicants.
- 4.4 The applicants have relied upon following case laws in favour their contention:
- UOI Vs A.V.Narasimhalu 1983 (13)ELT 1534(SC)

- Decision of GOI reported in 2011(268) ELT 125 (GOI)

4.5 The Commissioner (Appeals) ought to have appreciated the fact that the substantive requirement, viz. realization of export proceeds within the time limit prescribed by FEMA 1999 stands fulfilled by the applicants, while the procedural requirement viz., the production of proof for the same was only delayed, that too on account of circumstances beyond the control of the applicants and ought to have allowed the appeals of the applicants in terms of the decision of Hon'ble Apex Court reported in 1991 (55) ELT 437 (SC) wherein Hon'ble Supreme Court has drawn a distinction between the substantive, mandatory conditions and procedural ones and held that procedural infractions shall not come in the way of granting substantial benefits.

5. The Respondent Department has submitted counter reply vide letter dated 23.3.2015, wherein they mainly stated as under:-

5.1 The Original Adjudicating Authority ordered for recovery of drawback of Rs.1,08,172/- for the exports made under Shipping Bill No.7782648 dated 28.02.2012 for failure to produce Bank Realization Certificate by M/s Menino Blinds, Karur. In spite of several chances given to attend personal hearing, the applicant neither sent reply to the Show Cause Notice nor produced BRC within stipulated time limit.

5.2 The fact remains that the Bank Realization Certificate was not submitted within the prescribed time limit as specified under Rule 16A of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Regulation 9 of the Foreign Exchange Management (Export of goods and Services) Regulations, 2000 as amended and Reserve bank A.P.(DTR series) Circular No.50 dated 03.06.2008. Thus the contention of applicant is not acceptable.

6. Personal hearing was scheduled in this case on 23.3.15., 13.4.15 & 7.5.15. Nobody attended the hearings on above said dates. Hence, Government proceeds to decide the case on the basis of available records.
7. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned Order-In-Original and Order-In-Appeal.
8. On perusal of records, Government observes that the exporter was granted drawback with regard to exports made by them and demand of drawback already sanctioned was confirmed on the ground that they had failed to submit Bank Realization Certificate as evidence of remittance within stipulated period. Thereafter the Commissioner (Appeals) held that the remittances were received on 30.11.13, the realization date was beyond the stipulated time period and upheld the impugned Order-In-Original. Now, the applicants have filed this revision application on grounds mentioned in para (4) above.
9. Government observes that the provisions of recovery of already sanctioned drawback have been prescribed under Section 75 of the Customs Act, 1962 and Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The relevant provisions are reproduced as under:

"SECTION 75. Drawback on imported materials used in the manufacture of goods which are exported. - (1) Where it appears to the Central Government that in respect of goods of any class or description manufactured, processed or on which any operation has been carried out in India , being goods which have been entered for export and in respect of which an order permitting the clearance and loading thereof for exportation has been made under section 51 by the proper officer, or being goods entered for export by post under section 82 and in respect of which an order permitting clearance for exportation has been made by the proper officer, a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the manufacture or processing of such goods or carrying out any operation on such goods, the Central Government may, by notification in the Official

Gazette, direct that drawback shall be allowed in respect of such goods in accordance with, and subject to, the rules made under sub-section (2).

Provided that no drawback shall be allowed under this sub-section in respect of any of the aforesaid goods which the Central Government may, by rules made under sub-section (2), specify, if the export value of such goods or class of goods is less than the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf :

Provided further 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 Foreign Exchange Management Act, 1999 (42 of 1999), such drawback shall except under such circumstances or such conditions as the Central Government may, by rule, 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.

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 authorised by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised 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 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 15/02/2006)

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.

(3) Where the exporter fails to repay the amount under sub-rule (2) within said period of thirty days referred to in sub-rule (2), it shall be recovered in the manner laid down in rule 16.

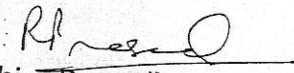
(4) Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or sub-rule (3) and the exporter produces evidence about such realisation within one year from the date of such recovery of the amount of drawback, the amount of drawback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

10. The above provisions provide for recovery of drawback where the export proceeds are not realized within the period allowed under Foreign Exchange Management Act, 1999 including any extension of such period granted by the Reserve Bank of India. In this case, it is an undisputed fact that the realization was made on

order no- 06/15-Cus dated 29.5.15 E.No.373/342/DBK/14-RA

30.11.2013 for goods exported vide Shipping Bill No. 7782648 dated 28.02.2012 beyond stipulated period of one year. Further, the applicant also failed to submit any extension from Reserve Bank of India regarding time limit for realization of export proceeds. Under such circumstances, Government finds that the applicant is liable to pay back the drawback availed for the reason of failure to realize foreign exchange within stipulated time limit or within such extended time period as permitted by Reserve Bank of India, if any. Therefore, the lower authorities have rightly confirmed the recovery of said drawback amount along with interest and imposed penalty.

11. In view of above, Government finds no infirmity in order of Commissioner (Appeals) and hence, upholds the same.
12. The Revision Application is thus rejected being devoid of merit.
13. So, ordered.


(Rimjhim Prasad)

Joint Secretary to the Government of India

M/s Menino Blinds
15A/47, Selva Nagar, Trichy Main Road
Pasupathipalayam PO Karur-639004
Tamilnadu

Order No. 06 /15-Cus dated 29-05- 2015

Copy to:-

1. Commissioner of Customs, No.1, Williams Road Cantonment, Tiruchirapalli-620001
2. Commissioner of Customs & Central Excise (Appeals), No.1, Williams Road Cantonment, Tiruchirapalli-620001
3. The Assistant Commissioner of Customs, Customs Division, No.1, Williams Road, Tiruchirapalli-620001
4. PS to JS (Revision Application)
5. ✓ Guard File
6. Spare Copy.

ATTESTED

(Shaukat Ali)

Under Secretary (Revision Application)

(शौकत अली)

(SHAUKAT ALI)

अधर सचिव (पुआ)

Under Secretary (RA)

विश्व बैंकालय (राजस्व विभाग)

Ministry of Finance (Dept. of Rev)

भारत सरकार / Govt of India

नई दिल्ली / New Delhi