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SPEED POST



**373/91/DBK/13-RA, 373/111/DBK/13-RA, 373/64/DBK/14-RA  
373/306/DBK/14-RA, 373/357/DBK/14-RA,**

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

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

Date of Issue.....27-5-2015

ORDER NO. 07-11/2015-Cus DATED 27-5-2015 OF THE GOVERNMENT  
OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE  
GOVERNMENT OF INDIA UNDER SECTION 129DD OF CUSTOMS ACT 1962.

Subject : Revision applications filed under Section 129DD of Customs  
Act 1962 against the Orders-in-Appeal as detailed in para (1)  
of the order passed by Commissioner of Customs, Central  
Excise & Service Tax (Appeals), Coimbatore

Applicant : M/s I. D. P. Creations, Tirupur  
M/s Kings Agencies, Tirupur  
M/s M.K. S. Garments, Tirupur  
M/s Neptune Impex, Tirupur  
M/s Balu S.O.C, Tirupur

Respondent : Commissioner of Central Excise & Customs Coimbatore

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**ORDER**

These revision applications are filed by applicants as detailed in table below against the Orders-in-Appeal passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals) Coimbatore with respect to Orders-in-Original passed by the Asstt./Dy. Commissioners of Customs, ICD, Tirupur:

S. No	R.A. NO.	Applicant	Order-in-Appeal No. & date	Order-in-Original No. & date
1.	373/91/DBK/13	M/s M.K. S. Garments	CMB-CEX-000-APP-256-13 dated 26.08.13	90/2013-(ACC) dated 4.3.13
2.	373/111/DBK/13	M/s Neptune Impex	CMB-CEX-000-APP-273-13 dated 26.08.13	51/2012-BRC dated 21.7.12
3.	373/64/DBK/14	M/s Balu S.O.C	CMB-CEX-000-APP-003-14 dated 31.01.14	53/2013-BRC dated 30.10.13
4.	373/306/DBK/14	M/s I. D. P. Creations	CMB-CEX-000-APP-113-14 dated 5.8.14	59/2014-Customs (BRC) dated 20.1.14
5.	373/357/DBK/14	M/s Kings Agencies	CMB-CEX-000-APP-112-14 dated 05.08.14	367/2014/AC-BRC Cell dated 26.2.14

2. Brief facts of the case are that the applicants were initially granted drawback for exports made by them. Subsequently, show cause notices were issued to the applicants for recovery of already sanctioned drawback on the ground that applicants failed to produce the evidence for realization 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 including any extensions of such period granted by the Reserve Bank of India. Later on, the Original Authorities vide impugned Orders-in-Original confirmed the demand of already sanctioned drawback and also imposed penalty in some cases.

3. Being aggrieved by the said Orders-in-Original, the applicants filed appeals before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Orders-in-Appeal, the applicants have filed these revision applications under Section 129 DD of Customs Act, 1962 before Central Government on the following grounds:

4.1 The Orders passed are not sustainable on merit as the same has been issued on the ground that the export proceeds have not been realized. This is factually incorrect. In the instant case, the sale proceeds in respect of export made by the applicants were realized within the prescribed time limit through the nominated bank.

4.2 The applicants were also under the bona-fide belief and genuine impression that the mandatory requirements have been complied with. In all the cases, the Bank Realization Certificates were submitted to the department either before issuance of Show Cause Notices or during adjudication proceedings or at appellate level. Hence, impugned Orders have been passed without taking into account factual position of the cases. After issue of Show Cause Notice no action was taken for many years and after several years Orders have been passed in haste and without taking reasonable steps to ensure that sufficient opportunities are extended to the applicants to produce the documents especially when the issue is involving revenue.

4.3 The Orders passed by the Original Adjudicating Authority and First Appellate Authority are contrary to the facts, devoid of merits and unsustainable. Further, the Orders have been passed without observing the principles of natural justice. As such, the Orders suffer from gross violation of natural justice and are liable to be set aside on this score alone.

- 4.4 That the applicants have not contravened any provisions of law warranting any action on the applicants and the demand of drawback, interest and imposition of penalty is unjustifiable, unwarranted and unsustainable.
- 4.5 In identical issue, the Revisionary Authority, vide Order No. 51/2013-Cus dated 08.02.2013 M/s Maestro Fashions, Tirupur Vs Commissioner of Customs and Central Excise, Coimbatore, remanded the case back to the Original Authority for considering the issue afresh. In the present cases, the appellants are having the copies of the Bank Realization Certificates, originals of which were already submitted, applying the ratio of the above said Order of the Government, ends of the justice will be met if the Revisionary Authority ordered the Original Authority to verify the Bank Realization Certificates and pass an appropriate Order afresh.
5. Personal hearings were scheduled in these cases on 23.3.2015/24.3.2015/25.3.2015/26.3.2015. As per request of authorized representative of the companies, hearing in all the cases were concluded on 25.3.2015, which were attended by Shri R.Arumugam, Consultant on behalf of the applicants who mainly reiterated the grounds of revision application. Nobody attended hearings on behalf of the respondent Department.
6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal.
7. Government observes that the applicants were initially granted drawback for exports made by them. Subsequently, Show Cause Notices were issued to the applicants for recovery of already sanctioned drawback on the ground that applicants failed to produce the evidence for realization 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 including any extensions of such period granted by the Reserve Bank of India. Therefore, the Original Authorities vide the impugned Orders-in-Original

confirmed the demand of already sanctioned drawback and also imposed penalty in some cases. Commissioner (Appeals) upheld impugned Orders-in-Original on the grounds that the applicants have not submitted the Bank Realization Certificates within the stipulated time period. Now, the applicants have filed these Revision Applications on ground mentioned in para (4) above.

8. 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 Duty 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

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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.

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**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.

*(In rule 16A, in sub-rule (1) bold words has been substituted vide Notification No. 19/2003 - Customs (N.T.) dated 03/03/2003)*

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.

*(Proviso has been inserted vide Notification No. 19/2003 - Customs (N.T.) dated 03/03/2003)*

- (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.

8.1 The above provisions prescribe 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 these impugned cases, the applicants have claimed that sale proceeds were received by their bank within stipulated period and they







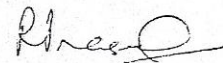
have submitted the copies of Bank Realization Certificates either before issuance of Order-in-Original (as in cases at Sr. Nos. 3&4 where it is claimed to be submitted on 12.9.11 & 15.07.11 respectively), or during adjudication proceedings or at appellate/revisory stage. Under such circumstances, Government finds that the Bank Realization Certificates are required to be verified to determine the authenticity, validity etc. and as to whether the export proceeds were received within stipulated period including any extensions by RBI as claimed by the applicant. As such, the cases are required to be remanded for fresh consideration. It was the responsibility of the applicant to submit evidence of receipt of sale proceeds immediately upon receipt which they admittedly failed to do instead of waiting for the recovery proceedings to be initiated. However, in the interest of justice, the applicants will submit these Bank Realization Certificates within 4 weeks of the receipt of this Order before the Original Adjudicating Authority for consideration in accordance with provisions of law and passing suitable orders.

8.2 The penalty imposable in terms of section 117 of Customs Act in these cases will also be re-determined accordingly by the Original Authority, subject to the outcome of the verification.

9. Government, therefore, sets aside impugned Orders and remands the cases back to Original Authority for fresh consideration in the light of above observation. Reasonable opportunity of hearing is to be afforded to concerned parties.

10. Revision Applications are disposed of in above terms.

11. So, ordered.



(Rimjhim Prasad)

Joint Secretary (Revision Application)

1. M/s I. D. P. Creations, SF No.257/2, Sirupooluvpatti Road, TTP Mill Backside, 15, Velampalayam, Tirupur-641652
2. M/s Kings Agencies, SF No.19,20, Amarjothi Bhuvanewari Nagar, Andipalayam, Mangalam Road, Tirupur-641687
3. M/s M.K.S. Garments, 43, PVG Nagar, Samundipuram Extension, Tirupur-641603
4. M/s Neptune Impex, No.1, Sirupooluvapatti West, 15, Velampalayam, Tirupur-641103
5. M/s Balu S.O.C, No.22, Devangapuram Street, Tirupur-641603

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GOI Order No. 07-11/15-Cus dated 29-5-2015

Copy to:

1. Commissioner of Central Excise & Customs, 6/7 A.T.D.Street, Race Course Road, Coimbatore-641018
2. Commissioner of Customs, Central Excise & Service Tax (Appeals), 6/7 A.T.D.Street, Race Course Road, Coimbatore-641018
3. The Deputy Commissioner Customs, Inland Container Depot, Rakkiyapalayam, Tirupur.
4. The Assistant Commissioner of Customs, Air Cargo Complex, Coimbatore-641014
- ✓ 5. Guard File.
6. PA to JS (RA)
7. Spare Copy

ATTESTED

(Shaukat Ali)

Under Secretary to the Government of India

(शौकत अली)  
(SHAUKAT ALI)  
अवर सचिव (एआ)  
Under Secretary (RA)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Dept. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi

