

**REGISTERED**  
**SPEED POST**



**F.No.373/358/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...12/2/16

**ORDER NO 07/2016-CUS DATED 10.02.2016** 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. CMB-  
CEX-OOO-APP-081/2014 dated 08.07.2014 passed by the  
Commissioner of Custom, Coimbatore.

Applicant : M/s Indian Apparels International.

Respondent : Commissioner of Customs, Coimbatore.

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## ORDER

This Revision Application is filed by the applicant M/s Indian Apparels International, Tamilnadu (hereinafter referred to as applicant) against the Order-in-Appeal No. CMB-CEX-OOO-APP-081/2014 dated 08.07.14 passed by the Commissioner of Customs (Appeals), Coimbatore with respect to Order-in-Original Sl. No. 69/2014 dated 20.01.2014 passed by the Assistant Commissioner of Customs, Coimbatore.

2. Brief facts of the case are that the applicants have been sanctioned and paid Drawback amount of Rs.1,47,445/- in respect of the drawback claims, Subsequently, it has been observed that 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 Foreign Exchange Management Act, 1999 including any extension. 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.1,47,445/- with interest and imposed penalty of Rs.10,000/- 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 realized 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 We submit that all the export proceeds related to the shipping bill for which the order in original was issued have been realized by us. There is no export proceeds pending for realization in our company.

4.2 We have also rightly replied along with the Bank Realization Certificates(BRCs) to the impugned show Cause Notice, by means of a registered post on 04.07.2011. Having not recorded the production of relevant BRCs and reply thereto, the original authority has issued the Order-in-Original which has been further upheld by the Commissioner (Appeals), Coimbatore which are not just and necessary. We had also

enclosed herewith the Bank Realization certificate copies related to the shipping bills for which the order in original for your goodself kind perusal. Thus there is no need for repaying the duty drawback amount as amended in the order in original.

4.3 The applicant had reply the SCN issued in the month of May 2011 along with the relevant BRCs in proof of realization of export proceeds for the relevant exports effected under the above referred Shipping Bills.. The applicant could not attend the Customs Office and submit relevant documents on the date of hearing as he was not in knowledge of the same. The applicant was neither negligent nor careless for the non appearance. The applicant , thus, requests for condoning the non- attendance of the PH and submitting the relevant documents on the date of hearing.

4.4 During the course of his business, more particularly the period of exports effected under the relevant shipping bills (year 2007-08 & 2008-09) there was no export proceeds pending realization. The appellant had also produced the banker's Certificate to the relevant Shipping bills for your goodself kind perusal. The order in original has been issued for non submission of proof of export proceeds realization for the exports effected under impugned shipping Bill.

5. Personal hearing was scheduled in this case on 26.03.2015, 15.04.2015, 07.05.2015 & 09.06.2015 Nobody attended the hearing. The applicant vide their letter dated 01.06.2005 requested to decide the issue on the basis of available documents/records.

6. I have gone through the facts of the case, record available in the case file and have perusal impugned Order-in-Original and Order-in-Appeal.

7. Government Observe that the applicant were initially granted drawback for exports made by him. Subsequently, show cause notice was issued to the applicant for recovery of already sanctioned drawback on the ground that the applicant failed to produce evidence of realization of export proceeds in respect of impugned exported goods for which they were allowed drawback within the period allowed order FEMA, 1999 including any extension of such period granted by the Reserve Bank of India. Therefore, the original authority vide the impugned Order-in-Original confirmed the demand of already sanctioned drawback and also imposed penalty. Commissioner upheld the impugned Order-in-Original. Now, the applicant has filed this Revision Application on grounds 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 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 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 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.

(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 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 or Deputy Commissioner of Customs 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 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 realized, 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 realized 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 realized 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 realization 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 the impugned case, the applicant has claimed that sale proceeds were received by their bank within stipulated period and they have submitted the copies of Bank Realization Certificates (BRCs) in reply dated 04.07.2011 to impugned Show Cause Notice but the same were not taken into consideration. This plea was also taken by the applicant before Commissioner (Appeals). Now, they have taken the same plea



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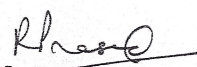
before the Revisionary Authority and also submitted photocopies of BRCs. However as letter dated 04.07.2011 is not placed on record it is not known whether the same BRCs were given in response to the impugned Show Cause Notice. Under such circumstances, Government finds that the BRCs are required to be verified to determine its authenticity, validity and as to whether the export proceeds were received within stipulated period including any extensions by RBI as claimed by the applicant. Also, the BRCs submitted by the applicant must conform the manner and format as prescribed by the DGFT. 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. However, in the interest of justice, the applicant will submit these Bank Realization Certificates(BRCs) in original along with evidence that these were indeed submitted vide letter dated 04.07.2011 in response to the Show Cause Notice to enable verification of the same to the satisfaction of the original authority 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 in terms of Section 117 of Customs Act, 1962 will also be re-determined accordingly by the original authority, subject to the outcome of the verification.

9. Government, therefore, sets aside impugned order and remands the case back to original authority for fresh consideration in the light of above observation. Reasonable opportunity of hearing to be afforded to concerned parties and the applicant is directed to extend full cooperation.

10. Revision Application is disposed off in above terms.


11. So, ordered.

  
(RIMJHIM PRASAD)  
Joint Secretary to the Government of India

M/s Indian Apparels International  
58 G/4, B.S. Sundaram Street, Avinashi  
Tirupur Dist, Tamilnadu-641654.

ATTESTED

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(Name)  
Commissioner  
(Name)  
(Name)  
Ministry of Revenue, Government of India  
New Delhi



**ORDER NO 07/2016-CUS DATED 10.02.2016**

Copy to:-

1. Commissioner of Customs, Central Excise and Service Tax, Coimbatore.
2. Commissioner of Customs Central Excise & Service Tax (Appeals),6/7  
A.T.D. Street, Race Course Road, Coimbatore-641018.
3. The Assistant Commissioner of Customs, Inland Container Depot, CFS,  
Tirupur-641603, Tamilnadu.
4. PA to JS (Revision Application).
5. Guard File.
6. Spare Copy.

ATTESTED



(B.P. Sharma)  
OSD (Revision Application)

(B.P. Sharma)  
Commissioner  
C.F.S. Tirupur  
Tamil Nadu  
10/02/2016  
New Ball

