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**373/131/DBK/13-RA, 373/134/DBK/13-RA, 373/143/DBK/13-RA  
373/146/DBK/13-RA, 373/147/DBK/13-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..12/21/16

**ORDER NO. 08-12/2016-CUS DATED 11.02.2016** 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 Original Knit Exports, Tirupur  
M/s Knit Media Apparels, Tirupur  
M/s Two Win Exports, Tirupur  
M/s Puneet Impex, Tirupur  
M/s Reliance Dyeing Works, 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 Assistant/Deputy Commissioners of Customs, ICD, Tirupur/ Coimbatore.

S. No	R.A. NO.	Applicant	Order-in-Appeal No. & date	Order-in-Original No. & date
1.	373/131/DBK/13	M/s Original Knit Exports	CMB-CEX-000-APP-346-13 dated 28.10.13	Sl.No. 54/2012-(BRC) dated 21.07.2012
2.	373/134/DBK/13	M/s Knit Media Apparels	CMB-CEX-000-APP-350/13 dated 28.10.13	Sl. No. 33/2012-(BRC) dated 21.07.2012
3.	373/143/DBK/13	M/s Two Win Exports	CMB-CEX-000-APP-349/13 dated 28.10.2013	Sl. No. 94/2013-(ACC) dated 04.03.2013
4.	373/146/DBK/13	M/s Puneet Impex	CMB-CEX-000-APP-368/2013 dated 25.11.13	Sl. No. 84/2012-BRS dated 21.07.2012
5.	373/147/DBK/13	M/s Reliance Dyeing Works	CMB-CEX-000-APP-347/2013 dated 28.10.13	Sl. No. 75/2012-(BRC) dated 21.07.2012

2. The common brief facts of the cases 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 as time barred as the same were filed after 90 days (i.e. beyond stipulated period of 60 days plus 30 days condonable period).

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 BRCs 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 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 it is also submitted that the orders have been passed without observing the principles of natural justice. As such, the orders suffer from gross violation of natural justice and is liable to be set aside on this score alone.

4.4 It is respectfully submitted 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 case, the appellant is having the copy of the BRC 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 BRCs and pass an appropriate order afresh.

5. Personal hearing scheduled in these cases on 06.10.2015, which was 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 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. On perusal of case records, Government observes that the original authority confirmed the demand of already sanctioned drawback of the applicant on the grounds that the applicant failed to submit BRC evidencing realization of foreign proceeds with regard to impugned exports against which drawback was sanctioned initially. Commissioner (Appeals) rejected the appeal of the applicant as time barred as the same was filed after 90 days [stipulated initial 60 days period plus 30 days condonable period]. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government notes that appeal was filed before Commissioner (Appeals) after lapse of the condonable period and the said fact is not contested by applicants. As per Section 128 of Customs Act, 1962, Commissioner (Appeals) is empowered to condone delay upto 30 days in filing appeal. There is no provision in Section 128 ibid to condone delay exceeding 30 days. The power of the Appellate Authority has been restricted to condone the delay only upto 30 days. Hon'ble Allahabad High Court in the case of M/s Doaba Rolling Mills (P) Ltd. Vs. CESTAT, New Delhi, reported in 2004 (169) ELT 258 (All.), has also held that the Commissioner (Appeals) under Section 128(1) ibid cannot condone delay in filing appeals beyond 30 days, as the statute itself provides for a period of limitation, and further maximum period for which delay can be condoned, the authority cannot extend the same. Government also notes that Hon'ble Supreme Court in the case of Singh Enterprises vs. CCE Jamshedpur 2008 (221) ELT 163 (SC) has held that Commissioner(Appeals) is empowered to condone delay upto 30 days and has no power to allow appeal to be presented beyond the delay of 30 days. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days after the expiry of 60 days which is the normal period for preferring appeal under Section 35 of the Central Excise Act, 1944. The provisions of section 128 of the Customs Act, 1962 and Section 35 of the Central Excise Act, 1944 are identical and the ratio of above said judgments is squarely applicable to this case.

9. In view of above circumstances, Government without going into merits of the case, finds that Commissioner(Appeals) has rightly rejected the appeal as time

barred. There is no infirmity in the said Orders-in-Appeal and therefore, the same are upheld.

10. The Revision Applications are, therefore, rejected.

11. So, ordered.

  
(RIMJHIM PRASAD)

Joint Secretary to the Government of India

1. M/s Original Knit Exports, SF No. 59/2, Rithik Towers, OPP. Ragam Exports, Kangayam Main Road, Tirupur-641606.
2. M/s Knit Media Apparels, SF No. 410, 4<sup>th</sup> Street, Panchampayam Pudur, P.N. Road, Tirupur-641602
3. M/s Two Win Exports, 65-H, Karattankadu 6<sup>th</sup> Street, M.R. Nagar, Dharapuram Road, Tirpur-641608
4. M/s. Puneet Impex, Windsor Tower Co-op. Housing Society, Flat No. 1105/6 T-28, Shastri Nagar, Andheri (West) Mumbai-400503
5. M/s Reliance Dyeing Works, SF No. 799, Kancheevaram, Nallur, Tirupur-641606

ATTESTED



(शिक्षा शर्मा/Shikha Sharma)  
सहायक निदेशक (अनुदान आयोग)  
उत्तर प्रदेश सरकार (अनुदान विभाग)  
Ministry of Finance (Deptt of Rev)  
भारत सरकार/ Govt. of India  
नयाँ दिल्ली / New Delhi

**ORDER NO. 08-12/2016-CUS DATED 11.02.2016**

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, Rakkiyalalayam, Tirupur.
4. The Assistant Commissioner of Customs, Air Cargo Complex, Coimbatore-641014
5. RA Associates, No. 59 (First Floor), 30 Feet Road, Near Kamaraj Statue, Krishnaswamy Nagar, Ramanathapuram, Coimbatore-641045
6. Guard File.
7. PA to JS (RA)
8. Spare Copy

**ATTESTED**



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

(B.P. Sharma)  
Commissioner  
Central Excise & Customs (Appeals)  
Ministry of Finance (Dept. of Rev.)  
New Delhi / New Delhi