

REGISTEREDSPEED POST

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

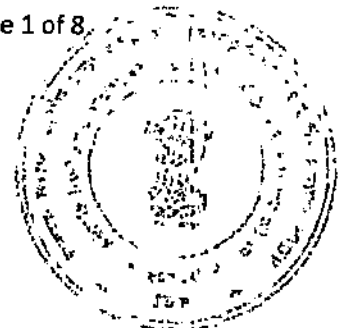
F.No.373/52/DBK/14-RA/<sup>18520</sup> Date of Issue 29.07.2020

ORDER NO. 94/2020-CUS (SZ) / ASRA / MUMBAI/ DATED 02.07.2020  
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.

**Applicant:** M/s International Apparel Manufacturers,  
Lakshmi Wollen Mills Compound,  
Block No. 33, Shakti Mill Lane,  
Off. Dr E. Moses Road, Mahalaxmi,  
Mumbai - 400 011.

**Respondent :** The Commissioner of Customs, Chennai.

**Subject :** Revision Application filed, under Section 129DD of  
the Customs Act, 1962 against the Order-in-  
Appeal No. C. Cus. No. 1813/2013 dated  
05.12.2013 passed by the Commissioner of  
Customs (Appeals), Chennai.



ORDER

The Revision Application is filed by M/s International Apparel Manufacturers, Mumbai - 11 (herein after referred to as 'the applicant') against the Order in Appeal No. C. Cus. No. 1813/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Chennai in respect of Order in Original No.315/2013 dated 01.04.2013 passed by the Assistant Commissioner of Customs (Drawback-Air), Chennai.

2. Brief facts of the case are that the applicants are exporters of readymade apparels under claim of drawback of duty. The applicant exported some consignments apparels covered by seven Drawback Shipping Bills through Air Cargo Complex, Chennai during the period from 01.02.2007 to 30.09.2011. The applicant was issued with the Show Cause Notice stating that they had failed to furnish proof of realisation of export proceeds in respect of 7 shipping bills. The details are as under:-

Sr. No.	Shipping Bill No. / Date	FOB Value	Drawback Amount paid (Rs.)
1	3347172/14.02.2007	4,03,984	32,723
2.	3457417/27.07.2007	36,677	3,925
3.	3467399/13.08.2007	20,884	2,234
4.	3493491/28.09.2007	1,26,805	14,583
5.	3565226/25.01.2008	2,03,912	22,431
6.	4265108/08.10.2010	34,959	3,006
7.	5614571/27.09.2011	11,78,774	68,428
	TOTAL		1,47,330/-

The adjudicating authority vide Order in Original No. 315/2013 dated 30.03.2013 confirmed the demand of Rs. 1,47,330/- under the



provisions of Rule 16A(2) of Drawback Rules, 1995 along with applicable interest under Section 75A of the Customs Act, 1962.

3. Aggrieved by the said order, the Applicant filed appeals before Commissioner (Appeal) on the grounds that the export proceeds have been realised and they are in possession of documents in proof of realisation of export proceeds. They have also submitted the required documents before the lower authority on 06.05.2013 and obtained the acknowledgement.

4. The Appellate Authority vide impugned order in appeal upheld the Order in Original. The Appellate Authority observed that :

4.1 In the Bank Realisation Certificates including especially 1.1.2007 to 30.7.2007; 1.7.2007 to 31.12.2007; 1.1.2008 to 30.6.2008; 1.7.2010 to 31.12.2010 and 1.7. 2011 to 31.12.2011 under the column "Shipping Bill Number and date" the following is mentioned: "...N.A....".

4.2 Thus without hesitation it can be said that this means – not applicable.

4.3 These Certificates give a picture that there was no shipping bill at all during the period it covers. Whereas there are Shipping Bills as could be seen from the table above, falling under the period.

5. The applicant contested the impugned Order in Appeal passed by the Appellate Authority in the instant Revision Application on following grounds that :

5.1 The principles of natural justice were not followed while passing the Order in Original.

5.2 The Appellate Authority had misunderstood & misconstrued the negative statement produced by the applicant before the adjudicating authority vide their letter dated 06.05.2013.



5.3 The Appellate Authority had recorded that the Assistant Manager of the CHA who appeared for the personal hearing had state that all the relevant BRCs were available with them and they were ready to produce the same.

5.4 They are not only ready to produce the negative statements as required under CBEC Circular No. 5/2009 dated 02.02.3009 but also are ready to produce all the BRCs relating to the consignments in question. They have enclosed the BRCs with the Revision Application.

5.5 Since they have established that the export proceeds have been realised, the demand is liable to be set aside.

6. Personal Hearing was held on 13.04.2015. Shri Narayanswami K.G., Assistant Manager (Exports) attended the same on behalf of the applicant. He stated that they have submitted negative statements of pending foreign receipts from the Chartered Accountant to the Appellate Authority. In view of change in the Revision Authority, a fresh personal hearing was granted to the applicant on 05.12.2019 and 12.12.2019. However, the applicant did not attend the same. No one attended the personal hearing on behalf of the department. Therefore, the case is taken up for decision on the basis of documents available on record and submission by the applicant.

7. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the rival submissions.

8. It is a statutory 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 199 read with regulations 9 of Foreign Exchange Management (Export of goods & services Regulations 2000 & para 2.41 of EXIM Policy 2005-2009 that export proceeds need realised within the time limit provided there under viz within six



months in this case subject to any extension allowed by RBI. In the instant case, the applicant had exported goods vide 7 shipping bills as listed in para 2 above. The Government also finds that the applicant vide their letter dated 06.05.2013 have submitted the BRCs / Negative Statement for the period of 01.01.2007 to 31.12.2012 issued by Corporation Bank, Overseas Branch, Bandra, Mumbai and the same was duly acknowledged by the department on 06.05.2013.

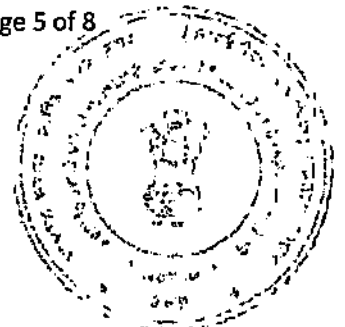
8. On perusal of the half yearly statements issued by the Corporation Bank for the period from 01.01.2007 to 31.12.2012, the Government observes that the Banker has certified and put the remark as 'NIL' against the respective half yearly period under heading "**Details of Export Pending Realisation**". This undoubtedly shows that there is no pending export realisation for the period mentioned in the certificate.

9. The Government further observes that the statements / certificates issued by the Banker bears the wording as

*"I / we have audited the accounts of M/s International Apparel Manufacturers and on that basis certify that the export proceeds for export shipment made during the period ..... to .... have been received except the following consignments as per details given below".*

Further, the Banker have given information in tabular format which read as :-

Sl. No.	Shipping Bill Number and Date	Due Date for Realisation	Amount Pending Realisation	Remarks like whether exporter has been granted extension or applied for extension or waiver or any other reasons for non -



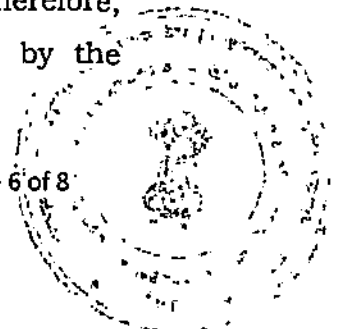
				<b>recovery</b>
--	....N.A....	....NIL....	...NIL...	<b>N.A.(Since there is no pending remittance)</b>

On perusal of the above table and the certificate issued by the banker it is understood that the certificate(s) only show that there was no shipping bill for the relevant period in respect of which any realisation is pending. It is therefore, opined that the Appellate Authority has erred in interpreting the Certificates / Statements issued by the Banker. The Government therefore finds that as per the certificates issued and produced by the applicant, there are no pending remittances during the period from 1.1.2007 to 31.12.2012.

9.3 As per the six (6) BRCS submitted by the, it is observed that the export proceeds were realised as detailed below :-

Sr. No.	Shipping Bill No. / Date	Date of realisation of Export Proceeds
1	3347172/14.02.2007	01.03.2007
2.	3457417/27.07.2007	11.07.2007
3.	3467399/13.08.2007	11.07.2007
4.	3493491/28.09.2007	15.10.2007
5.	3565226/25.01.2008	07.02.2008
6.	4265108/08.10.2010	10.03.2011

10. In view of the above discussion, the Government holds that the drawback proceedings initiated against the applicant are made without proper verification of documents furnished by the applicant. Therefore, the same holds no water in the force of evidence adduced by the applicant. Hence the recovery proceedings are set aside.



11. Further, the Government observes that the copies of the BRCs submitted by the applicant along with their submissions are only in respect of 6 shipping bills out of total 7 shipping bills. Under such circumstances, Government opines 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 granted by RBI to the applicant. As such, the case is remanded for fresh consideration. Therefore, the applicant are directed to submit the relevant BRCs in original to enable verification of the same within 4 weeks of the receipt of this Order before the Original Authority for consideration in accordance with provisions of law and passing orders.

12. In view of above circumstances, Government sets aside impugned order and remands the case back to the original authority for fresh consideration in the light of above observation after giving reasonable opportunity of hearing being offered to the applicant. The applicant is also directed to furnish the original BRCs for verification.

13. Revision Application is disposed off in above terms.

14. So ordered.

**ATTESTED**

**B. LOKANATHA REDDY**  
Deputy Commissioner (R.A.)

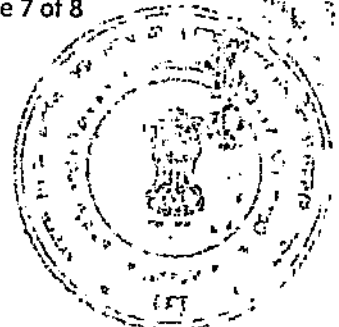
(SEEMA ARORA)

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

94  
ORDER No./2020-CUS (SZ) /ASRA/MUMBAI DATED 02.07.2020

To,

M/s International Apparel Manufacturers,  
Lakshmi Wollen Mills Compound,  
Block No. 33, Shakti Mill Lane,  
Off. Dr E. Moses Road, Mahalaxmi,  
Mumbai - 400 011.



Copy to:

1. The Commissioner of Customs (Airport & Air Cargo), Integrated Air Export Complex, Mennambakkam, Chennai - 600 027.
2. The Assistant Commissioner of Customs (Drawback), Integrated Air Export Complex, Mennambakkam, Chennai - 600 027.
3. The Commissioner of Customs (Appeals), 60, Rajaju Salai, Custom House, Chennai- 600 001.
4. Sr. P.S. to AS (RA), Mumbai
- ✓ 5. Guard File.
6. Spare Copy.

दिनांक

NO. 373/52/DBK/14-RA  
10/02/2014

