

SPEED POST



F. No. 380/166/SZ/DBK/2016-R.A.
F. No. 380/170/SZ/DBK/2016-R.A.
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 16/01/23

Order No. 14-15/23-Cus dated 16-01-2023 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

SUBJECT : Revision Applications, filed under Section 129DD of the Customs Act, 1962 against the Orders-in-Appeal Nos. COC-CUSTOM-000-APP-50/2016-17 & COC-CUSTOM-000-APP-51/2016-17 both dated 07.06.2016, passed by Commissioner of Customs (Appeals), Cochin.

APPLICANT : The Commissioner of Customs, Cochin

RESPONDENT : 1. M/s. Peejay Rubber Industries (P) Ltd., Ernakulam.
2. M/s. Tolin Tyres (P) Ltd., Ernakulam.

ORDER

Two Revision Applications, bearing Nos. 380/166/SZ/DBK/2016-RA dated 08.11.2016 & 380/170/SZ/DBK/2016-RA dated 29.11.2016, have been filed by The Commissioner of Custom, Cochin against the Orders-in-Appeal Nos. COC-CUSTOM-000-APP-50/2016-17 & COC-CUSTOM-000-APP-51/2016-17 both dated 07.06.2016, passed by the Commissioner of Customs (Appeals), Cochin, in respect of the appeals filed by M/s Peejyay Rubber Industries Pvt. Ltd., Ernakulam (hereinafter referred to as the Respondent-1) & M/s Tolin Tyres Pvt. Ltd., Ernakulam (hereinafter referred to as the Respondent-2), respectively.

2.1 The Respondents-1 herein had exported 243.541 Mts of procured tread rubber to Dubai, vide 12 shipping bills and claimed Rs. 9,93,985/- as drawback in respect of exports made. Subsequently, upon verification, it was noted that export proceeds had been realized in full in respect of only four cases and, therefore, the original authority, vide Order No. 42/2015 dated 03.09.2015, confirmed the demand of Rs. 3,80,941/- of drawback paid in terms of Rule 16A of the Customs, Central Duties and Service Tax Drawback Rules, 1995, along with the applicable interest. In the appeal filed by the Respondent-1 herein, the Commissioner (Appeals) observed that the foreign exchange had been realised in respect of balance 08 cases also and proceeded to condone the delay in submission of BRCs (Bank Realisation Certificates), in terms of Rule 17 of the Rules ibid, and accordingly, allowed the appeal.

2.2 Respondent-2 herein had exported various rubber products to Dubai, vide 19 shipping bills and claimed Rs. 10,22,777/- as drawback. Subsequently, upon verification, it was observed that foreign exchange had not been realised in respect of any of these cases. Therefore, the original authority, vide Order-in-Original No. 44/2015 dated 16.09.2015, confirmed the demand of Rs. 10,22,777/- of drawback paid under Rule 16A ibid along with applicable interest thereon. In the appeal, the Commissioner (Appeals)

found that the export proceeds had been released in full and condoned the delay in submission of BRCs, in terms of Rule 17 *ibid*. The appeal was, accordingly, allowed.

3. The revision applications have been filed by the Applicant department, mainly, on the grounds that, in the subject cases, the export proceeds had not been realised within the time period prescribed under the Foreign Exchange Management Act, 1999; that the exporters had not produced any extension of time from the Reserve Bank of India permitting realization of export proceeds beyond the specified period; that the Commissioner (Appeals) does not have powers to condone the delay and appears to have proceeded to decide the appeals on erroneous interpretation that it is about delay in producing BRCs whereas the Rules 16A deals with delay in realization of export proceeds; that the Rules 17 *ibid* empowers Central Government to relax the provisions of the Rules and not the Commissioner (Appeals); and, accordingly, the Orders of Commissioner (Appeals) are liable to be set aside. In respect of RA No. 380/170/DBK/2016-RA related to M/s Tolin Tyres Pvt. Ltd., i.e., Respondent-2, it has also been submitted that the amount of drawback should be read as Rs. 11,88,657/- and instead of Rs. 10,22,777/-, which is an arithmetical error. Cross objections have been filed by Respondent-1 and Respondent -2, vide separate letters dated 29.07.2017.

4. Personal hearing, in virtual mode, was held on 16.01.2023. With the consent of the Parties, hearing in both the cases was taken up together as the issue involved is identical. Sh. Anurag Sethiya, Superintendent appeared for the Applicant department and reiterated the contents of the RAs. Sh. P. Satheesan, Advocate appeared for the Respondents and requested that Written Submissions dated 12.01.2023 may be taken on record. He submitted that the realization of export proceeds was delayed due to reasons beyond their control. Hence, the Commissioner (Appeals) has correctly condoned the delay and allowed their appeals.

5. The revision applications have been filed with a delay which is attributed to administrative reasons. Delay is condoned.

6.1 Government has examined the matter carefully. Admittedly, the export proceeds, in respect of relevant shipping bills, have since been realised but not within the stipulated time period. It is also on record that the period for realization of export proceeds has not been extended by the competent authority, i.e., RBI or the AD Bank.

6.2 Government observes that, in terms of the second proviso to Section 75(1) of the Customs Act, 1962, where any drawback has been allowed on any goods and sale proceeds in respect of such goods are not received within the time period allowed under FEMA, 1999, such drawback shall be deemed never to have been allowed. Further, as per Rule 16A (1) *ibid*, the drawback is recoverable if the export proceeds are not realized within the period allowed under FEMA, 1999, including any extension of such period. In the instant case, export proceeds have not been realized within the period allowed nor has the extension been granted by the competent authority under FEMA. Thus, there is no doubt that the drawback paid to the Applicant is recoverable along with applicable interest.

6.3 Further, the provisions of Rule 16A *ibid*, enabling recovery of drawback where export proceeds are not realized within the period allowed under FEMA, including any extension of such period, have been framed to give effect to the provisions made in the parent statute, i.e., section 75(1) *ibid*. It is to be observed that drawback is paid before realization of export proceeds and recovery thereof is initiated if such proceeds are not realized within the period prescribed, including any extension of such period. If the requirement of realization within prescribed period, including any extension of such period, is not treated as a mandatory condition, the process of recovery shall remain an unending exercise and thereby render the provisions of the second proviso to section 75(1) and the Rule 16A(1) redundant and otiose.

6.4 It has been correctly pointed out by the Applicant department that the Commissioner (Appeals) has proceeded to record that the delay in production of BRCs can

be condoned. However, the issue involved herein is regarding delay in realization of export proceeds and not merely of the delay in production of BRCs. Further, the power to relax any of the provisions of the Rules, in terms of Rule 17, is vested in the Central Government and not in the Commissioner (Appeals). Hence, the Government holds that the Orders of Commissioner (Appeals), purportedly in exercise of powers under Rule 17 *ibid*, cannot be sustained.

6.5 The case laws cited in support of various contentions raised by the Respondents are not applicable, in view of the discussions above.

7. In respect of RA No. 380/166/SZ/DBK/2016-RA pertaining to M/s Tolin Tyres, it has been pointed out that due to arithmetical totalling error, demand has been incorrectly indicated as Rs. 10,22,777/- as against the correct amount of Rs. 11,88,657/-. The Government observes that it is for concerned authority to correct the arithmetical and typographical mistake, if any, and take necessary action, as per law.

8. The Revisions Applications are allowed, in above terms, and the impugned Orders-in-Appeal are set aside.



(Sandeep Prakash)

Additional Secretary to the Government of India

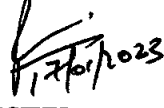
The Commissioner of Customs,
Custom House, Willingdon Island,
Cochin-682009.

Order No. 14-15/23-Cus dated 16-01-2023

Copy to:-

1. M/s. Peejay Rubber Industries Pvt. Ltd., Tolins III/25-BMC Road Mattor Kalady, Ernakulam-683574.
2. M/s. Tolin Tyres Pvt. Ltd., 111/25-BMC Road, Mattoor, Kalady-683574, Ernakulam.

3. The Commissioner of Customs (Appeals), Custom House, Willingdon Island Cochin-9.
4. Sh. P. Satheesan, Advocate, Flat No. I.B, Roots Enclave, SRM Road, Kochi-682018.
5. P.S to A.S (RA)
6. Guard File
7. Spare Copy
8. Notice Board


11/10/2023

ATTESTED

प्रवीण नेगी / Praveen Negi
अधीक्षक / Superintendent (R.A. Unit)
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue
Room No. 605, 6th Floor, B-Wing
14, Hudco Vishala Building, Bhikaji Cama Place
New Delhi-110066