

SPEED POST



F. No. 373/293/DBK/SZ/2018-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 27/1/23

Order No. 24/23-Cus dated 15.1.2023 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 Application, filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. COC-CUSTM-000-APP-36/2018-19 dated 30.07.2018, passed by the Commissioner of Customs (Appeals), Cochin.

APPLICANT : M/s Ginger Fashions Pvt. Ltd., Bengaluru.

RESPONDENT : The Commissioner of Customs, Cochin.

ORDER

A Revision Application No. 373/293/DBK/SZ/2018-RA dated 08.10.2018 has been filed by M/s Ginger Fashions Pvt. Ltd., Bengaluru (hereinafter referred to as the Applicant) against the Order-in-Appeal No. COC-CUSTOM-000-APP-36/2018-19 dated 30.07.2018, passed by the Commissioner of Customs (Appeals), Cochin. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 111/2017 dated 09.05.2017, passed by the Deputy Commissioner of Customs (Drawback), Cochin.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of 07 Shipping Bills, with the jurisdictional Customs authorities, for a total amount of Rs.6,36,379/-, which was sanctioned. Subsequently, on scrutiny, it was observed by the office of Respondent that the Applicant had failed to submit the proof to the effect that the export proceeds in respect of the aforesaid Shipping Bills had been realized, in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Accordingly, Show Cause Notice dated 16.02.2017 was issued to the Applicant and the original authority, vide the aforesaid Order-in-Original dated 09.05.2017 confirmed the demand of Rs. 1,66,501/- alongwith applicable interest corresponding to drawback paid in respect of two Shipping Bills. An amount of Rs. 79,115/- deposited by the Applicant herein was appropriated towards the confirmed demand. The appeal filed by the Applicants herein has been rejected by the Commissioner (Appeals), vide the impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that the Applicant could make realization of US\$ 5000/- & US\$ 19956/- against the requirement of US\$ 7928.3 & US\$ 29308.15 in respect of the relevant Shipping Bills; that accordingly they had remitted Rs. 79,115/- against the unrealized portion; that the Bank had vide letter dated 30.03.2017 confirmed that payment of US\$ 34,956/- had been received on 29.04.2015; that delay was nominal and should be condoned.

4. Personal hearing in the matter was held on 25.01.2023, in virtual mode. Ms. R. Devika, Advocate appeared for the Applicant and reiterated the contents of the Revision Application. She submitted that the entire amount of foreign remittance has been realised

as evident from Bank's letter dated 30.03.2017 and delay, if any, is only of few days, which may be condoned. Sh. Anurag Sethiya, Superintendent appeared on behalf of the Respondent department and pointed out that the realization of export proceeds is beyond the specified time period of nine months and no extension has been granted by the RBI/AD Bank. He supported the orders of the lower authorities accordingly.

5.1 The Government has examined the matter carefully. It is observed 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 the Foreign Exchange Management Act, 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.

5.2 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, second proviso to 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 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.

5.3 Further, the issue of extension of prescribed period lies squarely within the remit of RBI/AD Bank, as per the Regulations made under FEMA and the Master Circular issued in this behalf by the RBI. As such, the issue of condonation of delay, if any, does not fall within the purview of the Custom officials. Therefore, the averments made in this regard do not merit consideration.

6. In view of the above, the Revision Application is rejected.


(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Ginger Fashions Pvt. Ltd.,
No. 61, Sri Nivas 6th Main Road,
SBI Officers Colony, Basaveshwara
Nagar, Bengaluru-560079.

Order No. 24/23-Cus dated 25-1-2023

Copy to:-

1. The Commissioner of Customs, Custom House, Willingdon Island, Cochin-68009.
2. The Commissioner of Customs (Appeals), Custom House Willingdon Island, Cochin-682009.
3. Sh. M. Balgopal, Advocate, A5, HIG Avenue, Gandhi Nagar Road, Kadavanthra, Cochin-682020.
4. P.S to A.S (RA)
5. Guard File
6. Spare Copy
7. Notice Board


27/01/2023
ATTESTED