

**SPEED POST**



F. No. 373/254/DBK/SZ/2018-R.A.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 27/1/23.

Order No. 26 / 23-Cus dated 27.1.2023 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. 112/2018-TTN (CUS) dated 10.04.2018, passed by Commissioner of CGST & Central Excise (Appeals), Tiruchirapalli.

**APPLICANT :** M/s Anbu Textiles Pvt. Ltd., Madurai.

**RESPONDENT :** The Commissioner of Customs, Tuticorin.

\*\*\*\*\*

**ORDER**

A Revision Application No. 373/254/DBK/SZ/2018-RA dated 03.07.2018 has been filed by M/s Anbu Textiles Pvt. Ltd., Madurai (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 112/2018-TTN (CUS) dated 10.04.2018, passed by the Commissioner of CGST & Central Excise (Appeals), Tiruchirapalli. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 280/2017 dated 30.8.2017, passed by the Assistant Commissioner of Customs, Tuticorin.

2. Brief facts of the case are that the Applicants herein filed drawback claims in respect of 46 Shipping Bills, during the period January 2011 to December, 2011. The said claims were sanctioned amounting to Rs. 65,26,821/-. However, subsequently on scrutiny, it was observed by the department that the Applicant had failed to submit the proof to the effect that the export proceeds in respect of the said Shipping Bills had been realized, in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995. Accordingly, a show cause notice dated 08.1.2014 was issued to the Applicants for the recovery of availed drawback amount of Rs. 65,26,821/- along with interest, out of which a demand of Rs. 1,62,018/- along with interest accrued thereon was confirmed by the original authority, vide the above said Order-in-Original dated 30.08.2017. The appeal filed by the Applicants herein has been rejected by the Commissioner (Appeals), vide the impugned Order-in-Appeal.

3. The instant revision application has been filed, mainly, on the ground that the Applicant had realized the export proceeds and short fall in realization of export proceeds

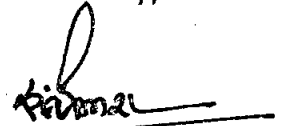
is due to the deduction of commission from the export proceeds by the Bank. Since the export proceeds had been realized in full, the recovery of proportionate drawback amount is not valid in the eyes of law.

4. Personal hearing in the matter was held on 25.01.2023, in virtual mode. Sh. R. Rajasabai, Advocate appeared for the Applicant and reiterated the contents of the revision application. Upon being asked Sh. Rajasabai sought time till evening of 26.01.2023 to submit proof of payment of Revision Application Fee by email. Applicant vide email dated 25.01.2023 submitted a copy of the receipt dated 27.01.2020 evidencing the payment of the fee. No one appeared for the Respondent department for the hearing nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5. Government has carefully examined the matter. The only issue to be decided here is that whether the recovery of proportionate drawback amount from the Applicant in respect of the 46 Shipping Bills on account of shortfall in realization of export proceeds is merited. Applicant has contended that export proceeds in respect of the impugned Shipping Bills were fully realized, however, the Bank has deducted some amount on account of commission. Government observes that the issue of agency commission /bank charges paid to the foreign agents/bank has been clarified by the Board in consultation with RBI. As per Circular No. 64/2003-Cus dated 21.07.2003, the Board clarified that field formations may continue to permit export benefits on FOB value without deducting agency commission if such commission is upto the limit of 12.5% of FOB value. Further, vide Circular No. 33/2019-Customs dated 19.09.2019, the Board has clarified

that duty drawback is not recoverable where the export proceeds realized are short on account of agency commission and foreign bank charges, within the overall limit of 12.5% of FOB value allowed by the Board. As such, it would be in the interest of justice that the matter is remanded back to the original authority with the directions to decide the matter afresh, keeping in view the instructions contained in Board's Circulars dated 21.07.2003 & 19.09.2019. It would be open to the original authority to verify the deductions made, including the nature and quantum thereof, and thereafter take a view regarding applicability of the aforesaid Circulars issued by the Board. Applicants shall be provided a reasonable opportunity of being heard after being made aware of the outcome of verification made with the Bank(s) concerned.

6. The Revision Application is allowed by way of remand to the original authority, with the above directions.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Anbu Textiles Pvt. Ltd.,  
59/11-South Avani Moola Street,  
Madurai-625001. (Tamilnadu)

Order No. 26/23-Cus dated 27.1.2023

Copy to:-

1. The Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin-628004.
2. The Commissioner of CGST & Central Excise (Appeals), No. 1 Williams Road, Cantonment, Tiruchirapalli, 620001.
3. Sh. R. Rajasabai, Advocate 1B/5- Bharathiar 3<sup>rd</sup> Street, S.S. Colony, Madurai-625016.
4. P.S to A.S (RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED

(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi

(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi

27.01.23