

SPEED POST



F.No. 375/43/DBK/2022-RA
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 26/9/22

Order No. 297/22-Cus dated 23-04-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Application under Section 129 DD of the Customs Act 1962, against the Order-in-Appeal No. 76(SM)/CUS/JPR/2022 dated 27.04.2022, passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Jaipur.

Applicant : M/s Jodhana Art & Crafts, Jodhpur.

Respondent : The Commissioner of Customs (Preventive), Jaipur.

ORDER

A Revision Application, bearing no. 375/43/DBK/2022-RA dated 04.07.2022, has been filed by M/s Jodhana Art & Crafts, Jodhpur (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 76(SM)/CUS/JPR/2022 dated 27.04.2022, passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur, vide which the appeal filed by the Applicant against the Order-in-Original No.18/2020-21 dated 03.03.2021, passed by the Deputy Commissioner of Customs, ICD Rajsico, Jodhpur, has been rejected.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of 09 Shipping Bills with the jurisdictional Customs authorities, and received a drawback amount of Rs. 4,40,739/-. Subsequently, on scrutiny, it was found that the Applicant had failed to submit the proof to the effect that the export proceeds in respect of the relevant Shipping Bills had been realized. Accordingly, show cause notice dated 21.02.2020 was issued in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, to the Applicant for the recovery of drawback availed amount of Rs.4,40,739/- along with interest, out of which the demand of Rs. 3,36,009/- was confirmed by the original authority, vide aforesaid Order-in-Original dated 03.03.2021. A penalty of Rs. 33,600/- was also imposed under Section 117 ibid. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), who vide the OIA dated 27.04.2022, rejected the appeal but waived the penalty imposed on the Applicant.

3. The instant revision application has been filed, mainly, on the grounds that the export proceeds had been realized though not within the stipulated time period and the recovery of drawback can not be made on this ground; and that demand is time barred in view of the judgment of Hon'ble Gujarat High Court in the case of S.J.S. International vs UOI {2022(380)ELT5778 (GUJ.)}.

4. Personal Hearing, in virtual mode, was held on 23.09.2022. Sh. O.P. Agarwal, Chartered Accountant, attended the hearing on behalf of the Applicant and

reiterated the contents of the revision application. He specifically relied upon the judgment of Hon'ble Gujarat High Court in the case of S.J.S. International {supra}. None appeared on behalf of the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5.1 The Government has examined the matter carefully.

5.2.1 It has been admitted that the export proceeds were not realized in stipulated time period nor the stipulated time period was extended by the RBI/AD Bank. 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 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.

5.2.2 It is to be observed that 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*. Further, the 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. The Government finds that 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.

5.2.3 Thus, there is no doubt that the drawback paid to the Applicant is recoverable alongwith interest.

5.3.1 The Applicant has further contended that the show cause notice is barred by limitation as it has been issued beyond the period of three years which would be reasonable period of limitation under Rule 16 of the Drawback Rules, 1995. In support of this contention, the judgment of the Hon'ble Gujarat high Court in the case of S.J.S. International vs UOI {supra.} has been relied upon.

5.3.2 At the outset, it needs to be observed that the show cause notice was issued, in the present case, under Rule 16A *ibid*, which does not prescribe any period of limitation. In the case of *State of Punjab vs. Bhatinda District Cooperative Milk P. Union Ltd.* {2007 (217) ELT 325 (SC)}, the Hon'ble Supreme Court has laid down the law, in this regard, in following manner "*17. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.*" Similarly, in the case of *Government of India vs. Citedal Fine Pharmaceuticals* {1989 (42) ELT 515 (SC)}, the Hon'ble Supreme Court has held that "*In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period, would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice or demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case.*"

5.3.3 As brought out hereinabove, the drawback is sanctioned and paid to the exporter even before the export proceeds are realized. In terms of Rule 16A *ibid*, it is thereafter the obligation of the exporter to realize the proceeds within time period specified in this behalf and to provide evidence in respect of realization to the Customs authorities. It is only if the exporter defaults in discharge of this obligation that the notice for recovery is issued. In the present case, there is not even an averment that the Applicant, at any stage, before the issue of show cause notice informed the department about realization of export proceeds. As such, the Applicant was in default of the obligations cast upon him under Rule 16A *ibid* when the show cause notice came to be issued. In view of this clear default, that too when the Applicant was already enjoying the benefits of drawback, the time taken in issue of the show cause notice cannot be held to be unreasonable. Further, in a trust based incentive system like drawback, fairness and justice would demand that a strict view is taken against a party that is in breach of trust.

5.3.4 Government also observes that while the show cause notice had been issued under Rule 16A *ibid*, the original authority has ordered for recovery under Rule 16 *ibid*. It is further observed that, as per sub-rule (3) of Rule 16A, "*(3) Where the exporter fails to repay the amount under sub-rule (2) within the said period of thirty days referred to in sub-rule (2), it shall be recovered in the manner laid down in Rule 16.*" Thus, it is evident that the original authority having found the amount to be recoverable under Rule 16A(2), ordered for its recovery in the manner laid down under Rule 16, in accordance with sub-rule (3) of Rule 16A.

5.3.5 The judgment in the case of SJS International (*supra*) has been passed in the case of demand issued under Rule 16 and not in the case of demand under Rule 16A. Hence, it has no applicability in the facts of the present case.

5.3.6 In view of the discussion above, the Government holds that the subject show cause notice has been issued within a reasonable period, in the facts and circumstances of the present case and in the nature of Rule 16A *ibid*.

6. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

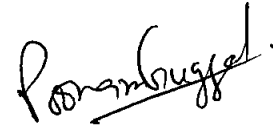
M/s Jodhana Art & Crafts, C-108,
Saraswati Nagar Basni Phase-II,
Jodhpur (Rajasthan)-342011.

Order No. 297/22-Cus dated 23-09-2022

Copy to:

1. The Commissioner of Customs (Preventive), Jodhpur, HQRS, New Central Revenue Building Statue Circle 'C' Scheme, Jaipur – 302005 (Rajasthan).
2. The Commissioner (Appeals), Central Excise & CGST, Jaipur, New Central Revenue Building, Statue Circle, Jaipur – 302 005.
3. M/s. Om P. Agarwal & Co., Chartered Accountant, 56, Section 7, N. Power House Road, Jodhpur (Rajasthan) – 342003.
4. The Deputy Commissioner, Customs, I.C.D. Rajisico, Industrial Area, Basni, Phase-II, Jodhpur -342005.
5. PA to AS(RA)
6. Guard File
7. Spare Copy

ATTESTED



(Pooran Buggal)
Substt (R.A.)