

SPEED POST



F.No. 380/06/DBK/2020-RA  
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 30/3/22

Order No. 114/22-Cus dated 30-03-2022 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 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 425(CRM)CUS/JPR/2019 dated 12.12.2019, passed by the Commissioner (Appeals), Central Excise, CGST & Customs, Jaipur.

Applicant : The Commissioner of Customs (Preventive), Jodhpur at Jaipur.

Respondent : M/s. Janiko Fashions, Jaipur.

**ORDER**

A Revision Application No. 372/20/DBK/2020-RA dated 13.03.2020 has been filed by Commissioner of Customs (Preventive), Jodhpur at Jaipur (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 425(CRM)CUS/JPR/2019 dated 12.12.2019, passed by the Commissioner (Appeals), Central Excise, CGST & Customs, Jaipur. Commissioner (Appeals), vide the abovementioned Order-in-Appeal, has allowed the appeal of M/s Janiko Fashions, Jaipur, (herein after referred to as the Respondent) by setting aside Order-in-Original No. 77/2018-19-DC dated 30.03.2019, passed by the Deputy Commissioner, Air Cargo Complex, Sanganer, Jaipur.

2. Brief facts of the case are that the Respondent filed drawback claims in respect of 02 Shipping Bills No. 4359738 dated 11.08.2014 and No. 3880165 dated 15.07.2014, with the jurisdictional customs authorities for a total amount of Rs. 30,793/-, which was sanctioned. However, subsequently, it was observed by the office of Applicant that the Respondent 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 28.11.2016 was issued to the Respondent for a demand of Rs. 30,793/-, which was confirmed by the original authority, vide the aforesaid Order-in-Original dated 30.03.2019. A penalty of Rs. 3,000/- was also imposed under Section 117 of the Customs Act, 1962. Aggrieved,

the Respondent filed an appeal before the Commissioner (Appeals), which was allowed.

3. The revision application has been filed, mainly, on the ground that the export proceeds in respect of Shipping Bill No. 4359738 dated 11.08.2014 were not realized within the stipulated time period or such extended period as may be extended by the competent authority and, hence, the drawback amount already paid is recoverable.

4. Personal hearing, in virtual mode, was held on 30.03.2022. Sh. Ajay Jain, Proprietor appeared for the Respondent and requested that documents sent by e-mail on 05.03.2022 may be taken on record. On the basis of written submissions dated 19.08.2020 and documents forwarded on 05.03.2022, Sh. Jain supported the order of Commissioner (Appeals). None appeared on behalf of the Applicant nor any request for adjournment has been received. Therefore, the matter is taken up for disposal based on records.

5.1 The Government has carefully examined the matter. Applicant in the revision application has contended that the export proceeds against the Shipping Bill No. 4359738 dated 11.08.2014 had not been realized within the stipulated time period or such extended period as may be extended by the RBI/AD bank. Respondent, vide e-mail dated 05.03.2022, has submitted a copy of letter dated 03.02.2020 issued by the Dena Bank (now Bank of Baroda) wherein it is stated that the payment against the said Shipping Bill dated 11.08.2014 was realized on 31.07.2015, 02.11.2015 and

20.12.2018. Thus, it is evident from the Bank's letter that the export proceeds against the said Shipping Bill were not realized within the stipulated time period. As such the contention of the Respondent that the payment was realized within the stipulated time period is factually incorrect.

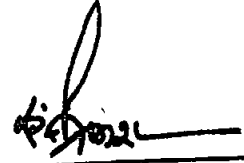
5.2 Government observes that, in terms of the second proviso to Section 75(1) of the Customs Act, 1962, where any drawback has been allowed on any goods and sale proceeds in respect of such goods are not received within the time period allowed under FEMA, 1999, such drawback shall be deemed never to have been allowed. Further, as per Rule 16A *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, the Government holds that the corresponding drawback, sanctioned and paid, is recoverable from the Applicant.

5.3 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 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. As such, the Commissioner (Appeals) has erred to the extent brought out in the revision application.

5.4 However, keeping in view of the fact that the full payment has been realized, mostly with only a slight delay, and as the amount involved is small the penalty imposed by the lower authority is waived.

6. In view of the above, the revision application is allowed with above mentioned modification.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of Customs, Jodhpur,  
HQRS., New Central Revenue Building,  
Statue Circle, "C" Scheme,  
Jaipur- 302005,  
Rajasthan.

Order No. 114/22-Cus dated 30-03-2022

Copy to:

1. M/s Janiko Fashions, 2260, Pt. Shivdeen Ji Ka Rasta, Kishanpole Bazar, Jaipur-302003(India).
2. Commissioner (Appeals), Central Excise, CGST & Customs, New Central Revenue Building, Statue Circle, Jaipur 302005.
3. PA to AS(RA).
4. Guard File.
5. Spare Copy.

ATTESTED



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