

**REGISTERED
SPEED POST**



F.No. 371/20/DBK/13-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.....

31/8/14

ORDER NO. 112/14-Cus DATED 02.05.2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D.P.SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129 DD OF THE CUSTOM ACT, 1962.

Subject : Revision application filed, under Section 129 DD of the Custom Act, 1962 against the order-in-appeal No. 527/Mumbai-III/2012 dated 18.12.12 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III

Applicant : M/s Karl Hogan Clothing Pvt. Ltd., Mumbai.

Respondent : Commissioner of Customs (Export), Mumbai

ORDER

This revision application has been filed by M/s Karl Hogan Clothing Pvt. Ltd., Mumbai against the order-in-appeal No.527/Mumbai-III/2012 dated 18.12.12 passed by the Commissioner of Central Excise (Appeals) Mumbai Zone-III with respect to order-in-original passed by the Assistant Commissioner of Customs, DBK(XOS), ACC, Sahar, Mumbai.

2. Brief facts of the case are that the applicant has obtained a drawback amount of Rs.274090/- in respect of the exports made under the Shipping Bills. Subsequently a show cause notice was issued for demand of drawback along with applicable interest to the Customs Deptt., on the ground that the applicant has not realized the foreign exchanges involved on the goods exported under the said Shipping Bills as per Rule 16[A] Sub-Rule [1] & [2] of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. As per Rule 16[A] Sub-Rule [1] & [2] of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The Exporter is under obligations to produce evidence to show that the sale proceeds [foreign exchange] in respect of the goods exported have been realized within the time limit prescribed under the Foreign Exchange Management Act, 1999. The original authority after following due process of law confirmed the demand of duty with applicable interest.

3. Being aggrieved by the said order-in-original, the applicant filed appeal before Commissioner (Appeals), who dismissed the same on the ground that the applicant failed to make pre-deposit.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 129DD of Customs Act, 1962 before Central Government on the following grounds:

4.1 The applicant humbly submits that as per the Customs, Central Excise Duties and S.T. Drawback Rules, 1995 read with Customs Act 1962, the applicant

had already realized the sale proceeds (F.E.) in respects of the goods exported within the time limit prescribed under the FEMA, 1999. The applicant, who is a reputed exporter, did not fail to produce the evidence to show that the sale proceeds (F.E.) in respect of the goods exported have been realized, as wrongly alleged in the said order. The applicant had clearly stated before the Lower Authority on 02/02/2010 that the company had already realized the sale proceeds (F.E.) in respect of the goods exported during 2006. The applicant had also enclosed the Chartered Accountant certificate to this effect along with the letter dated 02/02/2010. As the letter dated 02/02/2010 was self-explanatory, they did not reply to the show cause notice or appear for P.H. as alleged in the said order. The applicant again hereby encloses herewith the table showing the (5) shipping bills and bank realisation certificates as well as the amount of Drawback claimed in the ANNEXURE for Your Honour's Kind Perusal. Hence it is proved beyond doubt that the applicants had co-related each shipping bill and amount of the Drawback claimed and the total drawback amount also was tallied as per the said order. Hence the applicant is not liable to return any Drawback amount to the Dept. as wrongly alleged in the said order. However the lower authority had not disputed the fact that the 5 shipping bills as well as the bank realization certificates are genuine once. It was the duty of the lower authority to have considered all the genuine documents sympathetically rather than taken such harsh action.

4.2 The lower authority has wrongly held in the order-in-appeal that evidence produced by the applicant was not relevant at all. In this connection the applicant humbly submits that this charge of the lower authority had no weight at all in as much as the evidence though produced subsequently, does not cease to be evidence in law if it is otherwise a genuine evidence and it was rightly observed by the Kolkata High Court Judges. If it were not a genuine evidence, the amount of the Drawback claim for Rs.274090/- would not have been tallied along with the (5) shipping bills and the (BRC). The applicant had also written

the letter to the lower authority on 03/12/2012 through his advocate wherein he had submitted the copy of the bank remittance advice for remaining shipping bill no 6134669 dated 26/09/06 to prove that the demand of Rs.50737/- as mentioned in the interim order-in-appeal was deemed to had been complied with and hence the appeal was not liable for rejection U/S 129E of Customs Act 1962. In fact, the section 129 (E) of Customs Act 1962 was not applicable at all in as much as the drawback amount of Rs.274090/- was officially sanctioned under the law and it was not erroneously refunded to the applicants as wrongly alleged in the order-in-original by the Asstt. Commissioner of Customs, ACC Mumbai. Furthermore, if there is any penalty in any case and if the applicant cannot pay the penalty, then only section 129 E is applicable. It is not so, in this case. In the said letter of the advocate the P.H. was also asked for but it is not known why the lower authority had passed the present order-in-appeal in the hasty manner, which was totally unjustified and hence deserves to be set aside in full. The applicant had no malafide intention or any guilty mind in allegedly producing the (5) S/B at appeal stage. At the most the production of the documents at appeal stage, could not have been viewed so seriously by the lower authority particularly when it was a technical lapse on the part of the applicant. The applicant also encloses herewith all the (5) S/B as well as (BRC) as well as letter from the C.A. again before Your Honour for kind perusal, to prove that the company of the applicant had already realized the sale proceeds (F.E.) in respect of the Goods exported during 2006.

4.3 The applicant therefore hopes that they would not be denied the justice at Your Honour's Hands and after perusing the records of the case, they would be exonerated of all the charges and allegations leveled against them in the said order. Hence it is just proper, fair, necessary, convenient, and equitable and in the interest of justice that applicant's prayer be granted otherwise the grave irreparable loss, harm, injury, damage, undue hardship and prejudice would be caused to the applicants. The balance of convenience and equity are in their

favour. The applicants are reputed exporters and command good respect in the society and therefore it is below their dignity to misuse the Customs and Central Excise Duties and S.T. Drawback Rules 1995 read with Customs Act 1962 as wrongly alleged in the said order. The applicant had no malafide intention to hide or suppress the facts and to claim the drawback intentionally to misuse the drawback rules as wrongly alleged. The applicant craves leave to, add, refer, modify or cancel any of the submission before or during the course of P.H. in the matter in Mumbai.

5. Personal hearing scheduled in this case on 10.4.2014 at Mumbai was attended by Shri O.M.Rohira, Advocate on behalf of the applicant who reiterated the grounds of revision application. Nobody attended hearing on behalf of department.

6. Government has carefully gone through the relevant case records, oral and written submissions and perused the impugned order-in-original and order-in-appeal.

7. Government observes that in this impugned case, the original authority confirmed the demand of already availed drawback of Rs.274090/- on the ground that the applicant failed to realize the foreign remittance for export sale proceeds. Commissioner (Appeals) rejected applicant's appeal on the ground that applicant failed to make pre-deposit of Rs.50537/-. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. In this case applicant has claimed that foreign remittances for export sale proceeds in respect of all the shipping bills (5 Nos.) was received in time by them. They have produced the copies of 5 BRCs in the respect of all five shipping bills, evidencing receipt of export sale proceeds in time. Commissioner (Appeals) has rejected appeal for non-compliance of provisions of Section 129E of Customs Act 1962 as applicant failed to make pre-deposit of Rs.50737/-.

Government notes that demand of already sanctioned drawback claim can be confirmed only if export sale proceeds are not received in time. In this case, the copies of BRCs submitted reveal that sale proceeds was in fact received within stipulated time period. As such demand is liable to be dropped if the said BRCs are found valid on verification.

9. Government therefore sets aside the impugned orders and remands the case back to original authority to consider afresh in the light of above observations. Applicant is directed to submit the BRCs and other requisite document before original authority with 2 weeks of receipt of this order. A reasonable opportunity of hearing will be afforded the parties.

10. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

M/s Karl Hogan Clothing Pvt. Ltd
106 Amir Industrial Estate
Sun Mill Compound
Lower Parel
Mumbai – 400013



(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/ Govt. of India
नई दिल्ली/ New Delhi

Order No. 112/2014-Cus dated 02.05.2014

Copy to:

1. Commissioner of Customs (Export), Air Cargo Complex, Sahar, Andheri (East) Mumbai-400099
2. Commissioner of Customs (Appeals), Mumbai Zone-III, Awas Corporate Point, Makwana Lane Behind S.M.Centre, Andheri Kurla Road, Marol, Mumbai-400059
3. The Assistant Commissioner of Customs DBK(XOS), Air Cargo Complex, Sahar, Andheri (East), Mumbai-400099
4. Shri O.M.Rohira, Advocate, 148/5, Uphaar, 10th Road, Khar (W), Mumbai-400052
- ✓ 5. PS to JS(RA)
6. Guard File
7. Spare Copy

ATTESTED



(B.P.Sharma)
OSD (Revision Application)