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SPEED POST



**F.No. 371/76/DBK/13-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.....07/2/14

Order No. 27/14-cus dated 06.02.2014 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed,  
under section 129 DD of the Customs Act  
1962 against the Order-in-Appeal No.  
Mum-CUSTOM-AXP-APP-108 &109/13-14  
dated 03-07-2013 passed by the  
Commissioner of Customs, (Appeals), Mumbai.

Applicant : M/s. Fashion Club Global,  
C/o S.S. Arora Advocate,  
B-1/71, Safdarjung Enclave,  
New Delhi-110029.

Respondent : Commissioner of Customs,  
5<sup>th</sup> Floor, Avas Corporate Point,  
Makhwana Lane, Andheri Kurla Road,  
Behind S.M. Centre, Andheri (E),  
Mumbai Zone-400059.

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ORDER

This revision application is filed by applicant M/s. Fashion Club Global, against the Order-in-Appeal No. Mum-CUSTOM-AXP-APP-108 &109/13-14 dated 03-07-2013 passed by the Commissioner of Customs (Appeals), Mumbai-IV with respect to Order-in-Original passed by Assistant Commissioner of Customs (Export), Mumbai.

2. Brief facts of the case are that the applicant exported goods to South for which they were given duty drawback subsequently, demand notice was issued to the applicant on the ground of non submission of bank realization certificate (BRC). The original authority confirmed the demand of already sanctioned drawback vide impugned Order-in-Original for the reason of non submission of BRC.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

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

4.1 In terms of Rule 5 sub rule 3 (b) of appeal rules, the Commissioner (Appeals) have the jurisdiction to accept the additional evidence relevant to the case unless and until the adjudging authority has been given sufficient opportunity. From the personal hearing letter sent to the petitioner clearly mentioned that Assistant Commissioner of Customs was a party to the appeal case in hand and they were given sufficient opportunity to rebut the evince produced before the Commissioner (Appeals).

Under Rule 5 (4) Commissioner (Appeals) has the power to accept any evidence to enable him to dispose of the appeal. Therefore, the Commissioner (Appeals) is legally not correct by not taken the realization certificate issued by the bak while passing the order.

4.2 CESTAT in the case of 1995 (78) ELTY 80 (Tri.) Bhagwandas Harjpal vs. Collector of Customs (Prev,) Calcutta held that new documentary evidences can be considered by the Tribunal in the interest of justice-Section 129B of the Customs Act, 1962-Rule 23 of the CEGAT (Procedure) Rule, 1982.

5. Personal hearing was scheduled in this case on 30-12-2013. Shri S.S. Arora Advocate attended hearing on behalf of the applicant who reiterated the grounds of Revision Application.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that the original authority confirmed the demand of already sanctioned drawback on the ground that the applicant failed to submit Bank Realization certificate. Commissioner (Appeals) upheld impugned Order-in-Original. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

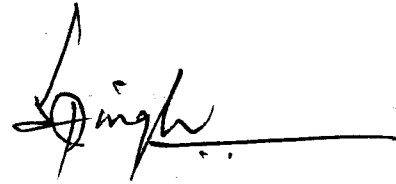
8. Government finds that in the present case the demand of erroneously sanctioned drawback was confirmed on the ground that Bank Realization Certificate for export sale proceeds were not submitted. The applicant contended that they had subsequently submitted the copies of BRC and have again furnished a copy of the same issued by Kotak Mahindra Bank. As per copies of Bank realisation certificate submitted by applicant, the export sale proceeds are stated to be realised as under:-

Shipping Bill No./Date	Date of Realisation of export sale proceeds
7920637 dt. 09-08-2010	27-09-2010
7839678 dt. 17-06-2010	14-01-2012 (hand written date)
7839679 dt. 17-06-2010	14-03-2011

The said position reveals that exports sale proceeds in case of SB No. 7920637 dt. 09-08-2010 and 7839679 dt. 17-06-2010 was realised on 27-09-2010 and 14-03-2011 respectively well within stipulated time period. The impugned Order-in-Original as well as Order-in-Appeal has not mentioned the drawback claim of Rs. 87426/- availed shipping bill wise. As such factual position is required to be verified by original authority. If on verification, the export sale proceeds are found to have been realised within one year then the same is required to be accepted and there will not be any reason for recovery of drawback. As such Government sets aside the impugned orders and remands the case back to the original authority for fresh consideration of claim in terms of above observations. A reasonable opportunity of hearing will be afforded to the applicants.

9. The revision application is disposed off in terms of above.

10. So, ordered.



(D.P. Singh)  
Joint Secretary to the Govt. of India

M/s. Fashion Club Global,  
C/o S.S. Arora Advocate,  
B-1/71, Safdarjung Enclave,  
New Delhi-110029.

ATTESTED



7/2

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

Order No. 27/14-Cx dated 06-02-2014

Copy to:

1. Commissioner of Customs, 5<sup>th</sup> Floor, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Behind S.M. Centre, Andheri (E), Mumbai Zone-400059.
2. The Commissioner of Customs, (Appeals), 5<sup>th</sup> Floor, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Behind S.M. Centre, Andheri (E), Mumbai Zone-400059.
3. Assistant Commissioner of Customs, CSI Airport, Mumbai.
4. S.S. Arora Advocate, B-1/71, Safdarjung Enclave, New Delhi-110029.

✓ 5. PS to JS(RA)

6. Guard File.

7. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)

OSD (REVISION APPLICATION)