

REGISTERED
SPEED POST



F.Nos. 373/47/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.....21/4/14

ORDER NO. 92/14-Cus DATED 21.04.2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT 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.CMB-CEX-000-APP-012-13 dated 17.01.2013 passed by Commissioner of Central Excise & Service Tax (Appeals) Coimbatore

APPLICANT : M/s Update Apparel (Bangalore) Pvt. Ltd., Bangalore

RESPONDENT : Deputy Commissioner of Customs, Tirupur

ORDER

This revision application is filed by M/s Update Apparel (Bangalore) Pvt. Ltd., Bangalore against the order-in-appeal No.CMB-CEX-000-APP-012-13 dated 17.01.2013 passed by Commissioner of Central Excise & Service Tax (Appeals) Coimbatore with respect to order-in-original No. 102/12-Cus (BRC) dated 31.01.2012 passed by Deputy Commissioner of Customs, ICD Tirupur.

2. Brief facts of the case are that M/s Update Apparel, No.351, 4th Main, 9th Cross, 4th Phase, Peenya Industrial Area, Bangalore – 560 058 have failed to submit the BRC in respect of following shipping bills within the stipulated time, therefore a show cause notice was issued, asking the applicants to produce the evidence of realization of export proceeds.

SB No.	SB Date	Drawback Amount(Rs.)
3438	21.02.2008	76292
6571	25.04.2008	412963
9837	01.07.2008	137291
10919	25.07.2008	25742
TOTAL		652288

As the SCN was returned undelivered by the Postal Authorities and in this circumstance the adjudicating authority took up the issue for adjudication and after due process of law the adjudicating authority has given ex-parte decision and ordered for recovery of Rs.6,52,283/- under Rule 16A of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, being the drawback amount paid earlier to the applicants, interest was also demanded under Section 75A (2) of the Customs Act, 1962 and imposed a penalty under Section 117 of the Act *ibid*.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) on the following grounds :-

- (i) Since their Sister concern M/s Ariatex Garments Pvt. Ltd. is also situated in the same premises, the SCN got undelivered by oversight of the postman.
- (ii) For the shipping bill No. 6571 dated 25.04.2008, the drawback granted amount is mentioned as Rs.4,12,963/- instead of Rs.1,76,018/-. Copy of Indian Bank Cheque No. H 476657 dated 07.10.2008 is enclosed.
- (iii) They had submitted the evidence for realization of export proceeds before availing the Drawback amount through their Clearing and Handling Agent, Kuehne – Nagel Pvt. Ltd., Tirupur.

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 on the following grounds :-

4. We understand that it is due to the show cause notice got returned by the postal authorities, Deputy Commissioner of Customs, Inland Container Depot, Rakkiyalalayam, Tirupur had proceeded to decide the case as ex-parte. In the letter, for the shipping bill No. 6571 dated 25.04.2008, the drawback granted amount mentioned as Rs.4,12,963/- instead of the actual amount of Rs.1,76,018/-. We had submitted the evidence for realization of export proceeds before availing the drawback amount through our clearing and handling agent, Kuehne – Nagel Pvt. Ltd., Tirupur.

4.1 The below table will help you to understand that we have received the payment from abroad within the time allowed under Foreign Exchange Management Act 1999.

SB No.	SB Date	BRC to be submitted as per the Rule	Payment Received on	BRC received by Kuhne	DBK amount sanction	Cheque No.	Date	Remarks

					Nagel to submit at Customs on behalf of update appeal	ed			
3438	21.02.08	6 Months	20.08.08	09.04.08	16.07.08				
9837	01.07.08	1 Year	30.06.09	26.08.08	17.09.08	239325.	H	30.09.08	DBK sanctioned after submissions of BRC through Kunhe Nagel
10919	25.07.08	1 Year	24.07.09	11.09.08	22.09.08	00	475772		
6571	25.04.08	6 Months	24.10.08	16.06.08	21.07.08	176018. 00	H 476657	07.10.08	

4.2 We have received only Rs.1,76,018/- against the SB No. 6571 dated 25.04.2008 whereas in the order of lower authority mentioned the drawback amount as Rs.4,12,963/-. We assume the reason for the mistake is not considering the amendment done in the particular shipping bill. The shipping bill No.6571 dated 25.04.2008 shows FOB value as GBP 47964.00 for 571 cartons with 22840 pcs. But it has been revised later as 306 cartons with 9970 pcs. Thus the actual FOB value reduced to GBP 20937.00. This has been affected the drawback amount also and drawback sanctioned accordingly. We had mentioned this in the statement which we submitted at the office of the Commissioner of Central Excise (Appeals) on 25th October 2012. And we would like to bring to your kind notice that in the order-in-appeal, the Commissioner of Central Excise (Appeals) has asked the lower authority to rectify the same after verification with record/documents.

4.3 As pointed out in the order-in-appeal, we have not tried to get any extension. When the BRCs submitted before sanctioning the drawback, there is no need of putting forth the time limit. We are still on that the postman has not approached us to deliver the show cause notice. And we believe that it may be because of the postman's oversight, he returned the show cause notice marking as "Addressee Left" since

Update Apparel (Bangalore) Pvt. Ltd. and Ariatex Garments Pvt. Ltd. are situated in the same premises.

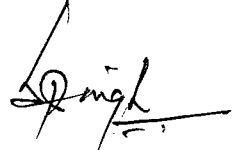
5. Personal hearing scheduled in this case on 21.03.14 at Chennai was attended by Shri Ravindran PVN, authorized representative on behalf of the applicant who reiterated the grounds of revision application.

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

7. Government notes that in all the case of SB No. 3498, 9837, 10919 and 6571, applicant claimed to here submitted the relevant BRC through their clearing agent. The photocopies of said BRCs are submitted alongwith their revision application. On perusal of said copies of BRCs, it is observed that foreign remittances were received well within stipulated period. In respect of shipping bill No. 6571 dated 25.04.2008, applicant contended that customs has not taken into account the amendment made in the shipping bill by the proper office of Customs. The FOB value of GBP 47964 for 571 cartons with 22840 pcs was revised to GBP 20937 for 306 cartons with 9970 pcs and as per the amendment they had received drawback of Rs.1,76,018/- against SB No. 6571. In this regard, Government notes that this factual position with regard to SB No. 6571 is required to be verified by original authority to arrive at correct amount of drawback claim. The original BRC are also to be verified by original authority to ascertain the veracity of applicant's claim that foreign remittances were received in time. In case the foreign remittances of the export sale proceeds are found to be received in time, there will be no case for recovery of drawback claim sanctioned initially and demand is liable to be dropped.

8. In view of above position, Government sets aside the impugned orders and remands the matter back to original authority for denovo consideration of case in the light of above observations. A reasonable opportunity of hearing will be afforded to both the parties before deciding the case.

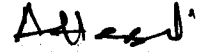
9. The revision application is disposed off in terms of above.
10. So ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

M/s Update Apparel (Bangalore) Pvt. Ltd.,
No.351, 4th Main, 9th Cross, 4th Phase,
Peenya Industrial Area,
Bangalore – 560 058



(भागवत शर्मा/Bhagwet Sharma)
सहायक आयुक्त/Assistant Commissioner
C.B.E.C.-O.S.D. (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
असल/Original/Govt. of India
110, D-Block, New Delhi

Order No. 92/14-Cus Dated 21.04.2014

Copy to:

1. The Commissioner of Customs, Central Excise & Service Tax (Appeals), 6/7, ATD Street, Race Course Road, Coimbatore – 641018.
2. Deputy Commissioner of Customs, Inland Container Depot, Rakkiyalayam Village, Tirupur – 641 654.
3. PA to JS(RA)
4. Guard File.
5. Spare Copy



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