



भारत सरकार/ Government of India
वित्त मंत्रालय / Ministry of Finance
आयुक्त सीमाशुल्क एन.एस.-II का कार्यालय
Office of Commissioner of Customs NS-II
Jawaharlal Nehru Custom House, Nhava Sheva,
Dist- Raigad, Maharashtra - 400 707



File No. S/12-Gen-MISC-1081/2017-18/DBK/BRC

Date of Order: 09.09.2025
Date of Issue: 23.09.2025

DIN No.: 20250978NT000088658B

Passed by: Geradi Narayan Srinivas
Asst. Commissioner of Customs,
Drawback Recovery Cell, NS-II, JNCH.

Order No. 945/2025-26/DC/NS II/DBK/BRC/CAC/JNCH

Name of the noticee : - M/s. Parmeshwari (India) Pvt. Ltd. (IEC: 1397008962)

ORDER-IN-ORIGINAL

१. यह प्रति उस व्यक्ति के प्रयोग में लाये जाने के लिए निःशुल्क दी जाएगी, जिसे यह जारी किया गया है।

1. This copy is granted free of charge for the use of the person to whom it is issued.

२. इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128(1) के तहत आदेश की संसूचना की तारीख से साठ दिन के भीतर ऐसे मामले जहाँ शुल्क या शुल्क और जुर्माना विवादित हैं या जुर्माना जहाँ सिर्फ जुर्माना ही विवादित है, की 7.5% राशि अदा करने पर सीमाशुल्क आयुक्त (अपील) जवाहरलाल नेहरू सीमा शुल्क भवन, न्हावाशेवा, उरण, रायगढ़ के समक्ष की जा सकती है।

2. An appeal against this order shall lie before the Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House, Nhava Sheva, Uran, Raigad under Section 128(1) of the Customs Act, 1962 within Sixty days from the date of communication of this order and on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty where penalty alone is in dispute.

३. अपील, सीमाशुल्क (अपील) नियम 1982, में प्रदर्शित फॉर्म सी.ए.-I में दो प्रति में की जानी चाहिए। अपील रुपये 2.00/- के न्यायालय फीस स्टॉप तथा इस आदेश या आदेश की प्रति के साथ संलग्न होनी चाहिए। यदि आदेश की प्रति संलग्न की जाती है तो इसमें भी न्यायालय फीस अधिनियम 1970 की अनुसूची 1 में प्रदर्शित रुपये 2.00/- की न्यायालय फीस स्टॉप भी होना चाहिए।

3. The appeal should be in duplicate and should be filed in Form CA - 1 appeared in Custom (Appeals) Rule, 1982. The appeal should bear a court fee stamp of Rs. 2.00 paid only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a court fee stamp of Rs. 2.00 only as prescribed under Schedule 1, item 6 of the Court Fees Act, 1970.

४. जो व्यक्ति इस निर्णय या आदेश के विरुद्ध अपील कर रहा है वह अपील को अनिर्णित रखेगा, और सीमा शुल्क अधिनियम 1962 की धारा 129ई के उपबंधों के अंतर्गत पैरा 2 के अनुसार धनराशि जमा कराएगा तथा अपील के समय उन भुगतान का प्रमाण प्रस्तुत करेगा, जिसके अनुपालन किए जाने पर सीमा शुल्क अधिनियम 1962 की धारा 128(1) के उपबंधों के अधीन अपील अस्वीकार कर दी जाएगी।

4. Any person appealing against this decision or order shall, pending the appeal, deposit the amount as per Para 2 above under Section 129E of the Customs Act, 1962 and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 128(1) of the Customs Act, 1962.

BRIEF FACTS OF THE CASE

Sub: - Denovo Adjudication of Show Cause-cum-Demand Notice dated 23.02.2018, issued to M/s. PARMESHWARI (INDIA)PVT.LTD., (IEC No.1397008962) under Rule 16A of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995, read with second proviso to Sec 75(1) and 75A(2) of the Customs Act 1962, for non-submission of proof of realization of export proceeds pertaining to exports during the period January, 2004 to March, 2014 - reg.

1. Pursuant to Board's Circular No. 5/2009-Customs, dated 02.02.2009 issued vide F.No 609/167/2003-DBK, this office had issued various Public Notices No 11/2009 dated 09.03.2009, 91/2015 dated 03.12.2015, 08/2016 dated 09.04.2016, 33/2016 dated 24.02.2016, 64/2016 dated 15.04.2016 and 136/2016 dated 07/10/2016, notifying all the exporters to submit proof of realization of export / sale proceeds within the stipulated time limit as prescribed under Foreign Exchange Management Act, 1999, in the form of 'Bank Realization Certificates / Negative Statements issued by their Authorized Dealer (AD) or Chartered Accountant in the capacity of statutory auditor of the exporter's account, on a six monthly basis'.

2. The second proviso to the Section 75(1) of the Customs Act, 1962 provides that where any drawback has been allowed on any goods and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India, within the time allowed under the Foreign Exchange Management Act (FEMA), 1999, such drawback shall be deemed never to have been allowed and the amount of such drawback shall be recovered or adjusted in terms of Rule 18(2) of the Customs and Central Excise Duties Drawback Rules, 2017 (erstwhile Rule 16A of Customs, Central Excise & Service Tax Drawback Rules, 1995).

3. While monitoring the realization of export proceeds for the Shipping Bills having 'Let Export Order (LEO)' dates between 01.01.2004 and 31.03.2014, it was observed that M/s. PARMESHWARI (INDIA)PVT.LTD., (IEC No.1397008962) having address at 145, NEW CLOTH MARKET, BHILWARA, RAJASTHAN.PIN-311001, (hereinafter referred to as 'the exporter' or 'the noticee') have received drawback amounting to Rs.52,25,332/-(Rupees Fifty Two Lakh Twenty Five Thousand Three Hundred Thirty Two Only) for the export shipments made during the aforesaid period. However, the exporter has failed to submit BRCs/ Negative Statements issued by their Authorized Dealer (AD) or Chartered Accountant in the capacity of statutory auditor of the exporter's account, on a six-monthly basis. Therefore, it appears that the said drawback amount of Rs.52,25,332/-(Rupees Fifty-Two Lakh Twenty-Five Thousand Three Hundred Thirty-Two Only) along with applicable interest is recoverable from them under Rule 18(2) of the Customs and Central Excise Duties Drawback Rules, 2017 (erstwhile Rule 16A of Customs, Central Excise & Service Tax Drawback Rules, 1995) read with second proviso to Section 75(1) & 75A (2) of the Customs Act, 1962 and Foreign Exchange Management Act, 1999.

4. In view of the above, a Show Cause-cum-Demand Notice dated 23.02.2018 vide F.No. S/12-Gen-MISC-1081/2017-18/DBK/BRC was issued asking the exporter to show cause to the Assistant/Deputy Commissioner of Customs, Drawback Recovery Cell, JNCH, NS-II, Nhava Sheva as to why, the said drawback amount of Rs.52,25,332/-(Rupees Fifty Two Lakh Twenty Five Thousand Three Hundred Thirty Two Only) along with applicable interest should not be recovered from them in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 (stands amended as Rule 18(2) of the Customs and Central Excise Duties Drawback Rules, 2017) read with second proviso to Section 75(1) & 75A (2) of the Customs Act, 1962 and Foreign Exchange Management Act, 1999.

5. There is no evidence to indicate that the aforesaid Show Cause-cum- Demand Notice dated 23.02.2018 has remained 'Undelivered' and is returned by the Postal Authority. Thus, in terms of Section 153 (3) of the Customs Act, 1962, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit. Accordingly, the said Show Cause-cum-Demand Notice

can be considered to have been served with due compliance of provisions of Section 153 of the Customs Act, 1962.

6. Sub-Rule (2) of Rule 18 of the Customs and Central Excise Duties Drawback Rules, 2017, provides that if the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, shall cause notice to be issued to the exporter for production of evidence of realisation of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within thirty days of the receipt of the said order. A personal hearing was granted on 25.04.2018, however, the exporter has failed to avail the said opportunity and has failed to submit any proof of realization of export / sale proceeds or any reply to the Show Cause Notice.

7. Accordingly, the case was adjudicated by the then Deputy Commissioner of Customs, BRC NS-II, JNCH vide Order in Original No. 1668/2020-21/DC/NSII/JNCH dated 17.03.2021 wherein the amount of Rs. 52,25,332/- /-(Rupees Fifty-Two Lakh Twenty-Five Thousand Three Hundred Thirty-Two Only) along with applicable interest was ordered to be recovered from them in terms of Rule 18(2) of the Customs and Central Excise Duties Drawback Rules, 2017 read with second proviso to Section 75(1) & 75A (2) of the Customs Act, 1962 and Foreign Exchange Management Act, 1999.

8. Aggrieved, the exporter preferred an appeal before Commissioner (Appeals) vide F. No. S/49-1274/2021-Misc/JNCH/Appeal.

9. Hon'ble Commissioner (Appeals) vide Order in Appeal No. 514-Drawback (BRC)/2024(JNCH)/Appeals dated 02.04.2024 observed the following:

"15.1I am of the opinion that Appellant was ready to submit the proof of realization but as the details of shipping bills were not provided by the Department so delays in submission of realization certificates should not be result in denial of the benefits. The Appellant should be given opportunity to submit the BRC.

16. Moreover, in the grounds of appeal, the Appellant has submitted the negative statements received by its merchant bank to substantiate its claim that the export proceeds were realized in time. Further, appellant also submitted certificates by Chartered Accountant certifying that the export proceeds have been realized. However, the appellant did not appear for the personal hearing."

9.1 In view of the above findings Hon'ble Commissioner (Appeals) has set aside the case and remanded the matter back to the Original Authority to pass appropriate order after giving the Appellant an opportunity of being heard.

RECORD OF PERSONAL HEARING

10. A personal hearing in the matter was conducted on 23.05.2025, attended by Shri Prerak Baheti, Chartered Accountant, on behalf of the exporter. During the hearing, he submitted the original copy of the Negative Statement pertaining to 31 Shipping Bills for the relevant period. He further stated that Bank Realization Certificates (BRCs) and a Chartered Accountant's Certificate had been submitted earlier. Additionally, he affirmed that all mandatory documents required to substantiate the receipt of foreign remittances have now been furnished to the department. Consequently, he requested that the proceedings be dropped.

DISCUSSIONS & FINDINGS

11. I have carefully gone through the facts, available records of the case, the charges issued to the exporter vide Show Cause-cum-Demand Notice dated 23.02.2018 vide F.No. S/12-Gen-MISC-1081/2017-18/DBK/BRC, the Order in

Original No. 1668/2020-21/DC/NSII/JNCH dated 17.03.2021 and the Order in Appeal No. 514-Drawback (BRC)/2024(JNCH)/Appeals dated 02.04.2024.

12. I find that this is a case of denovo adjudication as directed by Commissioner (Appeals) and the main issue before me is to determine whether the drawback amount of Rs.52,25,332/- (Rupees Fifty Two Lakh Twenty Five Thousand Three Hundred Thirty Two Only) received against the export shipments made during the period of 01.01.2004 to 31.03.2014 is recoverable, along with the applicable interest under Rule 16A of the Drawback Rules, 1995 (stands amended as Rule 18(2) of the Customs and Central Excise Duties Drawback Rules, 2017) read with second proviso to Section 75(1) & 75A (2) of the Customs Act, 1962 and Foreign Exchange Management Act, 1999.

13. It is a fact that as Rule 16A of Customs, Central Excise & Service Tax Drawback Rules, 1995 (stands amended as Rule 18(2) of the Customs and Central Excise Duties Drawback Rules, 2017) read with second proviso to Section 75(1) & 75A (2) of the Customs Act, 1962, provides for recovery of drawback amount where export proceeds have not been realized within the prescribed period or any period extended under the Foreign Exchange Management Act (FEMA), 1999. I further find that where any drawback has been allowed on any goods and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the Foreign Exchange Management Act (FEMA), 1999, it is deemed that the such drawback has never been allowed therefore the same is required to be recovered by pressing into action aforesaid Rule 16A of Customs, Central Excise & Service Tax Drawback Rules, 1995 (stands amended as Rule 18(2) of the Customs and Central Excise Duties Drawback Rules, 2017).

13.1 Further, I find that vide Board's Circular No. 5/2009-Cus dated 02.02.2009 and various Public Notices issued by this office thereafter, the burden to furnish the proof of realization of exports proceeds for the goods exported under the claim of drawback under Shipping Bills having LEO dates between the period from 01.01.2004 to 31.03.2014, lies on the exporter. Having failed to produce any evidence of realization of exports proceeds within the time allowed under the said Public Notices, the subject notice was issued to them.

13.2 I find that Sub-Section (2) of Section 75A of the Customs Act, 1962, provides that where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the rules made thereunder, the claimant shall, within a period of two months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under Section 28AA and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback. Further, I also find that in terms of Rule 18(2) of the Customs and Central Excise Duties Drawback Rules, 2017, if the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, shall cause notice to be issued to the exporter for production of evidence of realisation of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within thirty days of the receipt of the said order.

14. During the course of the personal hearing held on 23.05.2025, attended by Shri Prerak Baheti, Chartered Accountant (C.A.) representing the exporter, the original copy of the Negative Statement pertaining to 31 Shipping Bills for the relevant period was submitted. The C.A. stated that Bank Realization Certificates (BRCs) and a Certificate from a Chartered Accountant had been previously submitted. He further asserted that all mandatory documents required to establish receipt of foreign remittances have now been furnished to the department.

15. Mr. Naveen Kumar Kakani, Partner of M/s Kakani & Associates, Chartered Accountants, Bhilwara, Rajasthan, has issued fourteen (14) six-monthly Negative Statements dated 24th August 2021, covering the period from 01.07.2005 to 30.06.2012 for AD Code Nos. 0170094 and 5080006. The authenticity of these

certificates has been verified through online confirmation of the UIDIN from the official ICAI portal (<https://udin.icaai.org/>).

15.1 The Assistant General Manager of State Bank of India (SBI), Bhilwara, Rajasthan, has issued three (03) six-monthly Negative Statements dated 28.05.2018 for the period from 01.07.2005 to 31.12.2006 concerning AD Code Nos. 0170094-5080006, and eleven (11) six-monthly Negative Statements dated 28.05.2018 for the period from 01.01.2007 to 30.06.2012 concerning AD Code Nos. 0170093-5080007. The genuineness of these certificates has been affirmed by the Bank via an email dated 13.06.2025.

15.2 M/s Abhishek Laddha & Co., Statutory Auditors and Chartered Accountants based in Rajasthan, have issued fourteen (14) six-monthly Negative Statements for the period from 01.07.2005 to 30.06.2012 for AD Code No. 6390047. The authenticity of these certificates has been verified through online confirmation of the UIDIN from the official ICAI portal (<https://udin.icaai.org/>) as well as by the Auditor through an email dated 12.06.2025.

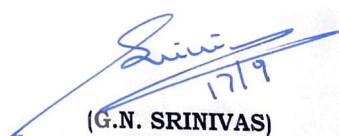
15.3 Upon examination of the 31 Shipping Bills in question, it is observed that Shipping Bills numbered 1 to 16 carry AD Code No. 6390047, which are comprehensively covered by the Negative Statements submitted by the exporter from their Statutory Auditor, M/s Abhishek Laddha & Co. Furthermore, Shipping Bills numbered 17 to 31 bear AD Code No. 0170094 and are adequately covered by the Negative Statements submitted by the exporter from M/s Kakani & Associates.

16. Based on the foregoing submissions by the exporter—that export proceeds have been received for all their exports—and the Negative Statements provided by the Statutory Auditor confirming no pending receipts, it is concluded that the exporter has duly received all remittances. Accordingly, I hereby pass the following order:

ORDER

17. I drop the demand of Rs. 52,25,332/- (Rupees Fifty-Two Lakh Twenty-Five Thousand and Three Hundred Thirty-Two only) from exporter M/s Parmeshwari (India) Pvt. Ltd., (IEC No.1397008962) demanded vide Demand Cum Show Cause Notice dated 23.02.2018 issued vide F.No. S/12-Gen-MISC-1081/2017-18/DBK/BRC.

18. This order is passed without prejudice to any other action and/or/further action on the aforesaid company and/or other individuals/persons under the provision of the Customs Act 1962 or any other law for the time being in force.


(G.N. SRINIVAS)
Asstt. Commissioner of Customs,
DBK (DRC), JNCH, Nhava-Sheva.

To,

M/s. Parmeshwari (India) Pvt. Ltd., (IEC: 1397008962)
145, New Cloth Market, Bhilwara, Rajasthan.
Pin-311001,

Copy to:

1. DC/Review Cell, JNCH.
2. AC/CAC/JNCH.
3. DC/EDI with a request to upload on JNCH website.
4. DC/CHS with a request to display on Notice Board, JNCH.
5. Office copy.