

# Bimal Jain

FCA, FCS, LLB, B.Com (Hons)

Dear Professional Colleague,

## Recovery of Drawback claimed, on non realization of export proceeds

We are sharing with you an important judgment of the Hon'ble Supreme Court of India, in the case of *Surinder Singh Vs. Union of India [2016 (340) E.L.T. 97 (S.C.)]* on the following issue:

### Issue:

Whether Customs duty and Excise duty portion of drawback already claimed by the assessee can be recovered by the Department consequent to the non-realization of export proceeds?

### Facts & Background:

The deceased assessee, Mr. Surinder Singh, who was the sole proprietor of M/s. Rang International ("**the Appellant**"), is carrying on the business of manufacture and export of readymade garments. During the period 1991-1993, the Appellant exported garments worth Rs. 45.75 crores, in respect of which the Appellant was allowed duty drawback. However, the Appellant was not able to realise export proceeds to the extent of Rs. 11.73 crores since the foreign buyers were declared bankrupt. Consequently, the Appellant applied to the Reserve Bank of India (RBI) to write off the amount, as there was no possibility of realising the aforementioned export proceeds. The RBI granted the permission to the Appellant subject to certain terms.

Thereafter, the Customs Authorities issued a Show Cause Notice requiring the Appellant to surrender/repay the duty drawback allowed earlier to the extent of the amount of sale proceeds not realised along with interest. Pursuant to the order of the Appellate Authority, the Appellant deposited the entire sum of drawback with interest.

Thereafter, the said matter reaches upto the Hon'ble High Court for refund of the drawback amount along with interest recovered from the Appellant wherein it was held that Rule 16A of the Duty Drawback Rules, 1995 ("**the Drawback Rules**") could not be retrospective and that all payments made towards the Central Excise component of drawback before December 6, 1995 (date on which the Drawback Rules introduced) cannot be recovered even though the export proceeds have not been realized. However, the Hon'ble High Court rejected the claim for refund of the drawback recovered from the Appellant to the extent of its Customs component.

Appellant view: The order of the Adjudicating Authority was entirely without jurisdiction. It was also contended by the Appellant that since the Drawback Rules were not retrospective, the demand for refund of the duty drawback to the extent of its Customs component made

# Bimal Jain

FCA, FCS, LLB, B.Com (Hons)

in exercise of Rule 16A thereof as pertaining to period prior to December 6, 1995 was unsustainable in law.

Revenue view: The Revenue is of the view that when Rule 16A of the Drawback Rules was introduced, it was only consistent with the existing provisions of Section 75 in the Customs Act, 1962 ("**the Customs Act**"), for recovery of duty drawback to the extent of its Customs component where export proceeds were not realised.

## Held:

The Hon'ble Supreme Court has held that the order passed by the High Court does not suffer from any infirmity and, therefore, no interference therein is called for and it's suffice to point out that the effect of Section 75 of the Customs Act, is that in case value/price of the goods exported is not received, it is to be presumed as if no drawback was ever allowed and in that view of the matter, the duty drawback which was taken by the Appellant had to be refunded. Rule 16A is a clarificatory provision clarifying the position of law which already exists in the form of Section 75 under the Customs Act and therefore, will have retrospective effect.

*Hope the information will assist you in your Professional endeavours. In case of any query/information, please do not hesitate to write back to us.*

Thanks & Best Regards

# Bimal Jain

FCA, FCS, LLB, B.Com (Hons)

[Author of a book on Goods and Services Tax, titled, "GST LAW AND ANALYSIS – WITH CONCEPTUAL PROCEDURES" \(2<sup>nd</sup> Edition\)](#)

**A2Z TAXCORP LLP**

**Tax and Law Practitioners**

## **Delhi:**

Flat No. 34B, Ground Floor,  
Pocket – 1, MayurVihar Phase-1  
Delhi – 110091 (India)  
Tel: +91 11 22757595/ 42427056

## **Allahabad:**

B2-3/4-31 Sarojani Apartments  
Sarojani Naidu Marg  
Allahabad - 211001

Mobile: +91 98106 04563; E-mail: bimaljain@hotmail.com

# Bimal Jain

FCA, FCS, LLB, B.Com (Hons)

## Chandigarh:

H. No. 908, Sector 12-A,  
Panchkula, Haryana - 134115

Email: [bimaljain@hotmail.com](mailto:bimaljain@hotmail.com)

Web: [www.a2ztaxcorp.com](http://www.a2ztaxcorp.com)

LinkedIn: <https://in.linkedin.com/pub/bimal-jain/14/601/4b4>

Facebook: [facebook.com/bimal.jain.90](https://facebook.com/bimal.jain.90)

Twitter: <https://twitter.com/JainTax>

YouTube: <https://www.youtube.com/channel/UCp0tT5ShjB4KHJRSIPc3t5w>

## We can now also be contacted at below mentioned address:

Bengaluru Office:	Kolkata Office	Dhanbad Office:
Adarsh Residency, Block F, 4th Floor, (F404) 47th Cross, Jayngar 8 <sup>th</sup> Block, Bengaluru, Karnataka-560070 Email: <a href="mailto:bengaluru@a2ztaxcorp.com">bengaluru@a2ztaxcorp.com</a>	10 Bow Street, 2 <sup>nd</sup> Floor, Near Central Metro Station, Besides Calcutta Motor Dealers Association, Kolkata, West Bengal-700012 Email: <a href="mailto:kolkata@a2ztaxcorp.com">kolkata@a2ztaxcorp.com</a>	2 <sup>nd</sup> Floor, Shree Laxmi Complex, Dhanbad, Jharkhand- 826001 Email: <a href="mailto:dhanbad@a2ztaxcorp.com">dhanbad@a2ztaxcorp.com</a>

**Disclaimer:** The contents of this document are solely for informational purpose. It does not constitute professional advice or recommendation of firm. Neither the authors nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this document nor for any actions taken in reliance thereon.

Readers are advised to consult the professional for understanding applicability of this newsletter in the respective scenarios. While due care has been taken in preparing this document, the existence of mistakes and omissions herein is not ruled out. No part of this document should be distributed or copied (except for personal, non-commercial use) without our written permission.

Mobile: +91 98106 04563; E-mail: [bimaljain@hotmail.com](mailto:bimaljain@hotmail.com)