CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS MISCELLANEOUS APPLICATION NO. 50544 OF 2025
IN
CUSTOMS APPEAL NO. 2102 OF 2012

[Arising out of the Order-in-Original No. 10/2012 dated 31/03/2012 passed by The Commissioner, Customs, New Delhi.]

M/s PGY Associates, **.....Appellant**
Kamla Tower,
Kanpur.

Versus

Commissioner, Customs, **....Respondent**
ICD, Tughlakabad,
New Delhi.

WITH
CUSTOMS APPEAL NO. 2103 OF 2012

[Arising out of the Order-in-Original No. 10/2012 dated 31/03/2012 passed by The Commissioner, Customs, New Delhi.]

Sushila Singhania, **.....Appellant**
R/o 11, Cantt. Gangakuti,
Kanpur.

Versus

Commissioner, Customs, **....Respondent**
ICD, Tughlakabad,
New Delhi.

WITH
CUSTOMS MISCELLANEOUS APPLICATION NO. 50545 OF 2025
IN
CUSTOMS APPEAL NO. 2104 OF 2012

[Arising out of the Order-in-Original No. 10/2012 dated 31/03/2012 passed by The Commissioner, Customs, New Delhi.]

Kavita Singhania, **.....Appellant**
R/o 11, Cantt. Gangakuti,
Kanpur.

Versus

Commissioner, Customs, **....Respondent**
ICD, Tughlakabad,
New Delhi.

WITH
CUSTOMS MISCELLANEOUS APPLICATION NO. 50542 OF 2025
IN
CUSTOMS APPEAL NO. 2105 OF 2012

[Arising out of the Order-in-Original No. 10/2012 dated 31/03/2012 passed by The Commissioner, Customs, New Delhi.]

Krishna Kumar Mishra, **.....Appellant**
R/o 150, Mithila Aptt., I.P. Extension,
Patparganj, Delhi.

Versus

Commissioner, Customs, **....Respondent**
ICD, Tughlakabad,
New Delhi.

WITH
CUSTOMS MISCELLANEOUS APPLICATION NO. 50543 OF 2025
IN
CUSTOMS APPEAL NO. 2106 OF 2012

[Arising out of the Order-in-Original No. 10/2012 dated 31/03/2012 passed by The Commissioner, Customs, New Delhi.]

Anil Kumar Agarwal, **.....Appellant**
R/o Padam Apartment, 16/16,
Kanpur.

Versus

Commissioner, Customs, **....Respondent**
ICD, Tughlakabad,
New Delhi.

AND
CUSTOMS APPEAL NO. 2516 OF 2012

[Arising out of the Order-in-Original No. 10/2012 dated 31/03/2012 passed by The Commissioner, Customs, New Delhi.]

Sushila Singhania, **.....Appellant**
R/o 11, Cantt. Gangakuti,
Kanpur.

Versus

Commissioner, Customs, **....Respondent**
ICD, Tughlakabad,
New Delhi.

APPEARANCE:
Shri R.K. Handoo, Advocate for the appellant.
Shri Ajay Jain, Special Counsel for the Department

CORAM:
HON'BLE DR. MS. RACHNA GUPTA, OFFICIATING PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51544-51549/2026

DATE OF HEARING : 04.08.2026
DATE OF DECISION: 28.09.2026

P.V. SUBBA RAO

The miscellaneous applications have been filed by the Revenue to implead Commissioner of Customs (Export), ICD, Tughlakabad as the respondent. We find that Commissioner of Customs, Tughlakabad is already the respondent. If the Commissionerate has subsequently been bifurcated into Commissioner of Customs (Import) and Commissioner of Customs (Export) and these appeals pertain to exports, naturally the concerned Commissioner will have to take action. There is no need to separately implead Commissioner of Customs (Export). The miscellaneous applications are rejected.

2. The order dated 31.3.2012 passed by the Commissioner of Customs, ICD, Tughlakabad is assailed in these six appeals by the appellants insofar as it applies to them. M/s. PGY Associates[1], is aggrieved by the disallowance of drawback and order of its recovery from the appellant in respect of 58 consignments of goods exported through ICD Tughlakabad and 34 consignments of goods exported through ICD Patparganj, New Delhi to Russia. It is also aggrieved by the order holding the exported goods liable to confiscation and consequently

1. **Exporter**

imposing penalty under section 114 of the Customs Act, 1962[2] and order of recovery of interest under section 75A(2) of the Act read with 28AB of the Act. Other appellants are aggrieved by the penalties imposed on them under section 114 of the Act. The operative part of the order is reproduced below:

> "In view of the discussion and findings above, I pass the following order :
>
> 1. Drawback amounting to Rs. 2,07,94,934/- (Rupees Two Crores seven Lakhs ninety four thousand nine hundreds and thirty four only) in respect of export of 58 consignments through ICD, Tughlakabad, New Delhi and drawback amounting to Rs. 1,22,51,916/- availed in respect of export of 35 consignments through ICD, Patparganj, New Delhi, details whereof have been given in the impugned notice, totaling to Rs. 3,30,46,850/- (Rupees Three Crores Thirty Lakhs Forty Six Thousand Eight Hundreds and Fifty only) availed of by M/s PGY Associates, Kanpur, having its office in New Delhi also, is disallowed and is ordered to be recovered from them under Rule 16/16A of the Customs and Central Excise Duties Drawback Rules, 1995, as amended, readwith the provisions of Section 75 (1) of the Customs Act, 1962;
> 2. An amount of Rs. 1,00,00,000/- (Rupees One Crore only) paid by Demand Draft by M/s PGY Associates, Kanpur, is appropriated under Rule 16/16A of the Customs and Central Excise Duties Drawback Rules, 1995, as amended, readwith the provisions of section 75 (1) of the Customs Act, 1962;
> 3. The goods collectively valued at Rs. 26,98,53,937/- (Rupees Twenty Six Crore, Ninety Eight Lakh, Fifty Three Thousand, Nine Hundred and Thirty Seven only) of export under drawback are liable to be confiscated under section 113 (d), 113 (h) and section 113 (i) & (ii) of the Customs Act, 1962. Since these goods, i.e. RMG, have already been exported, it is not possible to confiscated them hence, no redemption fine is imposed. However, a penalty of Rs. 3,30,46,850/- (Rupees Three Crores Thirty Lakhs Forty Six Thousand Eight Hundreds and Fifty only) equivalent to the amount of drawback availed by the Noticee Firm is imposed under section 114 of the Customs Act, 1962 upon M/s PGY Associates, Kanpur;
> 4. Interest under section 75A (2) of the Customs Act, 1962, read with section 28AB of the Customs Act, 1962 shall be recovered from M/s PGY Associates, Kanpur at the rates as applicable ;
> 5. Penalty of Rs. 1,00,00,000/- (Rupees one crore only) is imposed upon Shri Yadupati Singhania, Partner of M/s PGY Associates, Kanpur, under section 114 of the Customs Act, 1962 ;
> 6. Penalty of Rs. 50,00,000/- (Rupees fifty lakh only) is imposed upon Shri Gaur Hari Singhania, Partner of M/s PGY

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2. Act

Associates, Kanpur under section 114 of the Customs Act, 1962 ;

7. Penalty of Rs. 50,00,000/- (Rupees fifty lakh only) is imposed upon Smt. Sushila Singhania, Partner of M/s PGY Associates, Kanpur under section 114 of the Customs Act, 1962 ;
8. Penalty of Rs. 50,00,000/- (Rupees fifty lakh only) is imposed upon Smt. Kavita Singhania, Partner of M/s PGY Associates, Kanpur under section 114 of the Customs Act, 1962 ;
9. Penalty of Rs. 50,00,000/- (Rupees fifty lakh only) is imposed upon Shri Anil Kumar Agarwal (or Agarwal), Vice President and Authorized Signatory of M/s PGY Associates, Kanpur under section 114 of the Customs Act, 1962 for his acts of abetment in availing of drawback fraudulently; and
10. Penalty of Rs. 50,00,000/- (Rupees fifty lakh only) is imposed upon Shri Krishna Kumar Mishra (Shri K.K. Mishra), Assistant Vice President in M/s J.K. Cement and Authorized Signatory of M/s PGY Associates, Kanpur under section 114 of the Customs Act, 1962.

3. PGY Associates had filed shipping bills to export readymade garments to Russia through ICD Tughlakabad and ICD Patparganj under the Repayment of State Credit Scheme during August 2001 to March 2003 and claimed drawback which was paid. Investigation by the Directorate of Revenue Intelligence[3] including through its Customs Overseas Intelligence Network (COIN) officer posted in Moscow showed that the goods had never reached Moscow and the containers were de-stuffed in Kotka (Finland) or Bandar Abbas (Iran).

4. Accordingly, a show cause notice dated 31.10.2008[4] was issued to the exporter and other appellants herein alleging that the goods never reached the buyers and hence remittances received by the exporter through Punjab National Bank[5] were not the sale proceeds of the exports and were not relatable to

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3. DRI
4. SCN
5. PNB

the exports at all. Hence, it was proposed to recover the drawback with interest and impose penalties.

5. The proposals in the SCN were confirmed in the impugned order and hence these appeals.

Submissions of the appellant

6. Learned counsel for the appellants made the following submissions:

(i) The export proceeds were received from RBI through PNB. However, the Commissioner concluded in the impugned order that they were not relatable to the exports made and hence violation of the RBI circular had taken place.

(ii) The Commissioner has accepted that the goods were exported from India and had reached Kotka (Finland) or Bander Abbas (Iran). Once the export is completed, the drawback cannot be held to be fraudulent. Export, as per the Act, is complete once the goods leave the territory of India and delivery of the goods at the port of import is not relevant. Reliance is placed on the judgment of the Supreme Court in **Collector of Customs** versus **Sun Industries[6].**

(iii) The Drawback Rules do not stipulate the destination of the export goods as a condition for availment of duty drawback.

(iv) In the impugned order, the recovery has been ordered under Rule 16A(1) of the Customs and Central Excise Duties Drawback Rules, 1995[7] without

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6. 1988 (35) ELT 241 (SC)
7. Drawback Rules

referring to Rules 16(2) (3) & (4). Recovery of drawback can be made only if the exporter fails to produce evidence of realization of export proceeds. The exporter has, in this case, undisputedly, received the export proceeds.

(v) The circulars issued by RBI under FERA or FEMA can be enforced by the concerned authorities and not by Customs.

(vi) The finding of the Commissioner that any prohibition under Foreign Trade (Development & Regulation) Act, 1992[8] will be a prohibition under the Customs Act and hence violation of RBI circular will also be contravention of Customs Act is erroneous.

(vii) The Commissioner ordered recovery of drawback based on the communication dated 21.2.2007 from the First Secretary (Trade) Embassy of India, Moscow stating that the advance payments made by the Russian importers were returned to them by the Russian banks. However, the First Secretary had not made any enquiries with the Russian bankers.

(viii) As per section 139 of the Act, documents received from abroad should be authenticated in accordance with Authentication of Documents Rules, 1974. The Commissioner has arrived at the conclusions on the basis of inadmissible and vague and disjointed documents without giving any opportunity of cross examination.

(ix) The Commissioner has relied on (1) the discrepancy in the dates of three Bills of Lading tabulated at page 30 of the impugned order, (2) the letter from the Enforcement Department of Moscow stating that the pre-payments were made to the exporters but were later refunded and hence the goods were not

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8. FTDR Act

delivered in Russia; and (3) that the Russian importers had not done any import. The Commissioner did not consider that the difference of dates in the Bill of Lading might be to cover it within the validity of the LC. It does not mean that the goods were not exported.

(x) The impugned order recorded in paragraph 55.3 that the appellant has not been able to produce any evidence that the goods ever reached Russia. However, in paragraph 17.10.2, it is indicated that the goods were offloaded in Kotka, Finland, where the consignments are offloaded from big ships and sent to Russian Federation in smaller boats. Consequently, they merge with other consignments received from other places/exporters/ships. New sets of papers are prepared for onward movement of goods from Kotka to Russia.

(xi) The appellant had submitted that the goods were exported onwards to Russia from Bandar Abbas or Kotka through multi modal transport system under TIR Carnet but the Commissioner ignored this submission.

(xii) The Commissioner concluded that the money received through PNB were not the sale proceeds of exports on the basis of enquiry from the First Secretary which states that a sum of Rs. 72.54 crores received as advances from the Russian importers were returned by the Russian banks as the goods were not received. Of this, Rs. 26.68 crores pertained to the exporter herein. Based on this, the Commissioner concluded that the export proceeds received have no nexus to the exports made.

(xiii) In view of the above, the impugned order may be set aside and all appeals may be allowed.

Submissions of the Revenue

7. Learned special counsel for the Revenue vehemently supported the impugned order and asserted that it calls for no interference. He submitted as follows:

(i) Information received by DRI indicated that some of the goods supposed to have been exported to Russia were never received. Therefore, investigation was conducted including through our Embassy in Moscow.

(ii) The First Secretary (Trade) of Indian Embassy contacted the Russian authorities and conducted the investigation.

(iii) As per the special Rupee-Rouble arrangement for trade with Russia, Indian exports would be in rupees and the Indian exporters would be paid in rupees by their own banks and RBI would reimburse those banks. In turn, RBI would set off the value of the exports against India's state loans to Russia and would inform the Russia's Bank for Foreign Economic Affairs (BFEA) about the settlement of the State Debt.

(iv) At the Russian end, the Russian importers would pay their banks in advance for the imports in Roubles which will be passed on to BFEA. Thus, the circuit is completed with BFEA receiving roubles from Russian importers and corresponding rupee debt from India to Russia being set off.

(v) Investigations showed that the goods were off loaded en route and they never reached Russia. The importers in Russia had not received the goods and hence the Roubles which they paid in advance were also returned to them.

(vi) Therefore, there is no manner of doubt that the goods were not exported to Russia. When goods were not exported, remittance, if any, received cannot be said to be sale proceeds of exports.

(vii) Drawback is an incentive by returning the taxes incurred in the manufacture of exported goods (on presumptive basis). Drawback cannot be only based on remittance; every remittance does not entitle one to drawback. Only if the remittance is sale proceed of exported goods, will one be entitled to drawback.

(viii) The appellant's submission that the goods which were off loaded at Bandar Abbas or Kotka were further shipped to Russia through other means of transport cannot be accepted in the absence of any evidence. There is always a paper trail when goods are transhipped through multiple modes of transport.

(ix) The exporter is also required to honestly declare all details in the Shipping Bill filed under Section 50 of the Act and he did not and hence the order holding the exported goods liable to confiscation and consequently imposing penalty under section 114 is correct and proper.

(x) The impugned order may be upheld and all these appeals may be dismissed.

Findings

8. We have considered the submissions advanced by both sides and perused the records.

9. The case of the Revenue, in short, is that the goods were never delivered in Russia and were offloaded in Bandar Abbas (Iran) or Kotka (Finland) and therefore, the remittances received by the appellant exporter were not relatable to the

exported goods. In view of the special arrangement for exports to Russia during the relevant period, it would be profitable to review the manner in which goods and money are exchanged in international trade generally and under this scheme.

10. Sale of goods is a contract in which the buyer gets goods and the seller gets money in advance, on delivery or after sometime, as agreed.

11. When goods are sold across national boundaries, the contract becomes more complicated because of trust, political boundaries, and tax issues. The buyer and seller being physically away from each other have relatively less mutual trust and so, the seller wants an assurance that he will get the money and the buyer wants an assurance that the goods will be delivered. Since goods have to cross long distances and cross political boundaries, other operators such as shipping lines and airlines have to involved to ensure transport and to maintain the integrity of the chain of custody of the goods from the seller to the buyer. The importing country imposes duties and other restrictions and these tax and regulatory issues (enforced through Customs) which also need to be complied with.

12. All these complications in sale across national boundaries (exports and imports) are taken care of in a smooth running and elegant system generally used in exports and imports. While the seller and the buyer may not trust each other much,

the buyer and his bank trust each other and the seller and his bank trust each other and the two banks trust one another (being reputed institutions) and this chain of trust is used to ensure payments. Typically, instead of paying the seller in advance, on delivery, or much later, the buyer asks his bank to open a Letter of Credit (LC) in favour of the seller's bank with the seller as the beneficiary. The LC is a guarantee from the buyer's bank to the seller's bank that if goods, as indicated, are shipped and the documents are produced to it, it will pay the consideration to the seller's bank.

13. Thereafter, the seller exports the goods and the Master of the Vessel or the Shipping Line issues a Bill of Lading which is the document of title and it shows that the goods were given to the Master of the Vessel.

14. The seller presents the BL and LC and other documents to his bank (in a process called negotiation of documents) and receives the money. The seller's bank, in turn, sends the LC and BL to the Buyer's bank which then pays the seller's bank. The Buyer's bank, in turn, collects money from the buyer and gives him the BL and other documents.

15. Meanwhile, the Master of the vessel carries the goods to the buyer's port and hands over the goods to the Port Trust which ends his responsibility for the custody of the goods. The Port Trust either handles the goods directly or, in turn, hands them over to other custodians (such as inland container depots

and container freight stations). The importer then files the Bill of Entry and other documents to get the goods assessed to customs duty, pays the duty and gets clearance from Customs. Based on the clearance from Customs and the Bill of Lading and other documents such as Delivery Order issued by the Shipping Line, the custodian (either the port trust or some other custodian who has custody of the goods) gives the importer the goods.

16. **In short, the custody of the goods moves through different operators through the Bill of Lading and other documents while the money moves through different operators through the LC and other documents**.

17. Another issue is of differences in currencies. Generally, all exports and imports take place in freely convertible currencies (US$, Euro, GBP, etc.). When goods are exported from India, the buyer's bank pays the seller's bank in US$, etc. as per the invoice and the seller's bank, in turn, credits equivalent Indian Rupees to the seller's account.

Russian rupee exports

18. India had a different, Rupee trade agreement with the erstwhile Soviet Union and Russia. Our trade was in Indian Rupees to be converted as per a fixed officially determined exchange rate (of about 1 Rouble = 20 INR). Many of our imports from Russia were by the Government such as Steel

Plants, military equipment, etc. Over time, Government of India owed considerable amounts (in Indian Rupees) to Russia. Exports from India to Russia (such as garments, woolens, etc.) were mainly done by Private Indian exporters.

19. An arrangement has been worked out between the Reserve Bank of India and its Russian counterpart — Bank for Foreign Economic Affairs (BFEA) as per which Indian exporters will export goods to Russia in Indian Rupees which would be set off against the Government of India's debt to Russia in Indian Rupees. This arrangement was as follows.

20. The Russian importer will place an order on the Indian Exporter and will approach his bank and get an LC issued in Indian rupees. The Indian exporter would then export goods and present the documents including the LC to his bank. Instead of sending the LC and BL to the LC issuing bank in Russia, the Indian bank would pay the exporter and send the documents to the RBI which would, in turn, pay the Indian bank and set off the export against the loan of Government of India to Russia and inform the Russian Bank BFEA which will, in turn, recover equivalent Roubles from the Russian importer. The scheme notified by the RBI is below:

ks in India for handling matters relating to exports to ayment of State Credits.

w been decided to include Oriental Bank of Commerce, Patiala and Bank of Punjab Ltd. in the list of Nominated

Authorised dealers may bring the contents of this circular to the ice of their constitutents concerned.

4. The directions contained in this circular have been issued under section 10(4) and section 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and any contravention or non-observance thereof is subject to the penalties prescribed under the Act.

Annexure

Text of AD (GP Series) Circulars referred to above

AD (GP Series) Circular No. 4, dated 19-5-1999

Export of goods and services against repayment of state credits granted by erstwhile Soviet Union

Attention of authorised dealers is drawn to paragraph 2(*i*) to (*iv*) of AD (MA Series) Circular No. 30, dated 28th September, 1993, wherein the procedure for exports to be settled against repayment of State Credits has been detailed. Consequent upon signing of an Addendum to the Banking Arrangement, dated 6th September, 1993, by Reserve Bank and the Bank For Foreign Economic Affairs (BFEA), Moscow the settlement procedure will undergo a change and the revised procedure which will come into effect from 1st July, 1999 will be as under—

(*i*) BFEA will issue Letters of Credit (LCs) or confirm LCs issued by other banks in Russia by order of Russian importers denominated in Rupees in favour of Indian exporters of goods and services carrying the reference "Reimbursement against repayment of State Credits" and send the same to the Nominated bank in India and advise Reserve Bank of India (DAD) the details of LCs including the distinctive serial number of the LC, date of the LC, amount of LC, period for presentation of documents, date of expiry, description of goods to be shipped/services to be rendered and means of payment under the LC. In the case of LCs opened by banks in Russia other than BFEA, authorised dealers will correspond only with BFEA.

(*ii*) The Nominated bank after receiving the LC should seek confirmation of the reimbursement from the Chief General Manager, Reserve Bank of India, Deposit Accounts Department (DAD), Mumbai before advising the LC to the beneficiary constituent. Such confirmation will be given by Reserve Bank subject to availability of funds in the Central Account of BFEA with Reserve Bank and further, subject to receipt and matching by it of the details of the LC with those received from BFEA in terms of paragraph (*i*) above.

(*iii*) The names of banks in India which will be functioning as Nominated banks is given in Annexure I. The exporter will be required to approach any one of the branches of a Nominated bank

dealing in foreign exchange for the purpose of handling export documents, registering of LC and claiming reimbursement from Reserve Bank.

(iv) For the purpose of registering the LC and claiming reimbursement from Reserve Bank, Nominated banks will appoint one of their branches in Mumbai as a Link Branch. The name of such branch will be intimated by the Nominated bank to Reserve Bank, (DAD), Mumbai.

(v) Nominated banks will submit their claims to Reserve Bank, (DAD) as per enclosed format (Annexure II). On receipt of claims from the Nominated banks for payment against LCs opened by BFEA or other banks in Russia where confirmation has been obtained from Reserve Bank in terms of paragraph (*ii*) above, Reserve Bank will make payment including commission and bank charges, if any, to the Nominated banks provided such claims are received in Reserve Bank not later than the 37th working day, *viz.* excluding the days on which Reserve Bank, Mumbai is closed, from the date of expiry of the LC.

(vi) Subject to availability of balances in the Central Account of BFEA with the Reserve Bank, after earmarking of the same against LCs opened by BFEA and banks in Russia and advised to it as at (*ii*) above, RBI will also honour the payment instructions from BFEA in the form of demand drafts and other payment instruments for purposes of making payments for exports of goods and services for undrawn balances, retention money, by verifying with the original LCs to which the exports relate.

(vii) Funds from repayments of State Credits are to be utilised for export of goods to Russian Federation only. No third country exports are permitted to be financed out of funds from such repayments of State Credits.

2. The revised procedure will be applicable to LCs to be opened from July, 1999 only. LCs opened upto 30th June, 1999 will continue to be ed under the existing procedure irrespective of the date of ction.

3. Notice to Exporters No. 1, dated 19th May, 1999 is enclosed, the nts of which may be brought to the notice of your constituents who ready engaged or propose to engage in export trade with Russian ation.

4. The directions contained in this circular have been issued under on 73(3) of the Foreign Exchange Regulation Act, 1973 (46 of 1973) ny contravention or non-observance thereof is subject to the ties prescribed under the Act.

Notice to Exporters No. 1 of 1999

Implementation of the provisions of the Letters exchanged n the Government of India and Russian Federation, Reserve Bank ia (RBI) and the Bank for Foreign Economic Affairs of the USSR, w (BFEA) have concluded a Banking Arrangement. As per the ement repayment of State Credits will be made by way of exports

(3)

of any goods and services from India to Russian Federation that are permissible for export under Export and Import Policy of the Government of India in force from time to time. In pursuance of the provisions of the Banking Arrangement and Addendum thereto, for such exports to be settled against repayment of State Credits, the following procedure is laid down:-

(i) BFEA will open Letters of Credit (LCs) or confirm LCs opened by other banks in Russia denominated in Rupees in favour of Indian exporters of goods and services carrying the notation "Reimbursement against repayment of State Credits" and send the same to the nominated banks in India and advice RBI as and when the LC is opened, the details of LC including the distinctive serial number of the LC, date of LC, amount of LC, description of goods to be shipped/services to be rendered under the LC, name of nominated bank, etc.

(ii) The nominated bank, after receiving the LC should seek confirmation from the Chief General Manager, Reserve Bank of India, DAD, Mumbai. Such confirmation will be given by RBI subject to availability of funds in the Central Account of the BFEA with RBI and further subject to receipt and matching by it of the details of the LC with those received from BFEA in terms of (i) above.

(iii) The names of the banks in India which will be functioning as nominated banks is given in Annexure I. The exporter will be required to approach any one of the branches of a nominated bank dealing in foreign exchange for the purpose of handling export documents, registering of LC and claiming reimbursement from RBI.

(iv) On receipt of claims from the nominated banks for payment against LCs opened by BFEA or other banks in Russia where confirmation has been obtained from RBI in terms of (ii) above, RBI will make payment including commission and bank charges, if any, to the nominated banks provided such claims are received in RBI not later than the 37th working day, *viz.* excluding the days on which RBI, Mumbai is closed, from the date of expiry of the LC.

(v) Funds from repayments of State Credits are to be utilised for export of goods to Russian Federation only. No third country exports are permitted to be financed out of funds from such repayments of State Credits.

(vi) The revised procedure will be applicable to LCs to be opened from 1st July, 1999 only. LCs opened upto 30th June, 1999 will continue to be settled under the existing procedure irrespective of date of transaction.

Annexure I

List of Nominated Banks

1. ABN Amro Bank NV
2. Allahabad Bank
3. Andhra Bank
4. ANZ Grindlays Bank Ltd.
5. Bank of Baroda
6. Bank of India
7. Canara Bank
8. City Union Bank Ltd.
9. Citibank N.A.
10. Corporation Bank
11. Credit Lyonnais SA
12. Deutsche Bank AG
13. Indian Overseas Bank
14. IndusInd Bank Limited
15. Punjab National Bank
16. State Bank of Bikaner and Jaipur
17. State Bank of Hyderabad
18. State Bank of India
19. The Karnataka Bank Limited
20. Union Bank of India
21. United Bank of India

Annexure II

Format for claiming reimbursement for exports to Russia

Ref. No.

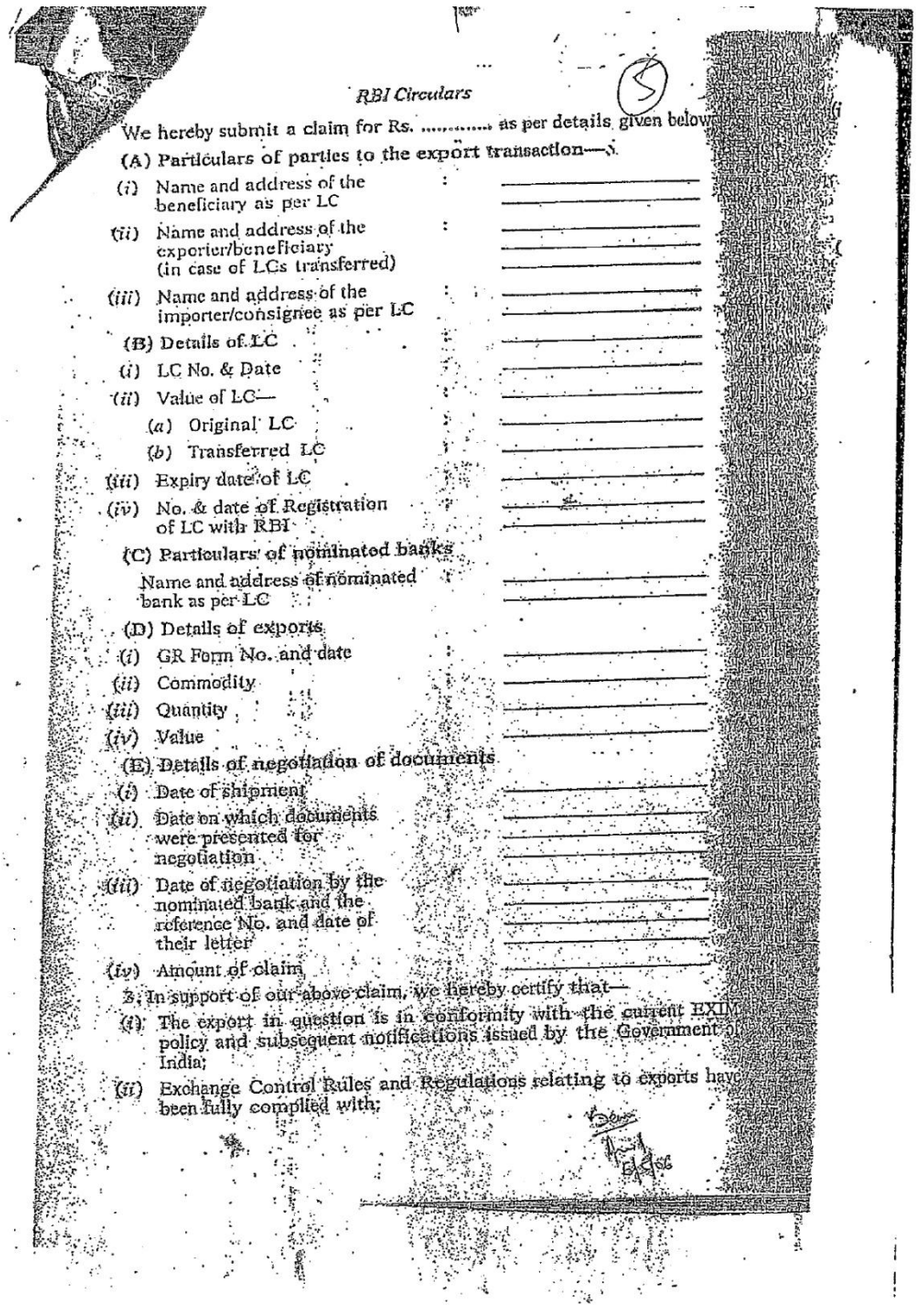
The Chief General Manager,
Deposit Accounts Department,
Reserve Bank of India,
Mumbai-400 001.

Dear Sir,

**Repayment of State Credits of erstwhile USSR—
Reimbursement of claim against export of goods
and services to Russia**

Please refer to your letter No. ..... dated ....., in terms which you had conveyed to us your confirmation of reimbursement in respect of the LC opened for exports to Russia.

See also AP (DIR Series) Circular No. 33, dated 10-5-2001.



RBI Circulars

(5)

We hereby submit a claim for Rs. ..... as per details given below:

(A) Particulars of parties to the export transaction—

(i) Name and address of the beneficiary as per LC :

(ii) Name and address of the exporter/beneficiary (in case of LCs transferred) :

(iii) Name and address of the importer/consignee as per LC :

(B) Details of LC :

(i) LC No. & Date :

(ii) Value of LC— :

(a) Original LC :

(b) Transferred LC :

(iii) Expiry date of LC :

(iv) No. & date of Registration of LC with RBI :

(C) Particulars of nominated banks

Name and address of nominated bank as per LC :

(D) Details of exports

(i) GR Form No. and date :

(ii) Commodity :

(iii) Quantity :

(iv) Value :

(E) Details of negotiation of documents

(i) Date of shipment :

(ii) Date on which documents were presented for negotiation :

(iii) Date of negotiation by the nominated bank and the reference No. and date of their letter :

(iv) Amount of claim :

2. In support of our above claim, we hereby certify that—

(i) The export in question is in conformity with the current EXIM policy and subsequent notifications issued by the Government of India;

(ii) Exchange Control Rules and Regulations relating to exports have been fully complied with;

21. **Thus, when goods are exported to Russia under this scheme, the remittance would come to the exporter from RBI through his bank in Indian Rupees and NOT in freely convertible currency from the exporter's bank.**

22. Thus, in case of exports to Russia under the scheme, not only is the drawback (say 10 or 15% of the FOB value) is paid to the exporter by the Indian Customs, but the entire value of the exports is also paid to the exporter by the RBI. RBI, in turn, would set off the amount so paid against the loans which Government of India owes to Government of Russia and inform BFEA.

Remittances

23. The Commissioner's finding is that remittances received by the appellant exporter through PNB were not for the exported goods but were some other remittances. The question is who made the remittances. They were done by the RBI. RBI does not make remittances except for Russian exports under the Scheme. To accept the finding of the Commissioner that the remittances were not for the exports, would imply that RBI had wrongly remitted rupees to the appellant's account through the PNB. It would further mean that RBI had wrongly set off the amount against India's state loan to Russia and informed BFEA of Russia.

24. If at all the DRI had found that the goods had not reached Russia at all and suspected that RBI had wrongly remitted the amount to the appellant exporter through PNB and had wrongly set it off against India's state loan to Russia, it should have informed the RBI so that the remittance part of the matter could have been looked into and necessary corrections made. RBI, in such a case, if satisfied, would have reversed the remittance to the appellant and also informed BFEA. Correspondingly, the amount should have been added back the amount to the State loan which India owed to Russia.

25. Nothing in the records shows that either PNB or RBI has been informed so and had confirmed that the remittance was wrongly made to the appellant and recovered it.

26. In short, to accept the finding of the Commissioner that the remittance was not relatable to the exports, we would have to, by implication, accept:

a. that RBI had remitted amounts to the appellant's account wrongly;

b. that RBI had wrongly set it off against the State loan of India to Russia and informed BFEA;

c. that BFEA of Russia had wrongly accepted (or not resisted) the setting off of the amount against the State loan of India to Russia; and

d. the amount wrongly set off against India's state loan to Russia now needs to be reversed and India would owe Russia an additional amount equivalent to the remittance.

27. We cannot accept that the remittance made by RBI to the appellant was not relatable to the export and that both the RBI and BFEA of Russia have committed mistakes in the absence of any evidence. It does not appear that DRI even involved RBI in the investigation or produced evidence in support of its suspected wrongful remittance to the RBI to look into.

Drawback

28. The case of the department is that since the goods never reached the intended destination (Russia), no drawback is admissible to the appellant. The case of the appellant, on the other hand is that the goods reached Russia through multi-modal transport after reaching Bandar Abbas or Kotka. It is also the submission of the appellant that once the goods have been exported from India, the appellant is entitled to the drawback which does not depend on the country of export.

29. We find that as per the Drawback Rules, the exporter will be entitled to drawback if the goods are exported. There are two Rules under which the drawback can be recovered- Rule 16 and Rule 16A. Rule 16 deals with situations where the drawback was wrongly paid- say, if Rs. 1,000/- was payable and Rs. 1,100/- was paid, the excess drawback can be recovered. Rule 16A, on the other hand, provides for recovery of drawback if the remittance has not been received within the time stipulated under FEMA. These two Rules read as follows:

16. Repayment of erroneous or excess payment of drawback and interest.- Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of Section 142 of the Customs Act, 1962 (52 if 1962).

16A. Recovery of amount of Drawback where export proceeds not realised. –

(1) Where an amount of drawback has been paid to an exporter or a person authorised by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Regulation Act, 1999 including any extension of such period, such drawback shall be recovered in the manner specified below.

(2) On receipt of relevant information from the Reserve Bank of India, the Assistant 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 shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within sixty days of the receipt of the said order :Provided that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to one total amount of sale proceeds;

(3) Where the exporter fails to repay the amount under sub-rule (2) within said period of sixty days referred to in sub-rule (2), it shall be recovered in the manner laid down in Rule 16.

(4) Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or sub-rule (3) and the exporter produces evidence about such realisation within one year from the date of such recovery of the

> amount of drawback, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs to the claimant
>
> Provided that the time-limit referred to in this sub-rule shall not be applicable to the goods exported from the Domestic Tariff Area to a special economic zone.

30. Drawback is an incentive to export goods from India and it is based on the universally accepted principle that countries export goods but not taxes. Countries formulate various schemes to pay back the taxes incurred in the exported goods. Drawback is one such scheme. Sections 74, 75 and 76 of the Act deal with the drawback. Section 74 provides for drawback of the customs duty paid on the imported goods if such goods are re-exported. Section 75 provides for drawback of the duties used in the raw material used in the manufacture of the exported goods. There are three primary ways in which this drawback is allowed. An exporter can apply for a brand rate for the goods which it exports giving details of the inputs used and the duties incurred and a brand rate of drawback is fixed for such goods. For vast majority of commonly exported goods, a drawback schedule giving rates of drawback is notified based on the average incidence of duties in different types of goods which is known as All Industry Rate (AIR). The third is case where even if there is an AIR, one exporter finds that his duty incidence is much higher, he can apply for a special brand rate. For vast majority of the exports, drawback is allowed as per AIR notified in the drawback schedule.

31. The duty and taxes incurred in the export goods depends on the goods manufactured, inputs used and the rates of duties on such inputs and it has nothing to do with the country or port to which it is exported. It is for this reason, that the drawback schedule does not indicate a separate rate for each country. The drawback rate depends on the nature of the goods and not the destination.

32. The next question is at what stage will drawback be payable. Drawback is payable and is paid as soon as export is complete the evidence for which is that shipping bill has been processed and the proper officer issued a Let Export Order and the Master of the vessel (or the shipping line) filed an EGM which includes that particular export. Based on this evidence that goods have been exported, drawback is paid. However, the purpose of paying drawback is not only to encourage exports but also to ensure that the sale proceeds of such exports are remitted to India.

33. The remittance is handled by the banks and not by the Customs. The time period within which the remittance has to be received is governed under the Foreign Exchange Regulation Act (FERA) or its successor legislation Foreign Exchange Management Act (FEMA). The foreign exchange department of the RBI monitors if the remittance has been received or not by matching the shipping bill data received from the Customs with the remittance realization data received

from the bank of the exporter. Often, if the remittance is received, the bank issues a bank realization certificate (BRC) to the exporter.

34. In case of exports to any country, the remittance comes to the exporter's bank from the bank of the overseas importer which issued the LC. In case of exports to Russia under the scheme, the exporter's bank (in this case PNB) receives remittance not from the bank which issued the LC but from RBI. The bank pays the exporter and RBI reimburses the bank and sets it off against the Government of India's debt to Government of Russia and notifies its Russian counterpart BFEA.

35. The next question which may arise is will drawback be payable if after the goods are exported, they do not reach the intended destination but reach some other destination or are then destroyed or are re-imported. The answer to that would depend on when the property would pass to the importer because if the goods are destroyed after the property in it passes to the importer, the importer is still liable to pay the exporter and remittance has to be received. When goods are exported on Free On Board (FOB) basis, for instance, the seller delivers the goods the moment they are put on board and all costs and risks thereafter are on the buyer's account. Therefore, neither can the drawback be denied to the exporter nor can the exporter claim any exemption from obtaining

remittance. Similarly, if the buyer then re-sells the goods to someone else in another place or diverts the goods to some other location, it will make no difference to either the drawback or the responsibility of the exporter to receive the remittance. This question was examined by the Supreme Court in **Collector of Customs, Calcutta** versus **Sun Industries[9].** In that case, the exporter had exported goods destined to Colombo and they were cleared by the customs and they left the territorial waters of India. Thereafter, the engine of the ship developed trouble and it returned and ran aground in Indian territorial waters at the port of Paradeep. Sun Industries applied for drawback on the ground that it has exported the goods which was denied by the department. The exporter then filed an appeal before Collector (Appeals) which was also rejected and then it filed a revision application which was then referred to Customs Excise and Gold Control Appellate Tribunal (CEGAT). Finding that in the CIF contract, on loading the goods on to the ship, the title passed to the purchaser and that export was also completed when the goods left the territorial waters, CEGAT held that the appellant was entitled to drawback. The department appealed to the Supreme Court which upheld the decision of CEGAT. Paragraphs 6 to 8 of the judgment of the Supreme Court are reproduced below:

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9. 1988 (35) ELT 241 (SC)

"6. On behalf of the revenue it had been contended before the Tribunal and it was reiterated before us by Shri Ganguly that proof must be given that the goods had reached 'a place outside India' in view of Section 2(18) of the Act. It was emphasised that in order to be export under Section 2(18) of the Act the goods must be taken out to a place outside India. Shri Ganguly submitted that taking out to a place outside India meant and comprehended delivery of goods to a place outside India. Section 35 of the Act as it stood prior to the amendment in 1983 was relied on. The Madras High Court has occasion to consider this question in the case of *Lucas TVS* v*. Assistant Collector,* [1987 (28) E.L.T. 266]. We are of the opinion that in view of the wording of the section, the goods went out of the territorial waters. When the ship got clearance and moved out of the territorial waters the export was complete. The title to the same goods passed to the exporters. The facts as they emerge are' that the goods reached a place in the high seas which is outside India and the title of the goods also passed to the purchasers. It is true that the goods did not land in any place because of the defect in the ship. But the expression "taking out to a place outside India" would also mean a place in high seas. It is beyond the territorial waters of India. High Seas would also mean a place outside India, if it is beyond the territorial waters of India. Therefore, the goods were taken out to the high seas outside territorial waters of India, they will come within the ambit of expression "taking out to a place outside India". Indubitably the goods had been taken out of India. "Place" according to Webster Comprehensive Dictionary, International Edition page 964 means a particular point or portion of space, especially that part of space occupied by or belonging to a thing under consideration; a definite locality or location. It also means an open space or square in a city. Therefore, in international trade the ship beyond the territorial waters of a country would be a place outside the country, if the goods are taken to that place, that is to say, a situation outside the territorial waters of a country and the title to the goods passes to the purchasers. Then, in our opinion, the goods are taken to a place outside India.

7. The expression "place" will depend for its connotation on the context in which it is used. In clause of charter party requiring charterer to procure safe "place" for discharge of cargo, quoted word meant spot selected to drop anchor plus area over which tanker might swing to tide and charter's duty was not fulfilled merely be selecting area containing both safe and unsafe berths. The word "place" as used in a statute relating to searching for

> stolen goods in any store, shop, warehouse, or other building or place in a town, includes a steam-boat or vessel moored at the wharf. See Words and Phrases, Permanent Edition, Vol. 32A, page 128. The word "place" is generally found in conjunction with other words which give it a colour, and is usually controlled by its context. For example, "place for water" includes a well. See Stroud's Judicial Dictionary, Third Edition, Volume 3 pages 2199 and 2208.
>
> 8. In that view of the matter, in our opinion, there was export of the goods in terms of Section 75 of the Act. The fact that the ship was brought back to India because of the damages in the ship does not, in our opinion, affect the position.

36. Thus, the law laid down by the Supreme Court is that once the goods are exported, i.e., they leave the territorial waters of India and the title is passed to the buyer, the exporter is entitled to drawback. Thus, in this case, even if it is presumed that the goods had not reached Russia but were landed in Bandar Abbas or Kotka, the appellant would still be entitled to drawback.

37. **Thus, the denial and order of recovery of drawback from the appellant cannot be sustained even on this ground.**

Confiscation or holding the exported goods liable to confiscation under section 113 (d) (h), (i) and (ii) of the Act

38. In the impugned order, the Commissioner held that the exported goods were liable to confiscation under section 113(d) (h) (i) and (ia) of the Act but since they were not physically available (having been already exported), he did not

confiscate them or impose any redemption fine. However, for acts and omissions which rendered the goods liable to confiscation, he imposed penalties under section 114 of the Act on all the appellants.

39. It is therefore, necessary to examine section 113 of the Act which reads as follows:

> **SECTION 113. Confiscation of goods attempted to be improperly exported, etc. –**
>
> The following export goods shall be liable to confiscation:-
> …….
> (d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
> ……
> (h) any goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
> (i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 ;
> (ia) any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under section 75 ;
>
> ……

40. Section 113 renders certain type of 'export goods' liable to confiscation. The term 'export goods' is defined in section 2(19) as follows:

> "2. **Definitions**.—In this Act, unless the context otherwise requires,—
>
> ….

(19) 'export goods' means any goods which are to be taken out of India to a place outside India;"

41. Export goods are those goods which are to be taken out of India to a place outside India. They are not those which have already been exported i.e., taken out of India. Section 113 deals provides for confiscation of certain types of export goods but not for confiscation of exported goods. The reason for this is two fold- firstly, once the goods are already exported they are no longer under the control of Indian customs to confiscate and secondly, during the relevant period, the Customs Act itself extended to the whole of India and had no extra territorial jurisdiction. Its extent has been extended beyond India through an amendment in 2018. For this reason alone, the exported goods cannot be held liable to confiscation.

42. Penalty under section 114 can be imposed for acts or omissions which rendered the goods liable to confiscation under section 113. Since exported goods cannot be held liable to confiscation under section 113, consequential penalties under section 114 on all the appellants also cannot be sustained.

43. To sum up:

(i) The finding in the impugned order that the remittances received by the appellant exporter were not related to the disputed export of goods to Russia is not correct because all remittances were received by the appellant from RBI through its bank PNB

under the special scheme for Rupee exports to Russia.

(ii) RBI does not remit proceeds of foreign exchange except for rupee exports to Russia under the scheme and therefore, RBI could not have remitted the money for some other purpose.

(iii) In the impugned order the Commissioner erred in accepting the contention of DRI that the remittances received by the appellant were not related to the exports to Russia. This, by extension, would mean that RBI had wrongly remitted the amount and had wrongly set off the amount against Government of India's debt to Government of Russia and the RBI's Russian counterpart BFEA had wrongly accepted this setting off. Had the remittance been reversed by RBI, the logical consequence would have been to undo the setting off of Government of India's debt.

(iv) If DRI had conducted some investigations which led it to doubt the delivery of the goods in Russia, it should have referred the matter to RBI to decide about the remittance which alone, can decide if the remittance pertains to the exports or not. Neither the DRI nor the Commissioner who passed the impugned order can sit in judgment over the remittance made by RBI.

(v) It cannot be said that the PNB, RBI and the BFEA of Russia are all wrong in making the remittance and making the adjustment against India's sovereign debt and only the Commissioner who passed the order is correct.

(vi) Drawback is admissible for exports and export is complete once the goods leave the territorial waters of India and the title in the goods passes to the buyer as held by the Supreme Court in **Sun Industries.**

(vii) Goods which were already exported were no longer 'export goods' and hence were not liable to

confiscation under section 113. Even the Act itself did not, during the relevant period, extend beyond India. Therefore, the confiscation of the goods is set aside.

(viii) Penalties under section 114 have been imposed for alleged acts and omissions which rendered the goods liable to confiscation under section 113 and since the confiscation is set aside, all penalties under section 114 are also set aside.

44. All appeals are allowed and the impugned order is set aside. The appellants will be entitled to consequential relief.

(Order pronounced in open court on 28/09/2026.)

(DR. RACHNA GUPTA)
OFFICIATING PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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