



REGISTERED  
SPEED POST

F.No. 375/48/DBK/2015-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... 5/1/18..

ORDER NO. 01/2018-CUS dated 01-01-18 ~~2017~~ OF THE  
GOVERNMENT OF INDIA, PASSED BY SHRI RAJPAL SHARMA,  
ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER  
SECTION 129DD OF THE CUSTOMS ACT, 1962.

SUBJECT : Revision Application filed, under section 129DD  
of the Customs Act, 1962 against the Order-in-  
Appeal No. 53(SLM)CUS/JPR-I/2015 dated  
22.06.2015 passed by the Commissioner of  
Central Excise (Appeals), Jaipur .

APPLICANT : M/s Manglam Arts

RESPONDENT : Commissioner of Central Excise, Jaipur-I.

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## ORDER

A Revision Application No. 375/48/DBK/2015-RA dated 21.09.2015 has been filed by applicant M/s Manglam Arts, Govind Nagar, Amber Palace Road, Jaipur, (herein after referred to as the applicant) against Commissioner (Appeal)'s Order-in-Appeal No. 53(SLM)CUS/JPR-I/2015 dated 21.09.2015 rejecting the applicant's appeal against Order-in Original No. 134/2014-15 dated 02.06.2014 by the Deputy Commissioner of Customs, Air Cargo Complex Sanganer, Jaipur.

2. The Brief facts leading to the filing of the Revision Application are that the applicant had exported, "Cotton Made ups ITEM" under claim for drawback at the all "Industry rates" and were paid drawback by the Deputy Commissioner of Customs. Later scrutiny of the records of the applicant revealed that they had not produced the BRCs for exports made under Shipping Bill No:- 666 dated 20.12.2010, 118 dated 05.05.2010, 546 dated 19.05.2011, 691 dated 10.06.2011, 692 dated 10.06.2011, 377 dated 06.05.2011, and thus they had not realized the export proceeds within the period allowed under Foreign Exchange Management Act 1999 and the RBI Regulations made there under. Accordingly proceeding for recovery of duty drawback of Rs. 49818/- along with interest was initiated against the applicant in terms of Rule of 16/16A of Customs, Central Excise and Service tax Drawback Rules 1995, read with Section 75 of the Customs Act, 1962, and the same was confirmed by the Deputy Commissioner of Customs vide his order dated 02.06.2014. A penalty of Rs. 12,000/- was also imposed on applicant under Section 117 of Customs Act, 1962. Their appeal against the said order of the Deputy Commissioner was also rejected by the Commissioner (Appeal) vide above referred order dated 21.09.2015. Being aggrieved, the applicant has filed the Revision application with the Government mainly on the ground that they have already realised the sale proceeds against the above shipping bills, except Rs. 2142.13 against shipping bill no. 546 and drawback amount of Rs. 152/- along with interest of Rs. 80/- for not receiving the sale proceeds of Rs. 2142.13 is already deposited by them.

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3. A personal hearing was fixed on 24/11/2017 and Shri Tikam Raut, authorised person, appeared in the above case for the applicant and produced the CA's

consolidated certificate dated 15.09.2015 regarding timely realisation of sale proceeds.

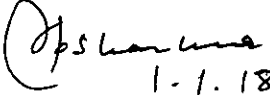
4. On examination of Rule 16/16A of the Drawback Rules, the government finds ~~that drawback amount is recoverable only if the foreign proceeds for export of the goods~~ has not been realised within six months from the export of the goods. But in this case it is noticed that the applicant has received the sale proceeds in time and the mistake on the part of the applicant is only that they did not submit C.A. certificate in time on six monthly basis as per CBEC Circular 5/2009 -Cus dated 02.02.2009. In this regard the Commissioner (Appeal) has fairly observed that "The appellant has submitted 3 certificates all dated 25.03.2013 issued by Shri Vini Mehta, chartered accountant which covers all the exports made during January 2010 to June 2011. The certificate of chartered accountant is according to the Circular No. 5/2009-Cus dated 02.02.2009, in which he has certified that export sale proceeds for the shipments made during the above period have been received except some shipping bills mentioned in the table. Thus, it is clear that the CA certificate is in ~~according to above circular~~" But despite of accepting that sale proceeds are realised in time by the applicant, the Commissioner (Appeal) has still upheld the Deputy Commissioner's order and rejected the applicant's appeal merely because the CA certificate was not submitted on six monthly basis before 7<sup>th</sup> January and July in respect of export for which the dues were to be realised in previous six months.

5. From the above observation of Commissioner (Appeal) it is manifest that the applicant has realised the sale proceeds well in time and as a result the applicant's case is not covered under Rule 16/16A of Drawback Rules 1995. While non submission of CA certificate on six monthly basis as per CBEC circular is certainly a lapse, it can not be termed as violation of above drawback rules. For non realisation of Rs. 2142.13 against shipping bill no. 546, the applicant has already deposited the drawback amount of Rs. 152/- alongwith interest of Rs. 80/- and its correctness has not been disputed by the Commissioner (Appeal) or even by the lower authority.

6. Considering these facts the Government is of the clear view that drawback of duty has been correctly availed by the applicant in respect of above referred six

shipping bills and its recovery is not warranted in this case as the applicant has realised sale proceeds within stipulated period of six months.

7. Accordingly, the Government sets aside Commissioner (Appeal)'s Order and allows Revision application.

  
1-1-18

(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

M/s Manglam Arts,  
Govind Nagar, Amber Palace Road,  
Jaipur

Copy to:-

1. The Commissioner of Central Excise, (Jaipur), N.C.R. Building Statue Circle, "C" Scheme, Jaipur – 302 005.
2. The Commissioner of Central Excise (Appeals), Jaipur, NCRB, Statue Circle, Jaipur
3. The Deputy Commissioner of Customs, Air Cargo Complex Sanganer, Jaipur
4. PS to AS(RA)
5. Guard File
6. Spare copy

ATTESTED

  
1.1.2018

(Debjit Banerjee)  
Sr. Technical Officer (RA)