

SPEED POST



F.No. 375/05/DBK/14-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

30/11/19

Order No. 09/19-Cus dated 29-8-2019 of the Government of India passed by Smt Mallika Arya, Principal Commissioner & Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under section 129 DD of the Customs Act 1962, against the Order-in-Appeal No.CC(A)Cus/636/2013 dated 31.10.2013 passed by the Commissioner of Customs (Appeals), New Delhi

Applicant : M/s R. K. Creations Pvt Limited

Respondent : Commissioner of Customs, Air Cargo (Export) New Delhi

ORDER

A revision application No. 375/05/DBK/2014-RA has been filed by M/s R.K. Creations (herein after referred to as "applicant") against the order No. CC(A)CUS/636/2013 dated 31.10.2013, passed by Commissioner of Customs (Appeals), New Delhi.

2. Brief facts of the case are that the applicant had exported carpets vide 30 Shipping bills and claimed the drawback to the tune of Rs. 1,51,65,124/-. After the goods were exported and the applicant had received the duty drawback for Rs. 45, 13,070/-. The SIIB branch of Commissioner of Customs (Air Cargo Export) conducted a detailed investigation after discrepancies were observed in drawback amount in respect of exports carried out through two shipping bills under Duty Drawback Scheme. It was found that the shipping bills and the invoices mentioned the total quantity of goods exported in square meters, the packing lists mentioned the dimensions of each carpet and its total quantity. While calculating the quantity mentioned as per packing list, it was found that the total quantity exported in square meters was much less as compared to the actual quantity declared on shipping bills and export invoices.

The department issued a show cause notice to applicant for recovery for excess availment of drawback under Rule 16 A of Customs, Central Excise and Service Tax Drawback Rules, 1995 for the amount of Rs. 77,37,695/-. Adjudicating authority, vide his order in original No. MKR/ACE/50/2013 dated 20.02.2013, disallowed the excess drawback amounting to Rs. 77,37,695/- and ordered for its recovery under Rule 16 A of Customs, Central Excise and Service Tax Drawback Rules, 1995 along with interest at the applicable rate. He also imposed a penalty of Rs. 1.25 Crores on M/s R. K. Creations Private Limited for mis-declaring the area of export carpets and appropriated Rs 5 lakhs voluntarily deposited by the applicant during investigation towards payment of wrongly availed drawback. Being aggrieved, the applicant filed an appeal before Commissioner (Appeals) and the Commissioner (Appeals) has stated that the applicant had disclosed the material facts regarding the contents of export at the time of exports by filing the referred export documents. Moreover, the issued is based on the mathematical calculations and asked the field officer to verify and report to him. He further ordered the applicant to pre-deposit a sum of Rs. 45 Lakhs under Section 129 E of the Customs Act, 1962 on or before 17.01.2014.

The applicant has filed the instant revision application challenging the order of Commissioner (Appeals) on the ground that the quantity mentioned in shipping bills, invoices

and packing lists matches with each other. They have further argued that even when verification report from the field officer was pending they have been asked to pre-deposit Rs. 45 lakhs by Commissioner (Appeals).

3. Personal hearing in the case was fixed on 09.08.2019 & 26.08.2019. No one from either the applicant's or the respondent's side appeared on any of the dates for personal hearing. The respondents furnished written para-wise counter reply dated 09.08.2019, which was again re-submitted on 23.08.2019 by them.

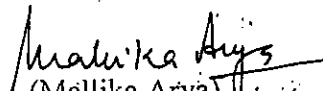
4. On examination of the revision application, counter reply by the respondent, Commissioner (Appeals)'s order and the order in original, Government finds that the case of the revenue against the applicant is that while the applicant declared higher quantity of goods in the Shipping Bills, actual quantity of export cargo as per packing list was far less. This modus operandi was adopted obviously to avail higher amount of drawback. The case regarding wrong availment of drawback of duty by misdeclaring the quantity of export goods has been confirmed by original adjudicating authority. The Commissioner (Appeals) has upheld the order-in-original and technically disposed off the appeal of M/s R. K. Creations Pvt. Limited. However, he observed that the issue was based on mathematical calculations and, therefore, he asked the field officer to verify and report. He further ordered the applicant to pre-deposit a sum of Rs. 45 Lakhs under Section 129 E of the Customs Act, 1962 on or before 17.01.2014. Now the applicant has approached Government of India for setting aside the order of Commissioner (Appeals) mainly on the ground that they have correctly declared the quantity of export goods in the export documents. They have further contended that even before the receipt of the verification report from the field officer the Appellate Authority has ordered for the pre-deposit.

The Government finds that the applicant has mis-declared the quantity of export goods so as to avail higher duty drawback fraudulently. The Commissioner (Appeals) has correctly asked for a verification report from the field officers to ascertain the factual position. As the involved amount is substantial [Rs. Rs. 77,37,695/- (excess availed drawback) + interest on this amount at an appropriate rate + penalty of Rs.1.25 Crore] the Government finds that the Commissioner (Appeals) order for pre-deposit of Rs. 45 lakhs on or before 17.01.2014 is reasonable. It is further observed that the erstwhile Section 129 E of the Customs Act, 1962 reads as follows:-

"129E: Where in any appeal under this Chapter, the decision or order appealed against relates to any duty and interest demanded in respect of goods which are not under the control of the customs authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the duty and interest demanded or the penalty levied: Provided that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty and interest demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue. Provided further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty and interest demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing."

It is observed that the direction of the Commissioner (Appeals) for a pre-deposit of Rs. 45 lakhs is with an objective to safeguard the interest of revenue. He has taken the quantum of duty, interest/ penalty imposed into consideration while determining the quantum of pre-deposit.

5. In view of above discussion, Government upholds the order of pre-deposit of Rs. 45 lakhs (Rupees Forty Five Lakhs) of Commissioner (Appeals). The applicant is directed to deposit the amount of Rs. 45 lakhs (Rupees Forty Five Lakhs) within 30 days of the receipt of the order. The case is remanded back to Commissioner (Appeals) to decide on merits.


(Mallika Arya)

(Additional Secretary of the Government of India)

1. M/s R.K. Creations Pvt Ltd,
P-32, Lower Ground Floor,
South Ext.-II,
New Delhi- 110049
2. Commissioner of Customs (Appeals),
New Custom House, Near IGI Airport, New Delhi

Order No. 09 /19-Cus dated 29-8-2019

Copy to:

1. Commissioner of Customs, Air Cargo(Export) New Customs House, Near I.G.I Airport New Delhi-110037
2. Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi
3. Additional Commissioner of Customs, Office of Commissioner of Customs(Air Cargo Export), New Custom House, New Delhi-10037
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED

N. Devi
29/8/19
(Nirmala Devi)

SO (REVISION APPLICATION)