

REGISTERED  
SPEED POST



F.No.380/09/DBK/2016-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... 8/8/18

ORDER NO/100/18-Cus dated 6-8-2018 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI R. P. 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. ASR-CUSTM-PRV-APP-252/15-16 dated 15.04.2015, passed by the Commissioner of Customs & Central Excise (Appeals), Chandigarh.

Applicant : M/s Nulli Secundus Brass Tracks, Jalandhar

Respondent : Commissioner of Customs(P), Ludhiana

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**ORDER**

A Revision Application no. 375/09/DBK/2016-R.A. dated 11.11.15 is filed by M/s Nulli Secundus Brass Tracks, Jalandhar (hereinafter referred to as the applicant) against the Order-in-Appeal No. ASR-CUSTOM-PRV-APP-252/15-16 dated 15.04.2015, passed by the Commissioner of Central Excise (Appeals), Chandigarh, whereby the applicant's appeal has been dismissed and the order-in-original confirming the recovery of drawback of duty of Rs. 3,46,711/- has been upheld.

2. The brief facts of the case are that the applicant imported 7.5 lakh brass padlocks on payment of duty and the same were re-exported in batches after gaps of 12 to 60 days from the import. The applicant claimed drawback of duty under Section 74 of Customs act, 1962, and the same were allowed by the Deputy Commissioner of Customs(DBK), ICD, Ludhiana. However, subsequently a Show Cause Notice was issued to the applicant for recovery of duty drawback of Rs. 3,46,711/- along with interest under Rule 7 of the Re-Export of Imported goods (Drawback of Customs Duties) Rules, 1995, on the ground that the applicant had not produced any evidence that the imported goods had not been used after importation and before re-export.

3. The revision application has been filed mainly on the ground that they had re-exported the imported goods after few days of importation, the padlocks are used by customers for years and it was not possible that 7.5 lakh locks could be re-exported by the applicant after collecting from so many customers. It is further contended that the re-exported goods were checked by Customs Appraiser and thereafter by Assistant Commissioner of Customs and these were allowed for re-export only when the goods fully tallied with the imported goods. A preliminary objection is also raised that the recovery action in this case has been taken without challenging the sanctioning order of the Deputy

Commissioner of Customs before the Commissioner (Appeals) which is not permissible in the law.

4. A personal hearing was held in this case on 01/05/2018 and it was availed by Sh. Aman Garg, Advocate, for the applicant who reiterated the grounds of revision already pleaded in their application. However, no one appeared for the respondent and no request for any other date of hearing has been received.

5. The government has examined the matter and it is observed that the re-export of the imported brass padlocks is not disputed by the revenue authorities and the recovery of duty drawback is ordered by the original authority and upheld by the first appellate authority merely for the reason that the applicant did not produce any evidence to establish that they had not used these goods prior to re-export thereof. However, no such objection had been raised earlier by the original sanctioning authority and instead the drawback amount had been granted on being satisfied about the admissibility of drawback of duty to the applicant. The reason for re-examining this issue later on is not revealed in the order-in-original and if the respondent had any doubt regarding use of the imported goods before re-exporting the same the onus was on the revenue authorities to establish that the imported goods were not re-exported as such. But no such evidence has been mentioned in both order-in-original as well as order-in-appeal. Instead, the entire case has been decided at the lower level on the ground that the applicant could not produce any evidence to prove that the imported goods were not used by them prior to re-export thereof. It is not explained as to how any evidence regarding non-use of the imported goods could be produced by the applicant after re-exporting the goods. The doubt of the revenue authorities regarding use of the padlocks is not even supported by the Appraiser and the Assistant Commissioner of Customs in their reports who had examined the goods at the time of re-export. Even the reasoning given by

the applicant that it was not possible to use the 7.5 lakh locks in a period of 12 days to 60 days and collect the same from the customers for re-export sounds fully convincing. Further, government also finds force in the applicant's argument that without getting the original sanctioning order of the Deputy Commissioner of Customs set aside from the competent authority by filing an appeal to the Commissioner (Appeals) on the basis of review order of the jurisdictional Commissioner, direct recovery order issued by the Assistant/Deputy Commissioner is not legally maintainable. Such order amounts to reviewing of his own order for which the Assistant/Deputy Commissioner is not competent under the Customs Act, 1962. Therefore the government is convinced that the order-in-appeal passed by the Commissioner (Appeals) is erroneous.

6. Accordingly, the order-in-appeal is set aside and revision application is allowed.

*R.P. Sharma*  
6.8.18  
(R.P.Sharma)

Additional Secretary to the Government of India

M/s Nulli Secundus Brass Tracks,  
686, Urban Estate, Phase-I,  
Jalandhar.

Order No. 100/18-Cus dated 6-8-2018

Copy to:

1. Commissioner of Customs, Ludhiana
2. Commissioner of Central Excise (Appeals), Chandigarh-I, Central Revenue Building, Plot No. 19, Sector 17-C, Chandigarh
3. The Deputy Commissioner, ICD, GFRL, Sahnewal, Ludhiana.
- ✓ 4. Guard File.
5. P.A. to AS (R)
6. Spare Copy

ATTESTED

*Nirmala Devi*  
6/8/18  
(Nirmala Devi)  
(Section Officer)