

REGISTERED
SPEED POST



F.No. 375/44/B/2016-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... 27.8.18

Order No. 114/18-Cus dated 7.8.2018 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 265/CUS/App/Alld/Lko/2016 dated 31.3.2016, passed by the Commissioner of Central Excise (Appeals), Lucknow

Applicant : Mr. Hajee Bavamiah Hafeez Ahmed, Chennai

Respondent : Commissioner of Customs, Lucknow

ORDER

A Revision Application No.375/44/B/2016-R.A. dated 21/06/2016 is filed by Mr. Hajee Bavamiah Hafeez Ahmed, a resident of Chennai (hereinafter referred to as the applicant) against the OIA No.265/CUS/Apl/Alld/Lko/2016 dated 31.3.2016, passed by the Commissioner of Central Excise (Appeals), Lucknow, whereby the applicant's appeal filed before him was rejected and the Deputy Commissioner's OIO dated 20.12.13 was upheld.


2. The brief facts leading to the present revision application are that the applicant had illegally imported 2000 pieces of SD RAMs valued at Rs.16.00 lakhs which were absolutely confiscated by the Additional Commissioner of Customs (Preventive), Lucknow Customs vide his Order dated 1.4.03. The Commissioner (Appeals), Allahabad, however, vide OIA dated 23.4.04 allowed the applicant to redeem the confiscated goods on payment of customs duties, fine of Rs.2.00 lakhs and penalty of Rs.1.00 lakh. But the applicant, instead of redeeming the goods, filed a revision application before the Government which was rejected by the JS (RA) vide his Order dated 31.5.15. The applicant's Writ Petition filed against the Government's above revisionary Order was also rejected vide his Order dated 27.1.11. Since the applicant had not redeemed the goods on payment of customs duties and fine etc., the confiscated SD RAMs were auctioned and the applicant, after gap of enormous time, filed refund claim on the ground that after appropriating the duties, redemption fine and penalty ordered by the Commissioner (Appeals), the balance sale proceeds must be given to him. However, his refund claim was rejected by the Deputy Commissioner on the ground that since he had not exercised his option to redeem the confiscated goods, ownership of confiscated SD RAMs had vested with the Central Government and the applicant could not claim any refund out of the sale proceeds. A reason was also given that the refund claim had been filed after 9 years after the OIA was passed and accordingly it was time barred. The applicant's appeal against the Deputy Commissioner's Order dated 20.12.13 was also rejected by the Commissioner (Appeals) under OIA dated 31.3.16 against which the present revision application has been filed before the Government.

3. The revision application is filed mainly on the grounds that the Commissioner (Appeals) had vide his Order dated 23.4.2004 set aside the Order for absolute confiscation of the goods and since the Department had auctioned the goods he is entitled for return of the balance amount from the sale proceeds.

4. A personal hearing was offered on 04/7/2018. However, no one appeared for the hearing for the applicant and even no request for any other date of hearing was also received from which it is implied that the applicant is not interested in availing the personal hearing in this matter. Hence, the revision application is taken up for a decision on the basis of available records.

5. The Government has examined the matter and it is found from the OIA as well as the revision application that the issue involved in the present proceeding is whether the applicant is eligible for refund of balance amount from the sale proceeds of the confiscated SD RAMs or not. But the revision application involving the issue regarding refund of duty or sale proceeds is not within the domain of the Government as per 1st Proviso to Section 129A read with Section 129DD of the Customs Act as which a revision application can be filed before the Government only if the OIA relates to goods imported or exported as baggage, short landing of imported goods and payment of drawback. The subject of any kind of refund is not specified for the purpose of filing of the revision before the Government and thus the Government does not have any jurisdiction to deal with the issue regarding refund of balance amount of sale proceeds involved in the present revision application.

6. Accordingly, the Government does not have any authority to modify the OIA in this case and the revision application is rejected as non maintainable.


7.8.18
(R.P.Sharma)

Additional Secretary to the Government of India

Mohd. Hajee Bavamiah Hafeez Ahmed,
Flat No.13, 106/107-11, Perambur Barracks
Vepery, Chennai-600007

Order No. 114/18-Cus dated 7-8-2018

Copy to:

1. Commissioner of Customs (P), Hall No.3, 5th & 11th Floor, Kendriya Bhawan, Sector-H, Aliganj, Lucknow-226024
2. Commissioner of Customs (Appeals), Central Excise & Service Tax, Hall No.2, 8th Floor, Kendriya Bhawan, Aliganj, Lucknow-226024
3. Deputy Commissioner of Customs (P), Division No.3, Thambusamy Road, Kilpauk, Chennai-600010
4. PA to AS(RA)
5. Guard File
6. Spare Copy

ATTESTED



(Ashish Tiwari)
Assistant Commissioner