

REGISTERED
SPEED POST



F.No. 375/58-59/DBK/2018-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 22/1/21

Order No. 12-13 /21-Cus dated 21-01-2021 of the Government of India passed by Sh. Sandeep Prakash, 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. NOI-CUSTM-000-APP-1690 & 1691-17-18 dated 16.02.2018, passed by the Commissioner of Customs & Central Excise (Appeals), Noida.

Applicant : 1. M/s Veronica Fashions Pvt Ltd
2. Sh. Ankit Sharma

Respondent : Commissioner of Customs, Noida

ORDER

Revision Application Nos.375/58-59/B/2017-RA dated 08.05.2018 have been filed by M/s Veronica Fashions Pvt. Ltd and Sh. Ankit Sharma, (hereinafter referred to as the applicants) against the Orders-in-Appeal Nos. NOI-CUSTOM-000-APP-1690 & 1691-17-18 dated 16.02.2018, issued by the Commissioner of Customs & Central Excise (Appeals), Noida. Commissioner (Appeals) vide the above mentioned Order-in-Appeal has rejected the appeal on the ground that the applicants did not make the mandatory pre-deposit of 7.5%, as per Section 129E of the Customs Act, 1962.

2. The brief facts of the case are that an intelligence was received by DRI, Delhi that some exporters were involved in export of highly overvalued carpets, garments, fabrics etc to Saudi Arabia, Malaysia and other countries, thus availing undue export incentives under Drawback, DEPB, Focus Product Scheme, Focus Market Scheme etc. The applicants M/s Veronica Fashions Pvt Ltd and its Director, Sh. Ankit Sharma were also involved in the misuse of various export incentive schemes. Applicants have filed 21 Shipping Bills wherein value declared was highly over invoiced. Adjudicating authority, vide Order-in-Original no. 12/ADC/CUS/ICD-DD/16 dated 28.07.2016, ordered that duty drawback amount of Rs. 51,28,392/- out of claimed drawback amount of Rs. 57,29,986/- under 21 Shipping Bills be rejected and re-determined the drawback amount payable at Rs. 6,01,594/- only. Besides a penalty of Rs. 1,00,00,000/- and Rs. 75,00,000/- was also imposed on M/s Veronica Fashions Private Limited, and Sh. Ankit Sharma, under Section 114 of the Customs Act, 1962, respectively. Aggrieved, the applicants filed appeals before the

Commissioner (Appeals) who rejected the appeals as non-maintainable on the grounds mentioned above. The instant revision applications have been filed mainly on the ground that the Section 129 E is not applicable in their case as no duty has been demanded from them.

3. Personal hearing in virtual mode was held on 20.01.2021. Sh. Mukesh Dubey, Advocate, attended the hearing on behalf of the applicant. He requested for adjournment by 01 week due to non availability of his senior. His attention was drawn to the fact that the subject hearing was granted as a last and final opportunity after the matter was adjourned at their request earlier. Request for further adjournment was, therefore, denied. Sh. Dubey stated that none of the applicants had made the pre-deposit as on date and then sought time of 10 minutes to seek instructions regarding pre-deposit. Upon reconvening, Sh. Dubey stated that applicants will make the pre-deposit within two months and subject to the same the matter may be remanded to Commissioner (Appeals) for decision on merits. On behalf of the department, Sh. R.K. Agarwal, Additional Commissioner, Noida, submitted that the appeal was rejected rightly as the mandatory pre-deposit was not made. Even as on date the pre-deposit has not been made. Therefore Revision Applications should be rejected.

4. Government has examined the matter. The Commissioner (Appeals) has rejected the appeal on the ground that the applicants did not make mandatory pre-deposit of 7.5% as per Section 129E of the Customs Act, 1962. At this stage, it is not

disputed that being a mandatory condition the pre-deposit ought to have been made. Only plea is that the matter should, now, be remanded back to Commissioner (Appeals) for decision on merits subject to the pre-deposit being made within two months. It is observed that the order of Commissioner (Appeals) is more than 2 years and 8 months old and the applicants were having sufficient time to make the pre-deposit, but the same was not done. Even at this late stage, the applicants have not sought a remand after making the pre-deposit but have made pre-deposit conditional to the remand order being passed. There is no explanation as to why the applicants could not approach with this plea after making the pre-deposit when they are admittedly, now, in a position to do so. In the circumstances, the request made by applicants does not appear to be bonafide. Keeping in the view the statutory position, there is no infirmity in the impugned Order-in-Appeal.

5. Before concluding, it is to be noted that, as evident from the proceedings of personal hearing, the applicants were all along conscious that the pre-deposit is required to made but attempted to keep the dispute alive by feebly contending, in the instant Revision Applications, that no pre-deposit was required to be made since no duty had been demanded from them. In the process the applicants conveniently overlooked the fact the penalties had been imposed on them and that, as per Section 129 E, the pre-deposit is required to be made even in a case where penalty alone is in dispute. The Government is, therefore, constrained to observe that the instant Revision Applications are nothing but an abuse of process of law.

5. The revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. M/s Veronica Fashion Pvt. Ltd,
C-4, 218, Ground Floor,
Thana road, Sultanpuri,
New Delhi 110066
2. Sh. Ankit Sharma,
2/42, NIB Vistar Housing Board,
Alwar, Rajasthan.

Order No. 12-13/21-Cus dated 21-01-2021

Copy to:

1. The Commissioner of Customs, Noida, Concor Complex, P.O. Container Depot,
Greater Noida, Gautam Budh Nagar, Uttar Pradesh-201311 .
2. The Commissioner of Customs & Central Excise (Appeals), C-56/42, Renu Tower,
Sector 62, Noida, Uttar Pradesh.
3. PA to AS(RA)
4. Guard File.
5. Spare Copy

Attested

(Nirmla Devi)
Section Officer (REVISION APPLICATION)