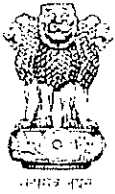


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SPEED POST



F.No. 372/13/DBK/18-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.. 25/9/19

ORDER NO. 16 /19-Cus DATED 27-9-2019 OF THE GOVERNMENT OF INDIA,  
PASSED BY SMT MALLIKA ARYA ADDITIONAL SECRETARY TO THE GOVERNMENT OF  
INDIA, UNDER SECTION 129 DD OF THE CUSTOMS ACT, 1962.

Subject : Revision Application filed, Under Section 129 DD of the Customs Act,  
1962 against the Order-In-Appeal No. KOL/CUS(Port)/AA/2029/2017  
dated 28.11.2017 passed by the Commissioner of Customs (Appeals),  
Kolkata.

Applicant : M/s Ajay Khemka (Apparels)

Respondent : Commissioner of Customs, Kolkata,

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## **ORDER**

This revision application No. 372/13/DBK/2018-RA has been filed by M/s Ajay Khemka (Apparels) (herein after referred to as "applicant") against the order No. KOL/CUS(Port)/AA/2029/2017 dated 28.11.2017, passed by Commissioner (Appeals), Kolkata.

2. Brief facts of the case are that the applicant exported 21 consignments under drawback Shipping Bills and availed drawback amount of Rs. 14,65,583/- accordingly. On scrutiny of XOS statement together with the EDI shipping bill data of ICES by the Customs authorities it was found that export proceeds were not realized even after expiry of the stipulated period / extended period allowed by RBI, as prescribed in the Rules. Accordingly, the Assistant Commissioner of Customs, Drawback issued a Demand cum Show Cause notice to the appellant asking him to produce evidence relating to realisation of foreign exchange or to deposit the sum of Rs. 14,65,583/- already availed as drawback along with interest accrued there upon. The appellant submitted copy of BRC which confirms that the remittances were not realized within the prescribed time limit in case of two shipping bill no. 5663588 dt. 25.10.2010 and 5666174 dt. 03.11.2010. Accordingly the adjudicating authority has confirmed demand of duty drawback amount of Rs. 1,27,020/- along with interest accrued thereon vide Order-in-Original no. KOL/CUS/AC/23/2014 (DBK) dtd. 29.01.2014. Being aggrieved, the applicant filed an appeal before Commissioner (Appeals), who vide order dated 28.11.2017, rejected the appeal filed by the appellant as he found no infirmity in the order of the lower authority. He further noted that the relevant Drawback Rules, 1995 specify that the foreign remittance have to be realized by the exporter within the period permitted by the Reserve Bank of India.

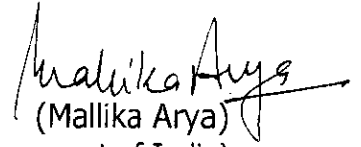
3. Personal hearing in the matter was fixed on 26.08.2019 which was not availed by the applicant and the respondent. Instead, a letter dated 16/08/2019 was received from applicant stating that they are in the process of compiling the documents & requested for

adjournment. As per their request they were provided the next date of hearing on 25.09.2019. The same was attended by Sh. Bharat B. Shah, Consultant, who reiterated the grounds of revision application and contented that the export proceeds in respect of the impugned shipping bills were realized within a time frame of 60 days / 90 days respectively. The photocopies of BRCs have been submitted with Government having SI. No. 0052453, SI No. 797091 both dated 27.01.11 in respect of shipping bill no. 5663588 dt. 25.10.10 and SI No. 811679 dt. 09.12.11 and in respect of shipping bill no. 5666174 dt. 03.11.10. The applicant contended that he could not produce these before the adjudicating authority and could not produce these before the Commissioner (Appeals) since the bank did not give these to the applicant in time. No one appeared from the respondent's side. A letter dated 13/09/2019 has been received from the Assistant Commissioner of Customs, Drawback Department (Port), Kolkata stating that the department has nothing to add other than the submissions they have already made. The case is being decided on the basis of evidence on record.

4. The Government has examined the case. It is observed that the dispute is regarding non submission of BRCs in connection with shipping bill No. 5663588 dt. 25.10.10 & shipping Bill No. 5666174 dated 03.11.2010. The applicant could not produce these before the adjudicating authority and also before the Commissioner (Appeals) since the bank could not give these to the applicant. From the photocopies of BRC's submitted before the Government it appears that the export proceeds of USD 16317 (within 3 months) & USD 20429 (within 2 months) have been realised against the aforesaid shipping bills. Since the export proceeds have been realised within prescribed period of one year, the applicant is eligible for duty drawback in respect of goods exported under shipping Bill No. 5663588 dated 25.10.2010 and 5666174 dated 03.11.2010.

5. In view of the above discussion, Government sets aside the impugned order-in-Appeal and remands the case back to the original authority for verification of the documents in original and consequential relief to the applicant.

6. The revision application is allowed in above terms.

  
(Mallika Arya)

(Additional Secretary to the Government of India)

M/s Ajay Khemka (Apparels),  
R/o 643C, Block-O  
New Alipore,  
Kolkata- 700053

Order No. 16 /19-Cus dated 27-9-2019

Copy to:

1. The Commissioner of Customs (Preventive), Customs House, 15/1, Strand Road, Kolkata- 700001
2. PA to AS(RA)
3. Guard File.
4.  Spare Copy

ATTESTED

  
27/9/2019

(Nirmla Devi)

Section Officer (REVISION APPLICATION)