

REGISTERED
SPEED POST



F.No. 380/10/DBK/2019-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 23/09/21

Order No. 190/2021-Cus dated 23/09/2021 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. KOL/CUS(PORT)/AA/451/2019 dated 01.07.2019, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : The Commissioner of Customs (Port), Kolkata.

Respondent : M/s. Vaibhav Exports Pvt. Ltd., New Delhi.

ORDER

A Revision Application No. 380/10/DBK/19-RA dated 30.09.2019 has been filed by the Commissioner of Customs (Port), Kolkata, (hereinafter referred to as the Applicant) against the Order No. KOL/CUS(PORT)/AA/451/2019 dated 01.07.2019, issued by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has allowed the appeal of M/s Vaibhav Exports Pvt. Ltd., New Delhi (herein after referred to as the Respondent) by setting aside the Order-in-Original No. KOL/CUS/AC/1733/DBK(Port)/2018 dated 16.05.2018 on the ground that the export proceeds in respect of the impugned Shipping Bills were realized except for 14 Shipping Bills wherein the respondent was directed to repay the proportionate drawback amount.

2. Brief facts of the case are that the Respondent filed drawback claims in respect of 39 Shipping Bills with the jurisdictional Customs authorities, and received a drawback amount of Rs. 1,69,60,664/-. Subsequently, on scrutiny, it was found that the Respondent herein had failed to submit the proof to the effect that the export proceeds in respect of the relevant Shipping Bills had been realized. Accordingly, show cause notice was issued in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, to the Respondent for the recovery of drawback availed amount of Rs. 1,69,60,664/- along with interest, which was confirmed by the original authority, vide aforesaid Order-in-Original dated 16.05.2018. Aggrieved, the Respondent filed an appeal before the Commissioner (Appeals), who vide the OIA dated 01.07.2019, allowed the appeal.

3. The revision application has been filed, mainly, on the ground that the Commissioner (Appeals) while allowing the appeal had accepted the new evidences without cross examining/verifying the veracity of the said evidences.

4. Personal hearing was fixed on 19.08.2021, 08.09.2021 and 22.09.2019. None appeared either on behalf of the Applicant department or on behalf of the Respondent, nor any request for adjournment has been received. Since sufficient opportunities have been granted, the case is taken up for final decision on the basis of records.

5. Government has carefully examined the matter. It is observed that the Commissioner (Appeals) has allowed the appeal on the basis of a communication dated 03.07.2017 submitted by the Respondent at the appellate stage, ostensibly issued by the Assistant General Manager, Oriental Bank of Commerce, stating therein that the extension for realization of export proceeds in respect of impugned Shipping Bill had been granted. Applicant department has filed the instant revision application, mainly, on the ground that Commissioner (Appeals) has accepted the new evidences without verifying their authenticity. Applicant department has further stated that the "Commissioner (Appeals) has gone beyond his power and jurisdiction in admitting new evidence i.e. the attested copy of letter issued from Oriental Bank of Commerce dated 03.07.2017 regarding extension of Shipping Bills, which is in explicit violation of Section 5(2) & 5(3) of the Customs (Appeals) Rules, 1982. The genuineness of this impugned letter is doubtful since the Assistant

General Manager of M/s oriental Bank of Commerce, New Delhi has submitted a letter under Ref. No. CTCFX dated 23.04.2018, which narrates a distinct version. Therefore, the admittance of this letter at the stage of appeal without cross-examining the veracity of the same is bad in law." It is further stated that a letter dated 08.07.2019 has been issued to the Bank for verification of genuineness of letter dated 03.07.2017 relied upon before the Commissioner (Appeals) and "Reply of the same is awaited". Thus, it is apparent that veracity/genuineness of the letter dated 03.07.2017 relied upon before the Commissioner (Appeals) is doubtful and the matter is under verification. As such, it would in the interest of justice that the matter is remanded back to the original authority to decide the matter afresh after due verification of the claim that the RBI/AD bank had granted the extension of time for realizing the export proceeds as well as after ascertaining the correct status of realization of export proceeds.

5. In view of the above, the impugned OIA dated 01.07.2019 is set aside and the revision application is allowed by way of remand, in above terms.



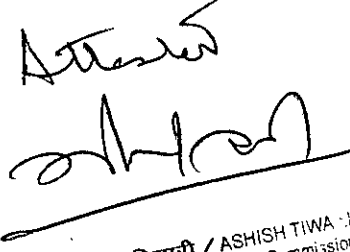
(Sandeep Prakash)
Additional Secretary to the Government of India

The Commissioner of Customs (Port),
15/1, Strand Road, Custom House,
Kolkata – 700 001.

Order No. 190/21-Cus dated 23/09/2021

Copy to:

1. M/s. Vaibhav Exports Pvt. Ltd., C-128/2, 2nd Floor, Village Mohammadpur, Near Bhikaji Cama Place, New Delhi – 110066.
2. The Commissioner of Customs (Appeals), Kolkata, 3rd Floor, 15/1, Strand Road, Custom House, Kolkata- 700001.
3. PS to AS(RA)
4. Guard File.
5. Spare Copy.



आशीष तिवारी / ASHISH TIWARI
सहायक आयुक्त / Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi