

REGISTERED  
SPEED POST



F.No. 375/68/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... 13/12/18

Order No. 224/18-Cus dated 7-12-2018 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 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CC(A)Cus/ICD/225/2016 dated 15.3.2016, passed by the Commissioner of Customs (Appeals), Delhi.

Applicant : M/s Creative Educational Aids Pvt. Ltd.

Respondent : Commissioner of Customs(Export),ICD, Tughlakabad, Delhi

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**ORDER**

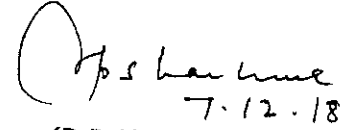
A Revision Application No. 375/68/DBK/16-RA dated 31.08.2016 is filed by M/s Creative Educational Aids Pvt. Ltd (hereinafter referred to as the applicant) against the Order No. CC(A)Cus/ICD/225/2016 dated 15.03.2016, issued by the Commissioner of Customs (Appeals), Delhi, whereby the Order-in-Original No. 407/2014 dated 20.11.2014 of the Dy. Commissioner of Customs, ICD, TKD, BRC cell, Delhi, confirming the recovery of Rs. 2,25,802/- against wrongly sanctioned drawback of duty in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995 and imposing penalty of equivalent amount has been upheld.

2. The revision application is filed mainly on the ground that they had submitted a certificate from Chartered accountant regarding realisation of the foreign exchange before the Commissioner (Appeals), but he has still wrongly upheld the Dy. Commissioner's order by ignoring the Chartered Accountant's certificate.
3. Personal hearing in the matter was attended by Sh. Ashish Goel, Chartered Accountant, on 04.09.2018 for the applicant and reiterated the submissions already made in their Revision Application. However, no one appeared for the respondent and no request for any other date of hearing is also made by them from which it is implied that the applicant is not interested in availing personal hearing in this case.
4. Government has examined the matter and it is observed that revision application is delayed by 2 months & 14 days and its reason is stated to be that they had earlier wrongly filed the appeal against the Commissioner (Appeals) order before the CESTAT under the bonafide belief that CESTAT was the appellate authority in this case. However, the mistake was realized later on and accordingly the appeal before CESTAT was withdrawn by them on 09.08.2016 and the same was

allowed by CESTAT vide its order dated 09.08.2016 which was received by them on 25.08.2016 soon after which they filed the present revision application on 08.09.2016. Thus the fact of wrong persuasion of their appeal before CESTAT for more than two and a half month is well established. Therefore, accepting the request of the applicant, the aforesaid delay of 2 months & 14 days is condoned in exercise of the power conferred under Section 129DD(2) of the Customs Act, 1962 as per which delay of 3 months can be condoned by the Government.

5. As regards main dispute in the present case, it is observed that the department's entire case is based on the premise that the applicant did not receive the export sale proceeds against the seven Shipping Bills within specified period of one year and as a result thereof drawback of duty is recoverable from the applicant. Whereas the applicant has claimed that they had exported the goods against the seven Shipping Bills only after receiving the export proceeds in advance and no amount remained pending from the beginning. It is also claimed that they had produced Chartered Accountant certificate regarding no dues pending in their case before the Commissioner (Appeals), but it was completely ignored at his end. To clinch this issue once for all the applicant also has produced now the BRC's dated 11.12.2007, 12.02.2007, 24.04.2007, 30.05.2007, 16.02.2007 and 13.11.2008 in regard to all the seven Shipping Bills in dispute as per which no export proceed was ever pending against the applicant. Thus fairness demands that this case should be re-examined fresh in the light of the applicant's claim that they had realised all amount in advance and no sale proceed was ever pending in their case. Accordingly the matter is remanded back to jurisdictional Assistant/Dy. Commissioner (DBK) to verify the genuineness of the BRC's and reconsider the issue regarding recovery of DBK of duty amount in the light of BRC's claimed to have been in existence much before the recovery action was initiated by the departmental authorities. It is needless to clarify here that no drawback amount will be recoverable from the applicant if the genuineness of these BRC's is found true.

5. Accordingly, the Order-in-Appeal is set aside and revision application is allowed to the above extent.

  
7.12.18

(R.P.Sharma)

Additional Secretary to the Government of India

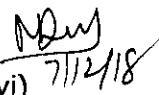
M/s Creative Educational Aids Pvt. Ltd.  
Toy City Industrial Area, Gautam Budh Nagar,  
Noida 201306

Order No. 224 /18-Cus dated 7-12-2018

Copy to:

1. Commissioner of Customs (Export), ICD Tughlakabad, New Delh
2. Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi-110037.
3. Assistant Commissioner of Customs, Export, BRC cell, ICD, TKD, New Delhi
4. Vaid Jain and associates, 100 Babar Road, Opposite Hotel Lalit, New Delhi 110001
5. Guard File.
6. Spare Copy

ATTESTED

  
(Nirmla Devi) 7/12/18

Section Officer (REVISION APPLICATION)