

REGISTERED
SPEED POST



F.No. 375/26/DBK/2014-R.A.Cx
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.....

Order No. 29/18-Cus dated 5-2-2018 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 Custom Act, 1962 against the Order-in-Appeal No. 29/VC/Cus/JPR-I/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Jaipur.

Applicant : M/s M.A. Exports

Respondent : Commissioner of Customs, Jaipur

ORDER

A Revision Application No. 375/26/DBK/2014-R.A.Cx dates 20.05.2014 is filed by M/s M.A. Exports, Jaipur (hereinafter referred to as the applicant) against the Order-in-Appeal No. 29/VC/Cus/JPR-I/2013 dated 05.12.2013, issued by the Commissioner of Customs (Appeals), Jaipur who has rejected the appeal of the applicant filed against the order of the Deputy Commissioner of Customs, ICD, Sanganer.

2. The Revision Application has been filed on the ground that the Deputy Commissioner has ordered for recovery of drawback amount of Rs. 12,30,975/- in terms of Rule 16A of the Customs, Central Excise duties and service tax Drawback Rules 1995 even when they had realised the export proceeds well in time and the Commissioner (Appeals) has not considered this fact while rejecting their appeal.

3. A Personal hearing was availed by the applicant and the respondent on 7.12.2017 and the advocate of the applicant again emphasized that they have already received export proceeds within time. However, when he was asked to produce the letters from RBI regarding extension of time granted by RBI and the BRCs he requested for ten days time for providing the same. Accepting this request, the applicant's advocate was directed to produce the above stated documents by 18.12.2017. Thereafter, the applicant has submitted a letter dated 18.12.2017 alongwith copy of applications for permission to extend the period for realization of export proceeds.

4. The Government has examined all relevant records in this matter and at the outset it is found that the Revision Application has been filed after delay of 69 days on account of wrong filing of appeal before CESTAT and returning of their appeal by the registry of CESTAT only on 02.04.2014. In their application for condonation of delay, the applicant has submitted that they had filed appeal before CESTAT wrongly due to lack of knowledge on their part and after being misguided by their previous legal counsel. The Government finds that the reason cited by the applicant for delayed filing of the Revision Application sounds to be genuine and it is a deserving case for condonation of the delay. Accordingly the delay is condoned.

5. As regards the merit of the revision application, in para 16 of his order, the Commissioner (Appeals) has categorically observed that the dates of realization of the export proceeds are 20.09.2011, 15.11.2011 and 22.02.2012 in respect of Shipping Bill Nos. 103 7266 dated 19.02.2008, No. 1037871 dated 31.03.2008 and Shipping Bill No. 1040217 dated 19.08.2008 respectively. He has further recorded that no document from the RBI regarding extension of initial period of six months for realization of export proceeds has been produced before him. The Government has also noticed that the applicant has not produced any evidence alongwith the Revision Application or otherwise to prove that they had realized export proceeds in respect of above mentioned three shipping Bills within specified period of six months from the date of export and dates of realization mentioned by Commissioner (Appeals) in his order are undoubtedly much beyond the prescribed period of six months. No document issued by RBI is also produced to evidence that the applicant was allowed to realize the export proceeds beyond the period of six months. During

the personal hearing also the advocate of the applicant was requested to produce the relevant documents to establish that they had received the export proceeds within specified period of six months or within extended period granted by the RBI. The advocate requested for ten days time and accordingly he was given time upto 18.12.2017 to produce such evidences. But even subsequently alongwith their letter dated 18.12.2017, the applicant has merely submitted an application to the J & K Bank for permission to extend the period for realization of export proceeds containing details of exporter, shipment, export performance during last three years etc. and a remark of a manager of J & K Bank on the application that extension is granted upto 19.08.2009 & 18.11.2009 respectively in respect of Shipping Bill No. 37266. However, even such application is not produced in respect of other two Shipping Bill Nos. 103787 and 1040217. Even the above stated application in respect of 1037266 is not submitted to the RBI which is a competent authority for giving extension for realization of export proceeds. Thus, no extension from RBI is obviously procured and received by the applicant and the copy of BRC is actually not submitted for consideration. Above all, the delay in realization of the export proceeds as mentioned in the order of the Commissioner (Appeals), which are referred above in this order, also are much beyond the period extended by J & K Bank even though this bank is not a competent authority for giving any such extension. Considering all these facts, the Government finds that the applicant has failed to provide any evidence to establish that they have received export proceeds within six months or within extended time granted by the RBI. Accordingly, no fault is found in the order of the Commissioner (Appeals).

6. In view of the above discussion, the Revision Application filed by M/s M.A. Exports is rejected.

(R.P. Sharma)
5.2.18

Additional Secretary to the Government of India

M/s M.A. Exports,
95, Govindpuri East,
III Street, II lane New
Ramgarh Road, Amber
Road, Jaipur - 302 002

Order No. 29/18-Cus dated 5-2-2018

Copy to:

1. The Commissioner of Customs Jodhpur, New Central Revenue Building, Statue Circle, "C" Scheme, Jaipur- 302 005 Rajasthan.
2. The Commissioner (Appeals) Central Excise Commissionerate NCRB, Statue Circle, C-Scheme-Jaipur-I, Jaipur-(Rajasthan).
3. The Deputy Commissioner Customs, ICD, RAJSICO, Jaipur, Rajasthan.
4. Ms. Asmita A. Nayak & Mr. Ranjeet K. Ranjan Advocates No. D/619, 1st Floor, C.R. Park Near Market No. 2, New Delhi- 110 019.
5. PA to AS(RA)
6. Guard File.
- ✓ 7. Spare Copy

ATTESTED

(5.2.18)
(Debjit Banerjee)

STO (REVISION APPLICATION)