

F.No. 380/11/DBK/2018-RA

F.No. 372/34/DBK/2018-RA

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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...15/2/21

Order No. 40-41/21-Cus dated 12-02-2021 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(CCP)/AA/530/2018 dated 06.03.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : 1. Commissioner of Customs (Preventive), Kolkata  
2. M/s S.D. Trade Impex Pvt. Ltd. Kolkata

Respondent : 1. M/s S.D. Trade Impex Pvt. Ltd. Kolkata  
2. Commissioner of Customs (Preventive), Kolkata

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**ORDER**

Revision Applications No.380/11/DBK/2018-RA dated 01.06.2018 and No. 372/34/DBK/2018-RA 14.05.2018, have been filed by Commissioner of Customs (Preventive) Kolkata, (hereinafter referred to as the Applicant – 1) and M/s S.D. Trade Impex Pvt. Ltd, Kolkata, (hereinafter referred to as the Applicant - 2), respectively, against the Order-in-Appeal No.KOL/Cus(CCP)/AA/530/2018 dated 06.03.2018, passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has allowed the appeal of the Applicant 2 to the extent mentioned therein and modified the Order-in-Original No. 17/DC(DBK)/2017-18 dated 09.05.2017 on the ground that the respondent had realized the export proceeds and has produced proof thereof. The drawback claims of the Applicant-2 have been allowed in appeal after deducting the proportionate drawback amount for the short realisation of remittances.

2. Brief facts of the case are that the Applicant -2 filed drawback claims in respect of 57 Shipping Bills, during the calendar years 2013, 2014 and 2015, with the Dy. Commissioner of Customs, Drawback, CC(P) Kolkata for a total amount of Rs. 3,98,28,405/-. The said claims were sanctioned by the jurisdictional Dy. Commissioner of Customs, Drawback Cell, CC(P), Kolkata. However, on scrutiny of the XOS statement, it was observed by the office of Applicant-1 that the Applicant-2 had failed to submit the proof to the effect that the export proceeds in respect of 57 Shipping Bills in dispute had not been realized in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995. Accordingly, a show

cause notice was issued to the respondent for the recovery of drawback availed amount of Rs.1,29,49,301/- along with interest. Out of this, demand of Rs. 56,57,983/- was confirmed by the Dy. Commissioner of Customs, Drawback Cell, CC(P), W.B., Kolkata, vide order dated 09.05.2017. Aggrieved, the Applicant-2 filed an appeal before the Commissioner (Appeals) who passed the Order-in-Appeal as above, allowing the drawback amount to the extent BRCs, evidencing that the export proceeds had been realized, were submitted. The Commissioner (Appeals) has also recorded that required documents were submitted well before the O-I-O dated 09.05.2017 was issued but the original authority proceeded ex-parte ignoring the same and concluded that no/part payment had been realized.

3. The revision application has been filed by Applicant-1 mainly on the ground that the applicant neither produced BRC nor negative statement in spite of lapse of stipulated time allowed under FEMA,99. Applicant - 2 filed the revision application on the ground that 03 days of delay in realizing export proceeds in respect of Shipping Bill No. 1022784 dated 05.06.2015 is not attributable to any omission or commission on their part and, therefore, this delay in realizing the export proceeds may be condoned.

4. Personal hearing held on 12.02.2021 was attended by Sh. H.K. Pandey, Advocate, on behalf of the Applicant - 2. He reiterated the grounds of revision already stated in the revision application. He also contended that the Government can condone the delay in realisation of export proceeds, by 03 days, in respect of one Shipping Bill, in terms of Rule 17 of the Drawback Rules. Applicant - 1, vide letter dated 03.02.2001, stated that no additional submission is to be made as all

relevant submissions are contained in the grounds of appeal and , therefore, requested to decide the case on merits.

5.1 Government has examined the matter. It is observed that the revision application, by Applicant-1, has been filed mainly on the ground that the Applicant-2 has not produced evidence to the effect that the export proceeds have been realized inspite of lapse of legally stipulated time. To the contrary, Commissioner (Appeals) has not only clearly documented the BRCs produced but has also recorded that the required documents were produced before the original authority well before the OIO dated 09.05.2017 was passed. Government observes that the Applicant -1 has not alleged that the BRCs produced are irrelevant or could not be verified. It is also not disputed that these were produced before the original authority at adjudication stage. As such, the impugned OIA does not merit any interference as regard the revision application filed by Applicant -1.

5.2.1 The Applicant-2 has filed the revision application on the ground that the 03 days of delay in realizing export proceeds in respect of Shipping Bill No. 1022784 dated 05.06.2015 is not intentional and , therefore, may be condoned. Government observes that, in terms of Rule 16 A ibid, the drawback is recoverable if the export proceeds are not realized within the period allowed under the Foreign Exchange Management Act, 1999, including any extension of such period. Admittedly, in the instant case, the export proceeds have not been realized within the period allowed nor has the extension been granted by the competent authority under FEMA. The government cannot extend this period or condone the delay, in

exercise of its revisionary jurisdiction under section 129DD of the Customs Act, 1962.

5.2.2 Applicant-2 has contended that the Government has the power to condone the delay in realizing the export proceeds in terms of Rule 17 of the Customs, Central Excise & Service Tax Drawback Rules, 1995. Government observes that Rule 17 authorizes the Central Government to relax any provision of the Drawback Rules, 1995, only, provided the Central Government is satisfied, that the exporter or his authorized agent has failed to comply with the Drawback Rules, 1995 for the reasons which was beyond their control. As stated hereinabove, realization of export proceeds is governed under the Foreign Exchange Management Act, 1999 and not under the Customs Act, or the Drawback Rules. Therefore, any relaxation in provisions relating to realization of export proceeds can be considered only under the provisions of FEMA and not under the Drawback Rules. Therefore, the contention of the Applicant -2 does not have any merit.

6. In view of the above, the impugned OIA is upheld and both the revision applications are rejected .

  
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(Sandeep Prakash)

Additional Secretary to the Government of India

1. The Commissioner of Customs (Preventive),  
15/1 Strand Road, Custom House,  
Kolkata - 700001.
2. M/s S.D. Trade Impex Pvt. Ltd.,  
22/1B, Nimtola Ghat Street, 1<sup>st</sup> floor,  
Kolkata - 700006

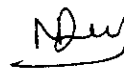
F.No. 380/11/DBK/2018-RA  
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Order No. 40-41/21-Cus dated 12-2-2021

Copy to:

1. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata- 700001.
2. Deputy Commissioner, (Drawback, Preventive), 15/1 Strand Road, Custom House, Kolkata - 700001.
2. PS to AS(RA)
4. Guard File.
6. Spare Copy

Attested



(Nirmala Devi)  
Section Officer (Revision Application)