

REGISTERED
SPEED POST



F.No. 372/07/DBK/2018-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...1...8...11...19

Order No. 47/19-Cus dated 19-11-2019 of the Government of India passed by Mrs. Mallika Arya, 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. KOL/Cus(port)/AA/1373/2017 dated 17.10.2017, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s Calcutta Laminating Industries, Kolkata.

Respondent : Commissioner of Customs(Port), Kolkata

ORDER

A Revision Application No.372/07/DBK/2018-RA dated 12.01.2018 has been filed by M/s Calcutta Laminating Industries (hereinafter referred to as the applicant) against the Order No.KOL/Cus(port)/AA/1373/2017 dated 17.10.2017, issued by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals) vide the above mentioned Order-in-Appeal has rejected the appeal on the ground that the applicant did not pay mandatory pre-deposit of 7.5% as per Section 129 (E) of the Customs Act, 1962.

2. Brief facts of the case are that a demand cum Show Cause Notice in terms of Rule 16 of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995, in respect of 20 Shipping Bill was issued to the applicant for the recovery of drawback amount as the export proceeds was short realized in Rupee terms. Vide Order-in-Original No. KOL/CUS/DC/633/DBK/2015 dated 07.04.2015 a demand of Rs. 37,092/- was confirmed in respect of 13 Shipping Bill along with applicable rate of interest. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals) who rejected the appeal as non-maintainable on the grounds mentioned above. The instant revision application has been filed mainly on the ground that the applicant had deposited a sum of Rs. 2,780/- as pre deposit as per the provision of Section 129(E) of the Customs Act, 1962.

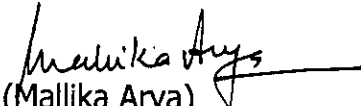
3. Personal hearing in the matter was fixed on 18.11..2019. Sh. Hiralal Bhandari, Proprietoer of M/s Calcutta Laminating Industries, attended the hearing on behalf of the applicant. He reiterated the submissions already made in their Revision Application. The applicant has also submitted a copy of TR-6 Challan dated 10.11.2018 evidencing pre-deposit of Rs. 2,780/-. No one from respondent's side appeared for Personal hearing. Therefore, case is being taken up for final decision on the basis of evidence available on records.

4. Government has examined the matter. It is observed that the Commissioner (Appeals) has rejected the appeal on the ground that the applicant

did not pay mandatory pre-deposit of 7.5% as per Section 129 (E) of the Customs Act, 1962. As regard the non deposit of mandatory amount of 7.5%, Government is of the view that the applicant has now submitted the copy of TR-6 Challan No. Nil dated 10.11.2018 evidencing the payment of pre-deposit amount of Rs. 2,780/-. Since, the mandatory condition of pre-deposit has been fulfilled, Government holds that the matter needs to be re-examined in the light of the applicant's claim.

Accordingly the matter is remanded back to Commissioner (Appeals) with the direction to decide the case on merit after verifying the genuineness of TR-6 challan. It is also observed by the Government that the adjudicating authority has confirmed the demand on the basis of short realisation of export proceeds in Rupee terms which does not seems to be tenable as the export proceeds have to be realized in foreign exchange only and the fluctuations of exchange rate should not have a bearing on drawback amount paid to the applicant by the respondent.

5. Accordingly, the Order-in-Appeal is set aside and revision application is allowed by way of remand to Commissioner (Appeals).


(Mallika Arya)

Additional Secretary to the Government of India

M/s Calcutta Laminating Industries
30, Chittaranjan Avenue ,
Kolkata 700012

Order No. 47 /19-Cus dated 19/11-2019

Copy to:

1. The Commissioner of Customs (Port), 15/1 Strand Road, Custom House, Kolkata - 700001.
2. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata- 700001.
3. Deputy Commissioner, (Drawback, Port), 15/1 Strand Road, Custom House, Kolkata - 700001.
4. PS to AS(RA)

- ✓
5. Guard File.
6. Spare Copy

Attested

N Devi
19-11-19
(Nirmla Devi)

Section Officer (REVISION APPLICATION)