

REGISTERED

SPEED POST



F.No. 380/01/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...11/12/19.....

Order No. 58/19-Cus dated 10-12-2019 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(CCP)/AA/1488/2017 dated 25.10.2017, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Commissioner of Customs (Preventive), Kolkata

Respondent : M/s Aashi International

ORDER

A Revision Application No.380/ 01/ DBK/ 18- RA dated 22.01.2018 has been filed by Commissioner of Customs (Preventive) Kolkata (hereinafter referred to as the applicant) against the Order in Appeal No.KOL/ Cus (CCP)/ AA/ 1488/ 2017 dated 25.10.2017, issued by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals) vide the above mentioned Order-in-Appeal has allowed the appeal of the respondent while setting aside the Order-in-Original 47/ ADC (P)/ CUS/ WB/ 2012 dated 30.03.2012 passed by the Additional Commissioner of Customs, CC(P), West Bengal, Kolkata.

2. Brief facts of the case are that the respondent filed a drawback claim in respect of two Shipping Bills with the jurisdictional customs authorities. The said claim amounting to Rs. 8, 03, 252/- was allowed by the jurisdictional Dy. Commissioner of Drawback, Kolkata. However, on the basis of an investigation, it was found that goods did not physically move to Bangladesh. A Show cause Notice was issued to the respondent for recovery of fraudulently availed drawback amounting to Rs. 8, 03, 252/- in terms of Rule 16 of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995 read with Section 75 A (2) of the Customs Act, 1962 along with applicable rate of interest. Additional Commissioner of Customs (P) decided the above said Show Cause Notice vide Order-in-Original No. 46/ ADC (P) / CUS/ WB/ 2008 dated 31.03.2008 and confirmed the demand of Rs. 8, 03, 252/- along with interest. Aggrieved, the respondent filed an appeal before the Commissioner (Appeals) who vide his Order-in-Appeal No. KOL/ CUS/ CKP/ 49/ 90/ 09 dated 27.02.2009 remanded the case back to original adjudicating authority. Additional Commissioner of Customs (CCP) vide the above mentioned Order-in-Original during the course of de-novo proceedings confirmed the said demand of Rs.8, 03, 252/- along with applicable rate of interest. Apart from this a penalty of Rs. 1, 00, 000/- each was also imposed on the respondent and also on Sh. Ram Chandra Ghosh, Inspector of Ghojadanga, LCS, under Section 117 of Customs Act, 1962. Aggrieved,

the respondent filed an appeal before the Commissioner (Appeals) which has been allowed on the ground that the respondent had submitted the copies of BRC's in respect of the impugned Shipping Bills. The applicant has challenged the Order-in-Appeal by filing the instant revision application on the ground that an opportunity was given to respondent to cross examine Sh. Joy Govind Gupta, proprietor of Transport company on five different occasion. However, Sh. Gupta did not appear on any of the dates fixed for cross examine. Therefore, the allegation of violation of principal of natural justice is not justified. Further, the goods never moved to Bangladesh as intimated by the First Secretary, Embassy of India, Kathmandu (Nepal). Chief Manager, Indian Bank vide letter dated 29.05.2005 has intimated that the foreign exchange against the impugned Shipping Bills was never realised and even the realisation of foreign exchange, if any, is not a definite indication of exports having been completed unless the export documents get co-related with the foreign exchange realisation.

3. Personal hearing was held on 24.10.2019 and attended by Ms. Aakriti Mathur, Advocate, Advocate, on behalf of the respondent. She reiterated the submissions already made in their Revision Application. The respondent has submitted a letter dated 04.12.2019 issued by Branch Manager, Indian Bank, Janakpuri branch, New Delhi -110058 confirming the issuance of BRC's against the impugned Shipping Bills. Since, no one appeared on behalf of the applicant and no request for any other date of hearing has been received, the case is being taken up for final disposal.

4. Government has examined the matter. The applicant in their revision application has contended that the respondent was given an opportunity to cross examine the truck owner but the same could not take place due to the non appearance of the truck owner. In the legal parlance, it is incumbent upon the prosecuting agency to ensure appearance of the witness, if any, but in case he does not appear the statement of such a witness cannot be relied upon. Further Commissioner (Appeals) in his Order-in-Appeal has observed that the truck owner in question is

'Sri Prabir Kumar Saha'. However the statement of purported truck owner which has been recorded is of 'Sri Prabir Kumar Sahoo', who is not even a noticee in this case. This fact has neither been negated by the applicant in the revision application nor any explanation has been offered. Since the statement of the truck owner cannot be relied upon under the circumstances, the applicant's entire case is based on the letter issued by the Indian embassy without any further corroboration.

Apex Court in the case of Naresh J. Sukhawani vs. UOI [1996 (83) E.L.T. 258 (S.C.)] has held as follows:

"It is contended that the statement of co-accused could be used only to corroborate other evidence as one of the circumstances under Section 30 of the Evidence Act. But it cannot be used as substantive evidence without corroboration from other independent evidence."

Commissioner (Appeals) in his order has observed as follows :

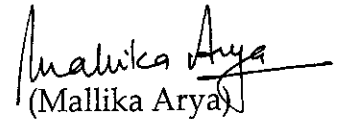
"Instead they relied on the letter received from Chief Manager, Indian Bank dated 29.05.2005 whereby he has informed that the sale proceeds in connection with the impugned Bills of Exports were not collected by the bank in account of the appellant. The appellant stated that the sale proceeds was realized in the current A/c No. 61751 of the appellant and relevant BRC was issued which was taken into seized custody of Department thus the appellant had failed to produce the same. Under these circumstances, to clear the ambiguity, the lower authority should have made a second query to the bank with the copy of the said FIRC. As the sale proceeds has been realised there should be any bar to get the drawback claimed the appellant."

5. The respondent has also submitted a letter dated 04.12.2019 to this authority issued by Branch Manager, Indian Bank, branch Janakpuri, New Delhi, confirming the issuance of BRC's in respect of the impugned Shipping Bill. Details are as follows:

	BRC-1	BRC-2
Invoice No.	AI-4-02-03	AI-5-02-03
Date of Invoice	03.08.2002	07.08.2002
Shipping Bill No.	13/102	13/103
Date of Shipping Bill	28.11.2002	28.11.2002
Bill of Lading No.	65884	65885
Bill Amount (US\$)	22653.00	23758.00
Amount realised in Rs.	1033656.39	1081577.54
Date of realisation	09.09.2003	09.09.2003
GR Form No.	AV-533618	AW-283039
Date of issue of BRC	15.09.2003	15.09.2003

In view of the letter produced from Indian bank dated 04.12.2019 by the respondent evidencing receipt of foreign exchange against impugned exports, the allegation of the applicant that the goods did not get exported remains unsubstantiated.

5. Accordingly, the revision application filed by the applicant is rejected and disposed off.


(Mallika Arya)

Additional Secretary to the Government of India

M/s Aashi International,
B-14, 1st floor,
Ganesh Nagar, Tilaknagar,
New Delhi – 110018

Order No. 58 /19-Cus dated /0-12-2019

Copy to:

1. The Commissioner of Customs (Preventive), 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

(Nirmala Devi)

Section Officer (Revision Application)