

REGISTERED  
SPEED POST



F.No. 380/04/DBK/2018-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. 11/12/19

Order No. 59/19-Cus dated 11-12-2019 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(port)/AA/2005-2006 dated 22.11.017, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Commissioner of Customs(Port), Kolkata

Respondent : M/s Astavinayak Udyog,

\*\*\*\*\*

**ORDER**

A Revision Application No.380/04/DBK/18-RA dated 01.03.2018 has been filed by Commissioner of Customs (Port) Kolkata, (hereinafter referred to as the applicant) against the OrderNo.KOL/Cus(port)/AA/2005-2006/2017 dated 22.11.2017, passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals) vide the above mentioned Order-in-Appeal has allowed the appeal of the M/s Astavinayak udyog, (herein after referred to as the respondent) and set aside the order in originals on the ground that the respondent had realised the export proceeds. The drawback claims of the respondent was allowed after deducting the proportionate drawback amount for the short realisation of remittances.

2. Brief facts of the case are that the respondent filed drawback claim in respect of 02 Shipping Bills with the Dy. Commissioner of Customs, Drawback (Port), Kolkata. The said claim were sanctioned by the jurisdictional Dy. Commissioner of Drawback, Custom House, Kolkata. However, on scrutiny of the XOS statement, it was observed by the applicant that the respondent had failed to submit the proof to the effect that the export proceeds in respect of 02 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. 87,195/- along with interest. The said demand was confirmed by the Dy. Commissioner of Customs, Drawback, Custom House, Kolkata vide order dated 13.01.2017. Aggrieved, the respondent filed an appeal before the Commissioner (Appeals) who partially allowed the drawback amount for which BRC's evidencing that the export proceeds had been realised were submitted before the Commissioner (Appeals).

The instant revision application has been filed mainly on the ground that the applicant did not submit any evidence before the adjudicating authority that the export proceeds had been realised.

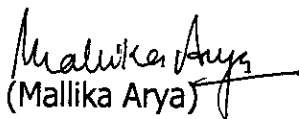
3. Personal hearing was attended by Sh. Daulal Derasaria, Proprietor, on behalf of the respondent. He reiterated that the exports proceeds have been realised partially and submitted the copies of BRC's. Since, no one appeared for the applicant and no request for any other date of hearing has been received, the case is being taken up for final disposal.

4. Government has examined the matter. It is observed that the revision application has been filed mainly on the ground that it is not clear that as to what evidence was produced by the respondent before the Commissioner (Appeals) that the Commissioner (Appeals) has given benefit to the respondent. It appears that the applicant has doubts regarding the authenticity of the impugned BRC's.

Government finds that the doubt of the applicant is farfetched in view of the fact that the respondent has produced the copies of the bank realisation statements available on the DGFT website along with the copies of extension advice issued by Reserve Bank of India in respect of Shipping Bill No. 8934857 and 4959414 dated 10.04.2015 and 12.09.2014 respectively where partial export proceeds were not realised in time. The said BRC's have also been submitted before the Government by the respondent.

In the light of BRC's and the Commissioner (Appeals) observation's to the effect that the export proceeds have been realised, Government upholds the order of Commissioner (Appeals).

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

  
(Mallika Arya)

Additional Secretary to the Government of India

The Commissioner of Customs (Port),  
15/1 Strand Road, Custom House,  
Kolkata - 700001.

Order No. 59/19-Cus dated 11-12-2019

Copy to:

1. M/s Astavinayak Udyog, Plot No. 62, Sec-A, Canal South Road, Metropolitan Co-op, Housing Society, Kolkata-700105
1. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata- 700001.
2. Deputy Commissioner, (Drawback, Port), 15/1 Strand Road, Custom House, Kolkata - 700001.
3. PS to AS(RA)
4. Guard File.
5. Spare Copy

Attested

(Nirmala Devi)  
Section Officer (REVISION APPLICATION)