

REGISTERED
SPEED POST



F.No. 372/39/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. 22/3/21.

Order No. 63/21-Cus dated 22-3-2021 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(PORT)AA/288/2018 dated 31.01.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s Shilpa Creation Pvt. Ltd

Respondent : Commissioner of Customs (Port), Kolkata

ORDER

A Revision Application No.372/39/DBK/18-RA dated 30.05.2018 has been filed by M/s Shilpa Creation Private Limited, (hereinafter referred to as the applicant) against the Order No. KOL/CUS(PORT)AA/288/2018, dated 31.01.2018, passed by the Commissioner of Customs (Appeals), Kolkata, whereby the Commissioner (Appeals) has rejected the appeal of the applicant against the Order-in-Original No. KOL/CUS/DC/1134/DBK/2016 dated 15.03.2016, passed by the Deputy Commissioner of Customs, Drawback department, Custom House, Kolkata.

2. Brief facts of the case are that the applicant filed drawback claims in respect of 03 Shipping Bills with the Dy. Commissioner of Customs, Drawback, Custom House, Kolkata. The said claims were sanctioned. However, on scrutiny of the XOS statement, it was observed by the department that the applicant had failed to submit the proof to the effect that the export proceeds in respect of the said Shipping Bills had been realized in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995. Accordingly, a show cause notice dated 18.11.2014 was issued to the applicant for the recovery of availed drawback amount of Rs. 31,06,606/- along with interest. Demand of Rs. 31,06,606/- alongwith interest accrued thereon was confirmed by the Dy. Commissioner of Customs, Kolkata, vide the above said Order-in-Original. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals) who vide the impugned OIA rejected the appeal on the ground that the applicant did not submit any proof that the export proceeds had been realized. The instant revision

application has been filed mainly on the ground that the applicant had realized the export proceeds in the month of February, 2012 from the same buyer showing as advance payment against export in the bank account of its other firm viz M/s Mohan General Trading Co. of the same address as the applicant company's account was declared NPA.

3. Personal hearing was fixed on 03.03.2021, 11.03.2021 and 19.03.2021. None appeared for applicant nor any request for adjournment has been received. The respondent department has, vide letter F.No. S34M-158/2014 DBK dated 24.12.2018, stated that the department has no additional submissions to make and that the case may be decided. Hence, the case is being taken up for final decision, based on records.

4. Government has examined the matter. It is observed that the lower authorities have confirmed the demand of drawback on the grounds that the applicant did not receive the export proceeds against the 03 Shipping Bills within specified period of nine months. Applicant has, in the revision application, claimed that the export proceeds had been realized in some other company's account, as their company was declared NPA. Thus, it is an admitted position that the export proceeds have not been realised by the exporter company i.e. the applicant. Realization of export proceeds by an exporter is an essential condition for the disbursement of drawback claim. In case the export proceeds are not realized, the drawback already disbursed is to be returned back in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback

Rules, 1995. In view of the clear statutory provisions, Government does not find any infirmity in the order of Commissioner (Appeals).

6. The Revision Application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Shilpa Creations Pvt. Ltd.
3/2, Green Park,
Kolkata 700019.

Order No. 43 /21-Cus dated 22-3-2021

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



(Nirmala Devi)
Section Officer (REVISION APPLICATION)