

F.No. 375/81-82/DBK/2018-RA
F.No. 375/83-86/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.. 1/4/21

Order No. 67-79/21-Cus dated 01-04-2021 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. LUD-CUS-001-APP/1038-1042/2018 and LUD-CUS-001-APP/1034-37/2018 both dated 27.04.2018, passed by the Commissioner of Goods and Service Tax (Appeals), Ludhiana.

Applicant : M/s Spartan Sports Industries, Jalandhar

Respondent : Commissioner of Customs, Ludhaina

ORDER

Revision Applications No.375/81-82/DBK/2018-RA dated 13.08.2018 and 375/83-86/DBK/2018-RA dated 13.08.2018, have been filed by M/s Spartan Sports Industries, Jalandhar, (hereinafter referred to as the Applicant) against the Orders-in-Appeal LUD-CUS-001-APP/1038-1042/2018 and LUD-CUS-001-APP/1034-37/2018 both dated 27.04.2018, passed by the Commissioner of Goods & Service Tax (Appeals), Ludhiana. Commissioner (Appeals), vide the Order-in-Appeal No. LUD-CUS-001-APP/1034-37/2018, has allowed the appeals of the respondent department and vide Order-in-Appeal No. LUD-CUS-001-APP/1038-42/2018, has rejected the appeals of the applicant on the ground that the applicant had not realized the export proceeds in the stipulated time period or such extended period as allowed by the Reserve Bank of India. Order-in-Appeal No. LUD-CUS-001-APP/1038-42/2018 disposes off 05 appeals, including 02 appeals filed by the present applicant.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of 66 Shipping Bills, during the calendar years 2013, 2014 and 2015, with the Assistant Commissioner of Customs, Drawback, CFS, Jalandhar, for a total amount of Rs.1,91,75,667/-. The said claims were sanctioned by the jurisdictional Assistant Commissioner of Customs, Drawback, CFS, Jalandhar. However, on scrutiny of the XOS statement, it was observed by the office of respondent that the applicant had failed to submit the proof to the effect that the export proceeds in respect of 66 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, show cause notices were issued to the respondent for the recovery of drawback availed amount of Rs.1,91,75,667/- along with interest. Out of this, demand of Rs. 1,76,02,523/- was confirmed by the Assistant Commissioner of Customs, Drawback CFS, Jalandhar vide orders dated 29.07.2016 and 30.01.2016 and the demand of Rs. 15,73,144/- was dropped vide orders dated 29.07.2013, 01.10.2013, 27.11.2013 and 09.12.2013. Aggrieved, the Applicant and respondent both filed appeals before the Commissioner (Appeals), rejected the appeal of the Applicant herein in respect of demand of Rs.1,76,02,523/- and allowed the appeal of the respondent herein in respect of demand of Rs. 15,73,144/- on the ground that the applicant had not realized the export proceeds in the stipulated time period or such extended period as allowed by the Reserve Bank of India.

3. The revision application has been filed by Applicant mainly on the ground that they had realized the export proceeds in respect of impugned Shipping Bills and the delay, if any, in receipt of payments from the overseas buyers is only procedural in nature.

4. Personal hearing, in virtual mode, was held on 24.03.2021, which was attended by Sh. B.L. Garg, Consultant, on behalf of the Applicant. He reiterated the grounds of revision already stated in the revision applications. Sh. Garg specifically highlighted the letter dated 22.03.2021 of the Axis Bank, Jalandhar and claimed that the said letter tantamounts to ex-post facto approval for extension of time in

receiving the remittances. Applicant has also submitted a written submission dated 23.03.2021 enclosing therewith the letter aforesaid dated 22.03.2021 issued by the Axis Bank. None appeared on behalf of the respondent nor any request for adjournment was made. Therefore, the case is being taken up for final decision, on the basis of facts available on record.

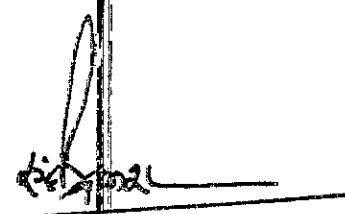
5.1 Government has examined the matter. It is observed that the revision application has been filed, mainly, on the ground that they had realized the export proceeds and the statutory benefits are not to be denied for procedural infractions as they had fulfilled the mandatory condition of export and realization of export proceeds. Applicant has submitted a letter dated 22.03.2021, issued by the Axis Bank, Jalandhar, Punjab, wherein it is stated that payments of said export bills have been realized and as per record, eBRC's have already been issued against Export Bills with delayed payment received. The Bank has further advised the applicant to get the realization of export proceeds for future transaction as per RBI guidelines within the stipulated timelines. The letter dated 22.03.2021 of the bank clearly states that the export proceeds were not realized within the stipulated time period. Further, there is nothing in the letter dated 22.03.2021 to establish that the competent authority has granted ex-post facto extension of time for realization of export proceeds. Government observes that, in terms of Rule 16A(1) *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.

5.2 Further, the provision under rule 16A(1) enabling recovery of drawback if the export proceeds are not realized within the period allowed under FEMA, including any extension of such period is not merely a procedural requirement. It is to be observed that drawback is paid before realization of export proceeds and recovery thereof is initiated if such proceeds are not realized within the period prescribed, including any extension of such period. If the requirement of realization within prescribed period is not treated as a mandatory condition, the process of recovery shall remain an unending exercise and thereby render the provisions of Rule 16A(1) otiose. As such, the contentions of the applicant, on this count, are not acceptable.

5.3 Thus, Government do not find any infirmity in the impugned Orders-in-Appeal, in so far as they relate to the applicant herein.

6. The revision applications are rejected .



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Spartan Sport Industries,
403, Leather Complex,
Kapurthala road,
Jalandhar, Punjab 144021

F.No. 375/81-82/DBK/2018-RA
F.No. 375/83-86/DBK/2018-RA

Order No. 67-70/21-Cus dated 01-04-2021

Copy to:

1. Commissioner of Customs , Container Freight Station, OWPL, C,-205, Phase – V, Focal Point Bhandhari Kalan, Ludhiana – 141010.
2. Commissioner of Customs (Appeals), Kolkata, 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)