

REGISTERED  
SPEED POST



F.No. 375/16/DBK/2016-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... 9/12/18

Order No. 73/18-Cus dated 2-7-2018 of the Government of India passed by Shri R.P.Sharma, 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. CC(A)/CUS/D-I/Exp/2447/2015 dated 31.12.2015 passed by the Commissioner of Customs (Appeals), NCH, New Delhi

Applicant : M/s Deepak Care Ltd.

Respondent : Commissioner of Customs, NCH New Delhi

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**ORDER**

A Revision Application No. 375/16/DBK/2016-RA dated 10.03.2016 has been filed by M/s Deepak Care Pvt. Ltd., New Delhi, against the Order-In-Appeal no. CC(A)/Cus/D-I/Exp/2447/205 dated 31.12.2015, passed by the Commissioner of Customs (Appeals), New Delhi, whereby the appeal of the applicant has been allowed by setting aside the Order-In-Original and the matter has been remanded back for re-consideration by the original adjudicating authority as per directions specified in the order-in-appeal.

2. Despite the Order-In-Original having been set aside and remanded back by the Commissioner (Appeals), the revision application is filed mainly only ground that the Commissioner (Appeals) has maintained in his order that the penalty already paid could be appropriated taking this a consequence of an error, though technical in nature, which is not in accordance with the law and is contrary to his own findings.

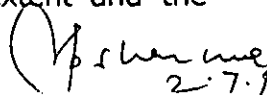
3. The personal hearing was held on 03.05.2018 and it was availed by Dr Deepak Aggarwal, Director, for the applicant who reiterated the above discussed grounds of revision.

4. The Government has examined the matter and it is observed that the Commissioner (Appeals) has categorically set aside the Order-In-Original dated 25.03.2015 whereby drawback of duty to the applicant was disallowed and penalty of Rs 24000/- and 12000/- was imposed under Section 114 of the Customs Act, 1962, for the reasons that the substantial benefit cannot be denied merely for the reason that the applicant had filed shipping bills ~~were~~ under Section 75, instead of Section 74 of the Customs Act, 1962. Yet the Commissioner (Appeals) has ended his discussion and findings with an observation that the penalty already paid could be appropriated taking this a consequence of an error. The applicant has filed the

revision application against this observation of the Commissioner (Appeals) only construing it as if the penalty is upheld by the Commissioner (Appeals) in his order.

5 The Government finds that the above observation of the Commissioner Appeals does not convey any meaningful idea and it was wholly unwarranted when he himself has set aside the Order-In-Original entirely. Consequently no penalty on the applicant survived and thereby the question of appropriating the amount of penalty earlier paid by the applicant does not arise. The entire proceeding regarding admissibility of DBK of duty and the breach of any legal provision inviting a penalty under Section 114 of the Customs Act, 1962, is still open and is required to be determined afresh by the Original Adjudicating Authority as per the direction of the Commissioner (Appeals). Therefore, the government agrees with the contention of the applicant that the Order-In-Appeal is erroneous and contradictory to the extent of recording the above mentioned observation unnecessarily that the penalties already paid could be appropriated taking this a consequence of an error.

6 Accordingly, the order-in-appeal is modified to the above extent and the revision application is allowed.

  
2.7.18  
(R.P.Sharma)

Additional Secretary to the Government of India

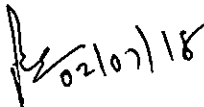
M/s. Deepak Care Ltd,  
B-1/D-1, Mohan – CoOperative Industrial Estate,  
New Delhi – 110 044

Order No. 73/18-Cus dated 2-7-2018

Copy to:

1. Commissioner of Customs, New Customs House, Near IGI Airport, New Delhi – 110 037
2. Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi – 110 037
3. Deputy Commissioner(Exports), Air Cargo, New Delhi
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED

  
(Ravi Prakash)  
OSD (REVISION APPLICATION)