F.No. 375/79/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..20.|4|21

Order No.____83/21-Cus dated 19-4-2021 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 dated 27.04.2018, passed by the Commissioner of Goods and Service Tax (Appeals), Ludhiana.
Applicant	:	M/s AAY VEE Exports
Respondent	:	Commissioner of Customs, Ludhaina

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ORDER

Revision Application No.375/79/DBK/2018-RA dated 01.08.2018, has been filed by M/s Aay Vee Exports, Ludhiana, (hereinafter referred to as the Applicant) against the Orders-in-Appeal LUD-CUS-001-APP/1038-1042/2018 dated 27.04.2018, passed by the Commissioner of Goods & Service Tax (Appeals), Ludhiana. Commissioner (Appeals), vide the above mentioned Order-in-Appeal has rejected the appeal 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 01 appeal filed by the present applicant.

2.   Brief facts of the case are that the Applicant filed drawback claim in respect of 01 Shipping Bill i.e. Shipping Bill No. 1913174 dated 26.09.2012, with the Deputy Commissioner of Customs, Drawback, CFS, OWPL, Ludhiana, for a total amount of Rs.2,47,217/-. The said claim was sanctioned by the jurisdictional Deputy Commissioner of Customs, Drawback, CFS, OWPL, Ludhiana. 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 the aforesaid Shipping Bill had been realized in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Accordingly, show cause notice was issued to the respondent for the recovery of drawback availed amount of Rs.2,47,217/- along with interest. Out of this, demand of Rs. 1,40,352/- was confirmed by the Deputy Commissioner of Customs, Drawback CFS, OWPL,

Ludhiana, vide Order-in-Original No. 71/DC/BRC/OWPL/LDH/2015 dated 01.05.2015. Aggrieved the applicant filed an appeal before the Commissioner (Appeals), which was rejected.

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 Bill 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 fixed on 24.03.2021 and 19.04.2021. None appeared on behalf of the applicant or respondent on both the dates. However, applicant submitted a written submission dated 18.04.2021. It is stated therein that they are unable to attend personal hearing on 19.04.2021 and their written submission may be taken on record and considered before taking any final decision in the matter. Further, no request for adjournment was made by the respondent . 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. 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. However, it is observed that the applicant, vide their letter dated 15.12.2014, addressed to the

Deputy Commissioner of Customs, CFS, OWPL, Ludhiana, had themselves admitted that the payment of USD 30290 was not realized within the stipulated time period or such extended period as granted by the Reserve Bank of India. Further, the applicant has not submitted the proof to the effect that any extension was granted by the Reserve Bank of India for the delayed realization of export proceeds either before the Commissioner (Appeals) or even at this stage. 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 provisions of 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 Order-in-Appeal, in so far as it relate to the applicant herein.

6. The revision application is rejected .

(Sandeep Prakash)
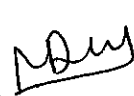Additional Secretary to the Government of India

M/s Aay Vee Exports,
HIG-610, PHB colony,
Jamalpur Chandigarh Road,
Ludhiana 141010

Order No. _____ 83 /21-Cus dated 19-4-2021

Copy to:
1. Commissioner of Customs , Container Freight Station, OWPL, C,-205, Phase – V, Focal Point Bhandhari Kalan, Ludhiana – 141010.
2. Commissioner (Appeals), Goods and Sevices Tax, F-Block, Rishi Nagr, Ludhiana
3. PS to AS(RA)
4. Guard File.
5. Spare Copy

Attested

(Nirmala Devi)
Section Officer (Revision Application)

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