

REGISTERED
SPEED POST



F.No. 375/03/DBK/14-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.....31.11.17

ORDER NO. _____ 20/17-Cx DATED 1/11/2017 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI R.P.SHARMA ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA,
UNDER SECTION 129 DD OF THE CUSTOMS ACT, 1962.

Subject : Revision Application filed, Under Section 129 DD of the Customs Act, 1962 against the Order-In-Appeal No. 35/CUS/APPL/KNP/2013 dated 11.10.2013, passed by the Commissioner of Customs (Appeals), Kanpur.

Applicant : M/s. Ghalib Exports Pvt. Ltd.,

Respondent : Commissioner of Customs, Kanpur,

ORDER

This revision application No. 375/03/DBK/2014-RA has been filed by M/s Ghalib Exports Pvt Ltd (herein after referred to as "applicant") against the order No. 35/CUS/APPL/KNP/2013 dated 11.10.2013, passed by Commissioner (Appeals), Kanpur. Besides the applicant has also filed an application for condonation of delay of 14 days on the ground of indisposition of applicant and due to that the Revision Application could not be prepared and filed on time.

2. Brief facts of the case are that the applicant had exported saddlery goods against the below mentioned shipping Bills and claimed drawback under Customs, Central Excise and Service Tax Drawback Rules, 1995.

S.No	S/Bill No. and Date	Drawback Amt. Paid
1.	1038 dated 05.08.2010	188705/-
2.	845 dated 15.07.2010	175351/-
3.	1950 dated 18.11.2010	192291/-
4.	2691 dated 18.02.2011	192557/-
	Total	7,48,904/-

3. Since the export proceeds against above Shipping Bills were not realized within the valid period as stipulated under the provisions of Foreign Exchange Management Act, 1999 or such extended period as may be allowed by Reserve Bank of India, the department initiated the proceedings for recovery of the drawback amount alongwith interest from applicant as per the provisions of Rule 16 A of Customs, Central Excise and Service Tax Drawback Rules, 1995 and recovery of Rs. 7,48,904/- was confirmed under Rule 16 A of Customs, Central Excise and Service Tax Drawback Rules, 1995 alongwith interest by way of an order passed by the Assistant Commissioner/Deputy Commissioner. Being aggrieved, the applicant filed an appeal before Commissioner (Appeals), who vide his order dated 15.10.2013, remanded back the matter relating to shipping Bill No. 845 dated 15.07.2010 for limited purpose of verification of documents submitted by the applicant to him as the export proceeds in respect of the shipping Bill No. 845 was claimed to have been realized by


the applicant. But he rejected the appeal pertaining to rest of the above mentioned three shipping bills as the export proceeds was not realized in time. Applicant has now filed the instant revision application to challenge the order of Commissioner (Appeals) on the ground that benefit of Rule 17 of Drawback Rules, 1995 may be extended to the applicant as the delay in procuring the foreign exchange was for genuine reasons. It is further contended by the applicant that the partial payment in respect of Shipping Bill No. 1038 dated 05.8.2010 is also realized in time and for which they are eligible for drawback.

4. Personal hearing in the matter was fixed for 15.09.2017 and the same was attended by Sh. Amit Awasthi, Advocate, who reiterated the grounds of revision application and further requested for one week time for submitting BRCs and other related documents which are submitted on 03.10.2017.

5. The Government has examined the applicant's request for condonation of delay and the same is allowed. As regard the main issue it is noticed that in connection with shipping Bill No. 1038 dated 05.08.2010 the applicant has claimed timely realisation of USD 29198 against the total amount of USD 63952 and to support their claim BRCs dated 22.03.11, 25.02.2011, 08.07.2011, 19.07.2011, 22.07.2011 and 27.07.2011 have been submitted by the applicant along with Revision Application. It appears from Commissioner (Appeals) order that these were not produced before him and these are produced subsequently along with Revision Application only. As per the above BRC's it is now evident that the export proceeds have been received within normal period of one year and accordingly the applicant is eligible for drawback of duty to the extent of export proceeds realized by them within one year of export of goods under shipping Bill No. 1038. However, for the remaining non realized amount the applicant is liable to pay duty drawback amount to the department along with interest. With regard to two other shipping Bills no. 1950 and 2691 dated 18.11.2010 and 18.02.2011 respectively, the applicant himself has admitted that the export proceeds could not be realized within stipulated time. Consequently, the departmental action under Rule 16 A of Customs, Central Excise & Service Tax Drawback Rules 1995 is maintainable in reference to above Shipping Bills No. 1950 and 2691. The contention of the applicant that the benefit of Rule 17 of drawback rules may be extended is not found tenable as this office doesn't have power of the Central Government for extending such relaxation and the applicant should have approached the Central Government through the Central Board of Excise & Customs who deals with all matter relating to drawback through the Directorate of drawback.

6. In view of the above discussion, the Commissioner (Appeals)'s order is modified to the extent that the recovery of drawback is not maintainable against shipping Bill No.1038 to the extent of export proceeds already realised in time or within extended time by the RBI. However, due verification of realisation in reference to this shipping Bill will be carried out by the Jurisdictional Assistant Commissioner and if it is found by him that the export proceeds have not been realised in time, he will be at liberty in this case also to recover drawback.

7. The revision application is disposed off in above terms.


(R.P.SHARMA) 1. 11. 17

(Additional Secretary to the Government of India)

M/s. Ghalib Exports Pvt. Ltd.,
502, El Dorado, 7/88 Tilak Nagar
Kanpur-208002

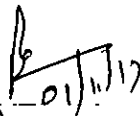
Order No. 20/17-Cx dated 1-11-2017

Copy to:-

1. The Commissioner of Customs, Central Excise & Service Tax, 117/7, Sarvodaya Nagar Kanpur-208005
2. The Commissioner (Appeals), Customs, 117/7, Sarvodaya Nagar Kanpur-208005
3. The Assistant Commissioner of Customs, ICD, Chakeri, Kanpur.
4. Shri Amit Awasthi, Advocate 7/116A, H-1, 1st Floor, Radhey Apartment, Swaroop Nagar, Kanpur-208002.
5. PS to AS (Revision Application)
- ✓ 6. Guard File
7. Spare Copy.

ATTESTED

(RAVI PRAKASH)
OSD(RA)


01/11/17