REGISTERED

SPEED POST

F.No. 375/06/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. 2-/-/17-Cus dated 0-/-/-2017 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/652/2013 dated 27.11.2013 passed by the Commissioner of Customs (Appeals), New Delhi

Applicant : Mr. S. K. Enterprises

Respondent : Commissioner of Customs (Exports), New Delhi

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ORDER

A revision application No. 375/06/DBK/2014-RA has been filed by M/s S.K. Enterprises (herein after referred to as applicant") against the order No. CC(A)CUS/652/2013 dated 27.11.2013, passed by Commissioner of Customs (Appeals), New Delhi.

2. Brief facts of the case are that the applicant had exported carpets vide the below mentioned shipping Bills and claimed the drawback :

S.No	Shipping Bill No.	Date	DBK (in Rs.)
1	3895047	03.08.2009	6,84,830/-
2	3944313	05.09.2009	7,59,936/-
3	2053339	01.12.2009	10,08,359/-
			24,33,124/-

After the goods were exported and the applicant had received the duty drawback to the tune of Rs. 24,33,124/-, the department conducted an investigation on receipt of an intelligence and found that whereas the shipping bills and invoices mentioned the total quantity of goods exported in square meters, the packing lists mentioned also the dimensions of each carpet and its total quantity. While calculating the quantity mentioned in packing lists, it was found that the total quantity exported in square meters were far lesser than the actual quantity declared in shipping bills and invoices. Accordingly, the department issued a show cause notice to applicant for recovery of excess drawback under Rule 16 A of Customs, Central Excise and Service Tax drawback rules, 1995. Adjudicating authority, vide his order in original No.. MKR/ACE/40/2013 dated 31.01.2013, disallowed the excess drawback amounting to Rs. 8,98,377/- and ordered for its recovery under Rule 16 A of Customs, Central Excise and Service tax drawback rules, 1995 along

with interest. Being aggrieved, the applicant filed an appeal before Commissioner (Appeals) and the same is rejected by the Commissioner (Appeals). The applicant has filed the instant revision application challenging the order of Commissioner (Appeals) on the ground that the quantity mentioned in shipping bills, invoices and packing lists matches with each other.

3. Personal hearing in the case was fixed on 08.09.2017, 20.09.2017 and on 06.10.2017. Whereas, Sh. Chitranjan D. Majhi, Dy. Commissioner, appeared for personal hearing on 06.10.2017 from respondent side, no one from the applicant's side appeared on any date of personal hearings. However, the applicant has furnished written submissions dated 10.10.2017 almost reiterating the grounds of revision application.

4. On examination of the revision application, Commissioner (Appeals)'s order and the order in original, Government finds that the case of the revenue against the applicant is that while the applicant declared higher quantity of goods in the Shipping Bills, actual quantity of exported goods as per packing list was far lesser and thereby lesser quantity of carpets were exported. It is evident from the packing lists given along with the Shipping Bills that although the applicant had given the same quantity of goods in the bottom of the packing lists as declared in the Shipping Bill yet when the quantity of the goods was calculated by taking into account the number of pieces and dimensions of carpet given in the packing lists the total quantity was found lesser than the quantity declared in the Shipping Bills, invoices and even in the Packing list. This modus operandi was adopted obviously to avail higher amount of drawback. It is admitted even by various persons working with the applicant. The case regarding wrong availment of drawback of duty by mis declaring higher quantity of exported goods has been confirmed by original adjudicated authority and upheld even by the Commissioner (Appeals) in his above stated order. Now the applicant has approached Government of India for setting aside the order of Commissioner (Appeals) mainly on the ground that they have correctly declared the quantity of exported goods in the shipping bills etc. and did not declare the number of pieces of carpet of each dimension in the Packing lists. However, Government finds in this case that applicant has not adduced any

convincing material and the reason to counter the department's above stated case establishing the mismatch in the quantity of exported goods as given in the packing lists with the total quantity declared in the Shipping Bill etc. The contention of the applicant that they had not mentioned the number of pieces and dimensions of carpet in packing list stands contradicted by the packing list itself wherein number of pieces and sizes of the carpets are clearly mentioned. Section 50(2) of the Customs Act, 1962 enjoined upon the applicant to declare the correct quantity in the Shipping Bills and by misdeclaring the quantities in packing lists and Shipping Bills the applicant has violated the above Provision as packing list is an integral part of the Shipping Bills. Further the Drawback Rules, 1995 are also contravened by above actions of applicant. The applicant has also advanced an argument that the goods declared in the Shipping Bills have been exported under the supervision of their CHA and the Customs officer, but no action has been taken against them. While this argument cannot be belied in this case, the truth of the fact remain that the applicant has mis declared the quantity of exported goods on higher side to avail the more duty drawback and their liability for their wrong action does not get diluted in this case just because the CHA and Custom officers did not detect the said mis declaration at the time of export of goods

5. In view of above discussion, government does not find any reason to interfere in the order of Commissioner (Appeals) and hence revision application is rejected.

1.11.17

(R.P.SHARMA)
(Additional Secretary of the Government of India)

M/s S.K. Enterprises
27, Gujrat Vihar
New Delhi 110092

Order No. 21/17-Cus dated 01-11-2017

Copy to:

1. Commissioner of Customs, Air Cargo(Export) New Customs House, Near I.G.I Airport New Delhi-110037
2. Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi
3. Additional Commissioner of Customs, Office of Commissioner of Customs(Air Cargo Export), New Custom House, New Delhi-10037
4. GST Consultancy & Legal Service.D-40, 1st Floor (Opp. Union Bank of India), South Extension Part-1 New Delhi-110049
5. PA to AS(RA)
6. Guard File.
7. Spare Copy

ATTESTED

01/11/17

(Ravi Prakash)
OSD (REVISION APPLICATION)