

REGISTERED
SPEED POST



F.No. 375/20/DBK/2018-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHICAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue... 8/1/2020

Order No. 03/2020-Cus /19-Cus dated 01/01/2020 of the Government of India passed by Mrs. Mallika Arya, 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/DBK/ACC/556/2017 dated 05.12.2017, passed by the Commissioner of Customs (Appeals), Delhi.

Applicant : M/s Rangoli International Pvt Ltd.

Respondent : Commissioner of Customs (Export), Air Cargo Complex, New Custom House, Delhi

ORDER

A Revision Application No.375/20/DBK/2018-RA dated 21.03.2018 has been filed by M/s Rangoli International Pvt. Ltd. (hereinafter referred to as the applicant) against the Order-in-Appeal No.CC(A)CUS/D- I/Exp/DBK/ACC/556/2017 dated 05.12.2017, issued by the Commissioner of Customs (Appeals), Delhi. Commissioner (Appeals) vide the impugned Order-in-Appeal has upheld the Order-in-Original No. 259/RT/DC/ACE/DBK/2016 dated 11.11.2016, passed by Dy. Commissioner of Customs, Drawback, ACC, Delhi, confirming the recovery of Rs. 1,41,43,818/- against wrongly sanctioned drawback of duty in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995.

2. The revision application has been filed mainly on the ground that the applicant being a status holder and is entitled to write off the outstanding exports proceeds upto 10% as per clause 2(b) of RBI circular No. 88 dated 12.03.2013. Further, the penalty is not imposable as the export proceeds were not realized due to lapse on the part of the applicant.
3. Personal hearing was fixed on 09.12.2019 and 30.12.2019 in this case. Applicant did not appear on both the dates. Sh. Babu Lal, Superintendent, appeared on behalf of the respondent on 09.12.2019. Respondent submitted a written submission dated 05.12.2019. However the applicant requested for another date of hearing without any cogent reasoning. Since ample opportunities have already been granted the case is being taken up for final disposal.
4. Government has examined the matter. It is observed that the applicant's entire case is based on the premisé that since the export proceeds will not realised and the same have been written off in accordance with the RBI Circular No. 88 dated 12.03.2013, therefore the drawback amount sanctioned and paid to the applicant can not be recovered from him.

The RBI Circular No.03 dated 22.07.2010 empowers the exporter to write-off the export proceeds not realised subject to the condition that the exporter has to surrender proportionate export incentives, if availed of, in respect of the relative shipment. Further, it is

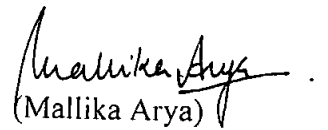
observed that the RBI Circular No. 88 dated 12.03.2013 has only simplified the procedure for writing-off the amount of export proceeds not realised.

The applicant has contended that CBEC vide Notification No. 30/2011-Customs(Nt) dated 11.04.2011 has inserted the Sub Rule 5 under Rule 16A of the Customs, Central Excise and Service Tax Drawback (second amendment) Rules, 2011 which states that if the amount of exports proceeds not realised have been written off the amount of drawback already paid to the exporter cannot be recovered.

Government is of view that all these instructions of RBI and CBIC have to be read in totality. The main crux of these instructions is that the exporter can write off the amount of export proceeds not realised subject to the condition that the exporter has to deposit the proportionate drawback amount already paid which is not the case here. Therefore the drawback amount is recoverable from him as held by Commissioner (Appeals).

As regards the contention of the applicant that the penalty is not imposable, it is on record that the export proceeds were not realised and no intimation was given by the applicant to the respondent. Hence the applicant has violated the provisions of Customs, Central Excise and Service Tax Drawback Rules, 1995 read with Section 75 of the Customs Act, 1962. Therefore the penalty of Rs. 20,00,000/- has been rightly imposed by the lower authorities and is upheld.

5. Accordingly, the revision application filed by the applicant is rejected.


(Mallika Arya)

Additional Secretary to the Government of India

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15 Barakhamba Road,
New Delhi 110001

Order No. 03/2020-Cus 01/01/2020
19-Cus dated 2019

Copy to:

1. The Commissioner of Customs (Appeals), New Custom House, Delhi-110037.

2. The Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037
3. Deputy Commissioner of customs, (Drawback) Air Cargo Complex, Near IGI Airport, New Delhi.
4. PS to AS(RA)
4. Guard File.
5. Spare Copy

ATTESTED

N Devi
06/01/2020

(Nirmala Devi)
S.O (R. A.)