

F.No. 375/78/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...28/5/2021

Order No. 101/21-Cus dated 28-5-2021 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 Eastman International, Ludhiana

Respondent : Commissioner of Customs, Ludhiana

ORDER

Revision Application No.375/78/DBK/2018-RA dated 11.07.2018 filed by M/s Eastman International, Ludhiana, (hereinafter referred to as the Applicant) against the Order-in-Appeal LUD-CUS-001-APP/1038-1042/2018 dated 27.04.2018, passed by the Commissioner (Appeals), Customs & CGST, 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. 9305118 dated 08.06.2012, with the Deputy Commissioner of Customs, Drawback, CFS, OWPL, Ludhiana, for a total amount of Rs.2,80,749/-. 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.2,80,749/- along with interest. Demand of Rs. 2,80,749/- was confirmed by the Deputy Commissioner of Customs, Drawback CFS, OWPL, Ludhiana, vide Order-in-Original No. 35/DC/BRC/OWPL/LDH/2016 dated 15.03.2016.

Aggrieved the applicant filed an appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed, mainly, on the ground that the export proceeds had been realized, though with a delay of 06 months and that onus for extension lies with the Reserve Bank of India.

4. Personal hearing, in virtual mode, was fixed on 24.03.2021, 19.04.2021, 06.05.2021, 25.05.2021 and 28.05.2021. None appeared on behalf of the Applicant or Respondent. As sufficient opportunities have been granted, the case is being taken up for final decision, on the basis of facts available on record.

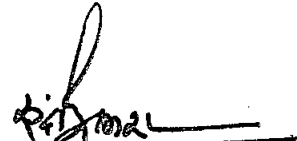
5.1 Government has examined the matter. It is contended that they had realized the export proceeds and the statutory benefits are not to be denied for procedural infractions as they had fulfilled the mandatory condition of export and realization of export proceeds. However, it is observed that the Applicant has themselves admitted in their revision application that the payment 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 relates to the Applicant herein.

6. The revision application is rejected .


(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Eastman International,
B-XXX-2185/C-203/1, Phase-VII,
Focal Point,
Ludhiana - 141010

Order No. 101/21-Cus dated 28-5-2021

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 Services Tax, F-Block Rishi Nagar, Ludhiana.
3. Deputy Commissioner of Customs , Container Freight Station, OWPL, C,-205, Phase – V, Focal Point Bhandhari Kalan, Ludhiana – 141010.
4. PS to AS(RA)
- ✓ 5. Guard File.
6. Spare Copy

Attested



RAVI PRAKASH
Officer on Special Duty,
Government of India
Ministry of Finance
Department of Revenue
HUDCO Vishala Building
Bhikaji Cama Place
New Delhi - 110066