

SPEED POST



F. No. 372/12/DBK/2021-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue 25/03/22

Order No. 102/22-Cus dated 25-03-2022 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. KOL/CUS(CCP)/AKR/199/2021 dated 24.02.2021, passed by the Commissioner of Customs (Appeals), Kolkata.
- Applicant : M/s Radhagovinda Fabrics Pvt. Ltd., Kolkata.
- Respondent : The Commissioner of Customs (Port), Kolkata.

**ORDER**

A Revision Application No. 372/12/DBK/2021-RA dated 19.04.2021 has been filed by M/s Radhagovinda Fabrics Pvt. Limited, Kolkata, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(CCP)/AKR/199/2021 dated 24.02.2021, passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original, bearing no. KOL/CUS/AC/SD/690/DBK(PORT)/2019 dated 05.08.2019, passed by the Assistant Commissioner of Customs, Drawback Department (Port) Custom House, Kolkata.

2. Brief facts of the case are that the Applicant filed drawback claim in respect of exports made against Shipping Bill No. 9474694 dated 09.05.2015, with the jurisdictional customs authorities, for a total amount of Rs.10,05,120/, which was sanctioned. Subsequently, on scrutiny, 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, a Show Cause Notice dated 01.09.2017 was issued to the Applicant and demand of Rs.10,05,120/- was confirmed by the original authority along with the interest payable thereon, vide the Order-in-Original No. KOL/CUS/DC/1777/DBK(Port)/2017 dated 25.05.2017. Being aggrieved, the Applicant preferred an appeal before the Commissioner(Appeals) who vide the OIA No. KOL/CUS(PORT)/AA/1467/2017 dated 18.10.2017 remanded the matter back to original authority for reconsideration on the

basis of BRCs submitted by the Applicant before the Commissioner (Appeals). Original authority, vide the aforesaid OIO dated 05.08.2019, confirmed the demand of Rs. 8,63,366/- and dropped the demand for remaining amount of Rs. 1,41,754/-. The appeal filed by the Applicant herein has been rejected vide the impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that the export proceeds have been realised though not within the stipulated time period; and that there was no mala-fide on the part of the Applicant's in delayed realization of export proceeds, hence, drawback amount can not be recovered.

4. Personal hearing was fixed on 21.02.2022, 11.03.2022 and 25.03.2022. None appeared either on behalf of the Applicant or the Respondent department on any of the above mentioned dates. No request for adjournment has also been received. Since sufficient opportunities have already been granted, the case is being taken up for final decision on the basis of records.

5.1 The Government has examined the matter carefully. Admittedly, the export proceeds have been realized but not within the stipulated time period. Government observes that, in terms of the second proviso to Section 75(1) of the Customs Act, 1962, where any drawback has been allowed on any goods and sale proceeds in respect of such goods are not received within the time period allowed under FEMA, 1999, such drawback shall be deemed never to have been allowed. Further, as per

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. In the instant case, export proceeds have not been realized within the period allowed nor has the extension been granted by the competent authority under FEMA. Thus, there is no doubt that the drawback paid to the Applicant is recoverable along with applicable interest.

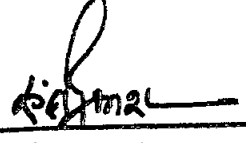
5.2 Further, the provisions of Rule 16A *ibid*, enabling recovery of drawback where export proceeds are not realized within the period allowed under FEMA, including any extension of such period, have been framed to give effect to the provisions made in the parent statute, i.e, section 75(1) *ibid*. It 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 the second proviso to section 75(1) and the Rule 16A(1) redundant and otiose.

5.3 The contention of the Applicant to the effect that since BRCs have been uploaded, the matter stands regularized by the RBI has no legal basis. The period of realization of export proceeds is specified by the RBI in terms of Regulations/Instructions issued, under FEMA, 1999, from time to time. The manner and authority competent to extend the period of realization are also specified by the RBI. Extension of time period is a positive act to be done by the authority competent to do so and there is no authority

in law to infer from the act of issuance of BRC that extension of time period has also been granted.

5.4 As such, there is no infirmity in the impugned Order of Commissioner (Appeals).

6. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Radhagovinda Fabrics Pvt. Ltd.,  
Room No. 302, 3<sup>rd</sup> floor,  
31/1, Chandiwala Galee,  
Kolkata-700012

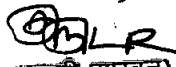
Order No. 109 /22-Cus dated 25-03-2022

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1. The Commissioner of Customs (Port), 15/1 Strand Road, Custom House, Kolkata - 700001.
2. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata- 700001.
3. PS to AS(RA)
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ATTESTED

  
(Lakshmi Raghavan)  
(Lakshmi Raghavan)  
अनुभागी अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi

॥ श्री गणेशाय नमः ॥  
**भारत सरकार (Government of India)**  
**वित्त विभाग (Finance Department)**  
**बजट विभाग (Budget Department)**  
**नया दिल्ली (New Delhi)**