

SPEED POST



F. No. 375/68/DBK/2020-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.....25/03/22

Order No. 103/22-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 129DD of the Customs Act 1962 against the Order-in-Appeal No.150-Cus-APPL/LKO/2020 dated 25.08.2020 passed by the Commissioner (Appeals), Customs, Central Excise and CGST, Lucknow.

Applicant : M/s. S.B. International, Kanpur.

Respondent : The Commissioner of Customs (Preventive), Lucknow.

ORDER

A Revision Application No. 375/68/DBK/2020-RA dated 27.11.2020 has been filed by M/s. S.B. International, Kanpur, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 150-Cus- APPL/LKO/2020 dated 25.08.2020, passed by the Commissioner (Appeals), Customs, Central Excise and CGST, Lucknow. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original, bearing no. 11/CUS/Dem/AC/ICD/Chakeri/KNP/2016 dated 20.01.2016, passed by the Assistant Commissioner of Customs, ICD Chakeri, Kanpur.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of exports made against 01 Shipping Bill No. 735 dated 30.08.2012, with the jurisdictional customs authorities, for a total amount of Rs.1,97,703/-, 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 16.02.2015 was issued to the Applicant for the recovery of drawback amount along with interest. Original authority, vide the above mentioned OIO dated 20.01.2016, confirmed the demand of Rs. 1,97,703/- along with the interest payable thereon. Being aggrieved, the Applicant preferred an appeal before the Commissioner(Appeals) who, vide the above mentioned OIA, rejected the appeal on the ground that date of communication of the OIO was not mentioned in the Appeal Memo.

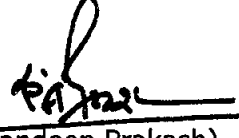
3. The revision application has been filed, mainly, on the ground that the export proceeds had been realized within the stipulated time period; and that Commissioner (Appeals) failed to give proper opportunity to the Applicant for substantiating the facts and fulfil the requirement of appeal memo.

4. Personal hearing, in virtual mode, was held on 25.03.2022. Sh. Anuj Shukla, Advocate appeared for the Applicant and stated that the OIO was received after a long gap by them and, therefore, the appeal was filed by them in time. However, the Commissioner (Appeals) has rejected the appeal without giving them any opportunity to rectify the defect and without causing any verification. Sh. Ajay Mishra, Joint Commissioner, appeared on behalf of the Respondent department and has no further comments to offer.

5.1 On examination of the relevant case records carefully, the Commissioner (Appeals)'s order and the revision application, the Government observes that the Commissioner (Appeals), has rejected the appeal solely on the ground that the date of communication of OIO was not mentioned in the CA-1 form. The non-mentioning of date of communication in CA-1 form is a rectifiable defect and the opportunity should have been provided to the appellant to do so. However, it would appear that such an opportunity was not provided nor the principles of natural justice appear to have been followed by the Commissioner (Appeals), before rejecting the appeal. Therefore, it would be in the interest of justice that the matter is remanded to Commissioner (Appeals), with a direction to decide the appeal fresh after affording an opportunity to Applicant herein to provide the date of communication of the relevant OIO, and thereafter proceed to decide the case afresh in accordance with law.

5.2 The Government would also like to observe that the OIA impugned herein is a cryptic document, bereft of any details. Such an order besides being unfair to the appellant is also of no assistance to the superior authorities in considering the further appeal/revision. Needless to say, such orders also do no justice to the Office of Commissioner (Appeals) himself as more often than not and as in this case, they are likely to land back at the door of Commissioner (Appeals), in the process prolonging the misery on both sides.

6. The Revision Application is allowed by way of remand to the Commissioner (Appeals), with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s S.B. International,
114/1, J.K. Colony,
Jajmau,
Kanpur - 208010

Order No. 103/22-Cus dated 25-03-2022

Copy to:

1. The Chief Commissioner, CGST, Lucknow- 7A Ashok Marg, Lucknow 226001. Specifically with reference to para 5.2 of the order.
2. The Commissioner (Appeals), Customs, Central Excise and CGST, 3/194, Vishal Khand -3, Gomti Nagar, Lucknow 226010.
3. The Commissioner of Customs, Preventive, Lucknow, Hall No. 3, 5th and 11th floor, Kendriya Bhawan, Sector – H, Aliganj - 226024.
4. Sh. Anuj, Shukla, Advocate, 320, Murli Bhawan, 10-A, Ashok Marg, Lucknow 226001.
5. PA to AS(RA).
6. ✓ Guard file.
7. Spare Copy.

ATTESTED



(लक्ष्मी राघवन)
(Lekshmi Raghavan)
अनुभाग अधिकारी / Section Officer
जि.स. मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi