

SPEED POST



F. No. 372/22/DBK/2021-RA
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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 28/3/22

Order No. 104/05/22-Cus dated 28-03-2022 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 Orders-in-Appeal No. KOL/CUS(CCP)/AKR/586/2020 dated 17.09.2020 and KOL/CUS(CCP)/KA/01/D/2021 dated 16.03.2021, both passed by the Commissioner of Customs (Appeals), Kolkata.
- Applicant : M/s Graphite India Limited, Kolkata.
- Respondent : The Commissioner of Customs (Preventive), Kolkata.

ORDER

Two Revision Application Nos. 372/22/DBK/2021-RA dated 12.10.2021 and 372/23/DBK/2021-RA dated 12.10.2021 have been filed by M/s Graphite India Limited, Kolkata (hereinafter referred to as the Applicant) against the Orders-in-Appeal No. KOL/CUS(CCP)/AKR/586/2020 dated 17.09.2020 and KOL/CUS(CCP)/KA/01/D/2021 dated 16.03.2021, passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) has rejected the appeals filed by the Applicant herein against the Orders-in-Original, bearing no. 03/AC/ICD-DGP/GIL/Drawback/2018-19 dated 22.12.2018, and 02/DBK/ICD-DGP/2017 dated 22.02.2017, both passed by the Assistant Commissioner of Customs, ICD, EPIP, Banskopa, P.O. Rajbandh, Distt – Burdwan, Durgapur, as time barred.

2.1 Brief facts of the case, in respect of the RA No. 372/22/DBK/2021, are that the Applicant filed drawback claim in respect of exports made against Shipping Bill No. 6961418 dated 31.12.2014, with the jurisdictional customs authorities, for a total amount of Rs.8,47,096/-, 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 12.01.2017 was issued to the Applicant and, out of the total demand of Rs. 8,47,096/-, a demand of Rs. 7,20,518/- was confirmed by the original authority along with the interest payable thereon, vide the above mentioned Order-in-Original

dated 22.12.2018. The appeal filed by the Applicant herein has been rejected, as barred by limitation, vide the impugned Order-in-Appeal dated 17.09.2020.

2.2 Brief facts of the case, in respect of RA No. 372/23/DBK/2021, are that the Applicant filed drawback claims in respect of exports made against 04 Shipping Bills, with the jurisdictional customs authorities, for a total amount of Rs.12,30,103/-, 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 was issued to the Applicant and, out of Rs. 12,30,103/-, a demand of Rs. 6,65,079/- was confirmed by the original authority along with the interest payable thereon, vide the above mentioned Order-in-Original dated 22.02.2017. The appeal filed by the Applicant herein has been rejected, as barred by limitation, vide the impugned Order-in-Appeal.

3.1 The revision application, in respect of the RA No. 372/22/DBK/2021, has been filed, mainly, on the grounds that there was no delay in filing the appeal before the Commissioner (Appeals) as the impugned OIO was received by them only on 04.01.2019 whereas the appeal was filed on 05.03.2019, i.e., well within 60 days of the communication of OIO.

3.2. The revision application, in respect of RA No. 372/23/DBK/2021, has been filed, mainly, on the grounds that there was no delay in filing the appeal before the Commissioner (Appeals) as the impugned OIO was received by them only on

06.03.2017 whereas the appeal was filed on 04.05.2017 i.e. well within 60 days of the communication of OIO.

4. Personal hearing in both the cases, in virtual mode, was held on 25.03.2022. Sh. Neeraj Baheti, Chartered Accountant, appeared for the Applicant and fairly admitted that they are before CESTAT for relief in the same cases. He also admitted that no applications for withdrawal has been filed before the CESTAT. Upon being asked as to why no action to withdraw has been taken in the matter, Sh. Baheti indicated internal issues of the Applicant. None appeared for the respondent nor any request for adjournment has been received. Therefore, the case is being taken up for final decision.

5. On examination of the relevant case records carefully, it is observed that the revision applications have been filed with condonation of delay applications. Applicant has attributed the delay to filing the appeals against the impugned Order-in-Appeals before a wrong forum, i.e., CESTAT. However, it is admitted by the Applicant that the appeals before the CESTAT are still pending and no action has been taken by the Applicants herein for withdrawal thereof, even though these appeals are admittedly filed in wrong forum. This inaction has continued even when the revision applications, in both the cases, were filed in October, 2021 and after that three hearings have been granted to the Applicant i.e. on 25.02.2022, 11.03.2022 and 25.03.2022. As such, the Applicant had sufficient opportunity to withdraw the cases from the CESTAT, if they had so desired. Thus, it is apparent that present applications are not bonafide and intention of the Applicant appears to be to keep alive proceedings in both the forums, i.e., before the CESTAT as well as

before the Government. The Government is, therefore, constrained to conclude that the Applicant is indulging in forum shopping taking chances in two forums simultaneously and the present applications are non-bonafide. In any case, since the Applicant continue to remain before CESTAT, the question of considering the condonation of delay does not arise, at this stage. Further, in these peculiar facts and circumstances of the case, the Government is not persuaded to accept the contention of the Applicant against the OsIA impugned herein, which have been passed by the Commissioner (Appeals) apparently after due verification from records.

6. Accordingly, the revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India


M/s Graphite India Limited
31, Chowringhee Road,
Kolkata-700016

Order No. 104-105/22-Cus dated 28-03-2022

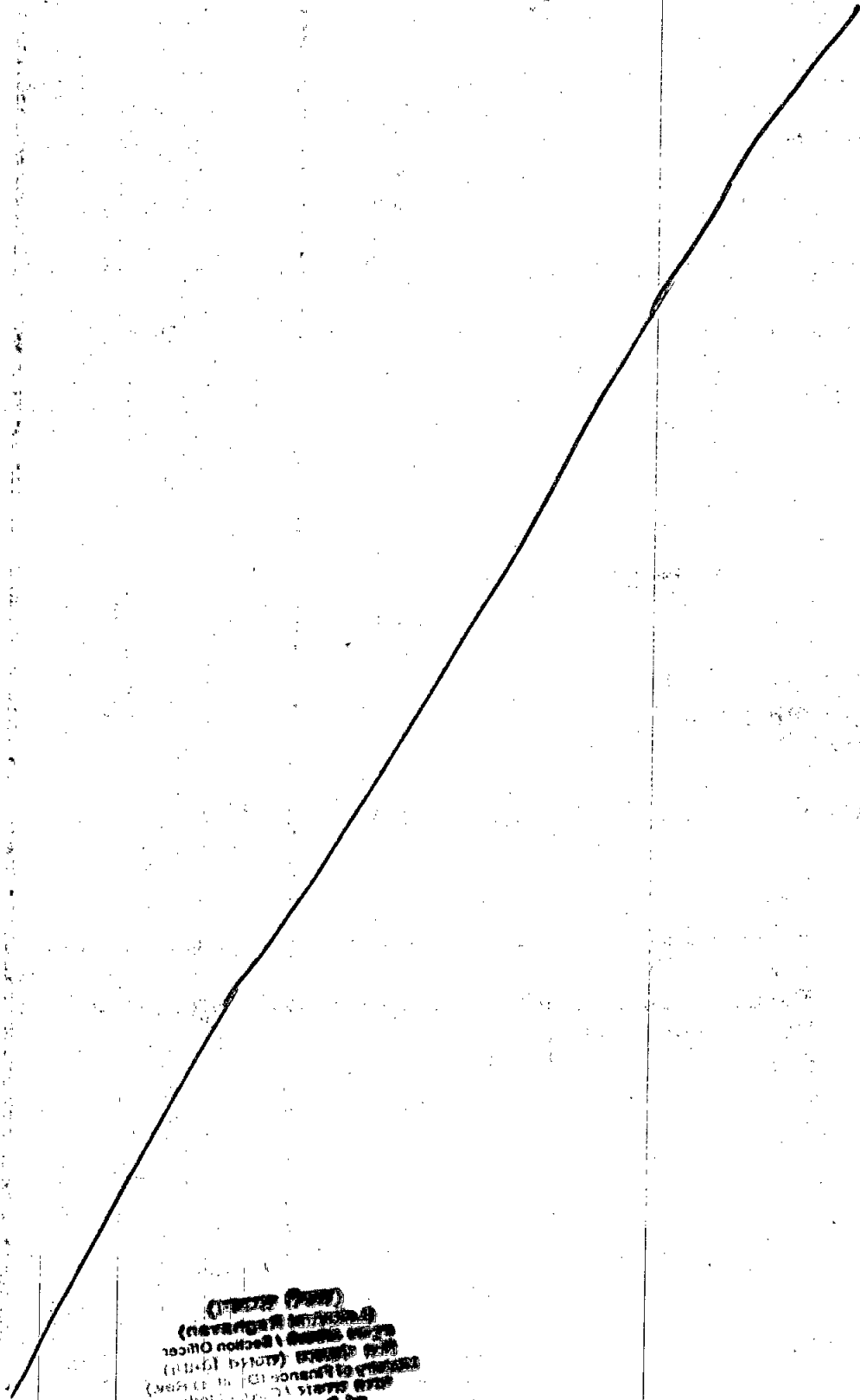
Copy to:

1. The Commissioner of Customs (Preventive), 15/1 Strand Road, Custom House, Kolkata - 700001.
2. The Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata- 700001.
3. PS to AS(RA)
4. Guard File.
5. Spare Copy

ATTESTED



(लक्ष्मी राघवन)
(Lekshmi Raghavan)
अनुयाय अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
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