

F.No. 375/97/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 02/06/2021

Order No. 105/21-Cus dated 02-06-2021 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/1233/2018 dated 04.06.2018, passed by the Commissioner, Customs & CGST (Appeals), Ludhiana.

Applicant : M/s Multiple Overseas Exports, Ludhiana

Respondent : Commissioner of Customs, Ludhiana

ORDER

Revision Application No.375/97/DBK/2018-RA dated 23.08..2018 has been filed by M/s Multiple Overseas Exports, Ludhiana, (hereinafter referred to as the Applicant) against the Order-in-Appeal LUD-CUS-001-APP/1233/2018 dated 04.06.2018, passed by the Commissioner (Appeals), Customs & CGST, Ludhiana. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal of the Applicant, against the order- in-Original No. 62/DC/BRC/OWPL/LDH/2015 dated 30.03.2015 passed by the Deputy Commissioner of Customs, CFS, OWPL, Ludhiana.

2. Brief facts of the case are that the Applicant filed drawback claim in respect of 01 Shipping Bill i.e. Shipping Bill No. 1058585 dated 13.11.2007, with the Deputy Commissioner of Customs, Drawback, CFS, OWPL, Ludhiana, for a total amount of Rs.1,88,341/-, which was sanctioned. 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. Accordingly, show cause notice was issued in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, to the Respondent for the recovery of drawback availed amount of Rs.1,88,341/- along with interest, which was confirmed by the original authority, vide aforesaid Order-in-Original dated 30.03.2015. 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, but the delay was due to the winding up of the business by the foreign buyer. It is further contended that the export proceeds have been eventually realized. Therefore, the drawback amount

recovered from them should be repaid to them in terms of Rule 16A(4). Relying upon the judgment in Pratibha Syntex Ltd. Vs. UoI {2013(287)ELT290 (Guj.)}, it is also contended that the demand had not been initiated within a reasonable period of 03 years.

4. Personal hearing, in virtual mode, was held on 02.06.2021. Sh. Deepak Gupta, Advocate, appeared on behalf of the Applicant and reiterated the contents of Revision Application. None appeared on behalf of the Respondent. Further, no request for adjournment of the case has been made. Therefore, 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 the Applicant had realized the export proceeds and the statutory benefits are not to be denied as the delay in realizing foreign remittance is due to the winding up of the business of foreign buyer, which was beyond the control of the Applicant. However, it is observed that the Applicants have 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 had 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. The contention that the export proceeds could not be realized for the reasons

beyond the control of the Applicants ought to have been raised before the competent authority under FEMA for extension of time and cannot be considered in the present proceedings.

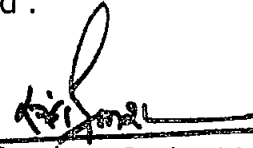
5.2 Further, the provisions of rule 16A(1) enabling recovery of drawback if the export proceeds are not realized within the period allowed under FEMA, including any extension of such period, is not merely a procedural requirement. It is to be observed that drawback is paid before realization of export 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 The claim of repayment of drawback , under sub-rule (4) of Rule 16A, due to eventual realization of export proceeds does not arise as the export proceeds have not been realized within the specified period nor has such period been extended by the competent authority.

5.4 Rule 16 A does not prescribe any limitation period for demand and recovery of the drawback amount. Therefore, relying upon Pratibha Syntex Ltd. (Supra), the Applicant has claimed that the demand should have been raised within a period of 03 years, which has not been done in this case. The Government observes that the Hon'ble Supreme Court has, in the case of Citadel Fine Pharmaceuticals {1989(42)ELT515 (SC)}, held that " In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be a reasonable period, would depend upon the facts of each case." In Pratibha Syntex Ltd.,

the demand arose out of a clarification having been issued as regards the interpretation of condition (c) of Note under SS No. 5404 (1) (ii) of the Drawback Schedule. In light of these facts, the Hon'ble Gujarat High Court held that the show cause notices which have been issued after a period of three years cannot be said to have been issued within a reasonable period of time. Therefore, the period of three years held to be reasonable in Pratibha Syntex has no general applicability. As such, the present contention of the Applicant can also not be accepted.

6. In view of the above, Government do not find any infirmity in the impugned Order-in-Appeal. The revision application is rejected .



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Multiple Overseas Exports,
365, Dr. Hira Singh Road,
Civil Line,
Ludhiana - 141001

Order No. 105/21-Cus dated 02-06-2021

Copy to:

1. Commissioner of Customs , Container Freight Station, OWPL, C,-205, Phase - V, Focal Point Bhandhari Kalan, Ludhiana - 141010.
2. Commissioner (Appeals), Customs & CGST, 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

C. Bhatia
02/6/2021
Attested
(Culshan Bhatia)
Superintendent (RA)