

F.No. 375/99/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. 02/06/21

Order No. /06/21-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/1092/2018 dated 09.05.2018, passed by the Commissioner (Appeals) CGST, Ludhiana.

Applicant : M/s K.N. Exports, Amritsar

Respondent : Commissioner of Customs, Ludhaina

ORDER

Revision Application No.375/99/DBK/2018-RA dated 23.08.2018 has been filed by M/s K.N. Exports, Amritsar, (hereinafter referred to as the Applicant) against the Order-in-Appeal LUD-CUS-001-APP/1092/2018 dated 09.05.2018, 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. 46/DC/BRC/LDH/2016 dated 28.03.2016 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. 1499164 dated 28.08.2012, with the Deputy Commissioner of Customs, Drawback, CFS, OWPL, Ludhiana, for a total amount of Rs.1,07,166/- 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.1,07,166/- along with interest, which was confirmed by the original authority, vide aforesaid Order-in-Original dated 28.03.2016. 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 within the stipulated period of 12 months, except the payment of USD 5930.10, which was not received within the stipulated time period. The payment was delayed because of certain unavoidable circumstances. It is further contended that the export proceeds have been eventually realized and, therefore, amount of drawback recovered should be repaid to them in terms of Rule 16A (4) *ibid*.

4. The RA has been filed with a delay of 09 days. Delay is condoned.

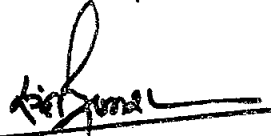
5. Personal hearing, in virtual mode, was held on 02.06.2021. Sh. Deepak Gupta, Advocate, appeared on behalf of the Applicant and reiterated the contents of Revision Application. Sh. Gupta also submitted that the compilation submitted by him by e-mail on 02.06.2021 is not applicable in the facts of this case and, hence, may not be considered. None appeared on behalf of the Respondent. Further, no request for adjournment has also been received. Therefore, the case is being taken up for final decision, on the basis of facts available on record.

- 6.1 Government has examined the matter. It is contended by the Applicant that the Let Export Order was made on 13.09.2012 and that they had realized the bulk of the export proceeds within the stipulated time period of one year i.e. before 12.09.2013. Thus, only partial payment of USD 5930.10 was not realized within the stipulated time period and the statutory benefits are not to be denied as the delay was due to the reasons which were beyond their control. It is observed that, at the relevant time, in terms of RBI Master Circular No. 14/2012-13 dated 02.07.2012 the export realization period was one year from the date of export till September 30, 2012. Further, in the Order-in-Original, it is stated that the payment of USD 23965 was realized on 05.07.2013 i.e. before the stipulated period of one year. From this it is clear that only payment of USD 5930.10, received on 23.01.2014, was beyond the stipulated period of one year. Applicants have also admitted this position in their revision application. Further, no proof has been submitted 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, partial export proceeds i.e. of USD 5930.10 have not been realized within the period allowed nor has the extension been granted by the competent authority under FEMA. Thus, the Government holds that the Applicant is

entitled for drawback to the extent of value of exports that has been realized within the stipulated period of one year i.e. up to 12.09.2013 but the drawback is not admissible proportionately to the extent of payment of USD 5930.10 which was received on 23.01.2014.

6.2 The question of repayment of entire amount under Rule 16A (4), as contended, does not arise as the part proceeds have not been realized within the stipulated period.

7. In view of the above, the impugned order-in-Appeal is modified to the extent mentioned above and the revision application is partially allowed with consequential relief.


(Sandeep Prakash)


Additional Secretary to the Government of India

M/s K.N. Exports,
67, Dashmesh Nagar,
Jaura Phatak,
Amritsar 143001

Order No. 106/21-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), 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 02/6/2021
(Gulshan Bhatia)
Superintendent (RA)