

REGISTERED
SPEED POST



F.No. 372/66/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..24/6/21

Order No. 113/21-Cus dated 24-6-2021 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.KOL/CUS(CCP)/AA/1442/2018 dated 02.08.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s S.J. Fabrics Pvt. Ltd, Kolkata

Respondent : Commissioner of Customs (Preventive), Kolkata

ORDER

A Revision Application No.372/66/DBK/18-RA dated 01.11.2018 has been filed by M/s S.J. Fabrics Private Limited, Kolkata (hereinafter referred to as the Applicant) against the Order No. KOL/CUS(CCP)/AA/1442/2018, dated 02.08.2018, passed by the Commissioner of Customs (Appeals), Kolkata, whereby the Commissioner (Appeals) has rejected the appeal of the Applicant against the Order-in-Original No. 16/DC(DBK)/2017-18 dated 09.05.2017, passed by the Deputy Commissioner of Customs, Drawback Cell, CC(P), Kolkata.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of 176 Shipping Bills with the Dy. Commissioner of Customs, Drawback Cell, CC(P), Kolkata. The said claims were sanctioned. However, on scrutiny of the XOS statement, it was observed by the department that the Applicant had failed to submit the proof to the effect that the export proceeds in respect of the said Shipping Bills 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 03.08.2016 was issued to the Applicant for the recovery of availed drawback amount of Rs. 88,16,720/- along with interest. Demand of Rs. 7,60,244/- along with interest accrued thereon was confirmed by the Dy. Commissioner of Customs, Kolkata, vide the above said Order-in-Original dated 09.05.2017. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), who vide the OIA No. KOL/CUS(CCP)/AA/946/2017 dated 07.09.2017 rejected the appeal as barred by limitation. Thereafter, in compliance of

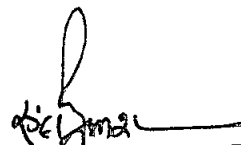
CESTAT's Final Order No. FO/75819/2018 dated 11.04.2018, the impugned OIA came to be passed. The Commissioner (Appeals) has rejected the appeal on the ground that the Applicant did not submit any proof that the export proceeds had been realized within stipulated time period. The instant revision application has been filed, mainly, on the ground that the Applicant had realized the export proceeds and short fall in realization of export proceeds is due to the deduction of bank charges from the export proceeds by the Bank. Since the export proceeds had been realized in full, the recovery of proportionate drawback amount is not valid in the eyes of law.

3. Personal hearing, in virtual mode, was held on 23.06.2021. Sh. Arijit Chakrabarti, Advocate, appeared on behalf of the Applicant and reiterated the contents of the revision application. He specifically submitted that the export proceeds could not be realized in respect of 2 Shipping Bills nos 2495733 dated 19.08.2015 and 6250778 dated 02.07.2013, in time, and no extension has been granted. Hence, it is admitted that this amount is recoverable; that the balance amount is with reference to Bank Charges which is the included in the realization. Both the lower authorities have failed to consider this aspect. Hence, the matter may be remanded to the original authority for de-novo consideration on merits. None appeared for respondent nor any request for adjournment has been received. Hence, the case is being taken up for final decision, based on records.

4. Government has examined the matter. It is observed that the lower authorities have confirmed the demand of drawback on the grounds that the Applicant did not receive the export proceeds against the 02 Shipping Bills within specified period and in the remaining Shipping Bills, the export proceeds were not realized in full. Applicant, in the revision application and also during the course of personal hearing, has admitted that the export proceeds in respect of 02 Shipping Bills had not been realized in specified time period and no extension has been granted. Hence, there is no infirmity in the orders of lower authorities to this extent. The only issue to be decided here is that whether the recovery of proportionate drawback amount from the Applicant in respect of the remaining 174 Shipping Bills on account of shortfall in realization of export proceeds is valid. Applicant has contended that export proceeds in respect of the remaining 174 Shipping Bills were fully realized, however, the Bank has deducted some amount on account of Bank charges. Government observes that the issue of Bank charges was also raised by the Applicant before the original authority but the same was not considered. Central Board of Indirect taxes & Customs, vide Circular No. 33/2019-Customs (issued vide F.No. 609/19/2019-DBK) dated 19.09.2019, has clarified that duty drawback is not recoverable where the export proceeds realized are short on account of bank charges deducted by foreign banks. The said instructions are clarificatory in nature. Thus, Government holds that the entire matter pertaining to the deduction of bank chargers and recovery of proportionate drawback amount corresponding thereto needs to be relooked. As such, it would be in the interest of justice that the matter is remanded back to the original authority with the direction to decide the matter afresh,

on merits, as far as it pertains to the deduction of bank charges and recovery of proportionate drawback amount on account thereof, keeping in view the instructions contained in Board's Circular dated 19.09.2019.

6. The Revision Application is disposed of with the above directions.



(Sandeep Prakash)

Additional Secretary to the Government of India

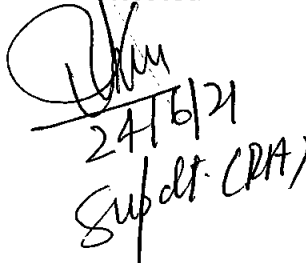
M/s S.J. Fabrics Pvt. Ltd.
60, Vivekanand, 1st floor
Kolkata 700006.

Order No. 113 /21-Cus dated 24-6-2021

Copy to:

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

Attested



24/6/21
Supdt. (CRA)