

F.No. 375/100/DBK/2018-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 24/6/21

Order No. 114/21-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. LUD-CUS-001-APP-1232-2018 dated 04.06.2018, passed by the Commissioner, Customs and CGST (Appeals), Ludhiana.

Applicant : M/s Kohinoor International, Jalandhar

Respondent : The Commissioner of Customs, Ludhaina

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**ORDER**

Revision Application No.375/100/DBK/2018-RA dated 30.08.2018 has been filed by M/s Kohinoor International, Jalandhar, (hereinafter referred to as the Applicant) against the Orders-in-Appeal LUD-CUS-001-APP-1232-2018 dated 04.06.2018, passed by the Commissioner, Customs & CGST (Appeals), Ludhiana. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal of the applicant on the ground that the Applicant had not realized the export proceeds in the stipulated time period or such extended period as allowed by the Reserve Bank of India.

2. Brief facts of the case are that the Applicant filed a drawback claim in respect of 01 Shipping Bill, i.e., Shipping Bill No. 1010006 dated 28.12.2004, with the Deputy Commissioner of Customs, Drawback, CFS, OWPL, Ludhiana, for a total amount of Rs.1,35,600/- 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 in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Accordingly, show cause notice was issued to the Applicant for the recovery of drawback availed amount of Rs.1,35,600/- along with interest, which was confirmed by the Deputy Commissioner of Customs, Drawback CFS, OWPL, Ludhiana, vide Order-in-Original No. 63/DC/BRC/OWPL/LDH/2015 dated 31.03.2015. Aggrieved the Applicant filed appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed by the Applicant, mainly, on the ground that they had realized the export proceeds in respect of impugned Shipping Bill and hence the demand for recovery of drawback is not valid.

4. Personal hearing, in virtual mode, was held on 24.06.2021. Ms. Pooja Malhotra, Advocate, appeared on behalf of the Applicant and reiterated the contents of the revision application. None appeared for respondent nor any request for adjournment was made by the respondent. 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. The revision application has been filed, mainly, on the ground that the export proceeds had been realized and the statutory benefits are not to be denied for procedural infractions as the mandatory condition of export and realization of export proceeds had been fulfilled. However, it is not disputed that the Applicant had failed to realize the export proceeds within the stipulated time period. Further, the Applicant has not submitted any proof to the effect that extension was granted 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.

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, are not merely procedural in matter, as contended by the Applicant. 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 the provisions of Rule 16A(1) shall be rendered otiose. As such, the contentions of the applicant, on this count, are not acceptable.

6. In view of the above, the revision application is rejected.

  
(Sandeep Prakash)

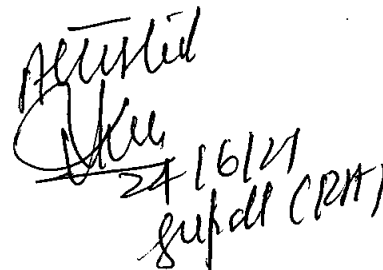
Additional Secretary to the Government of India

M/s Kohinoor International  
Basti Bawa Khel, Kapurthala Road,  
Jalandhar 144021.

Order No. 114/21-Cus dated 24-6-2021

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 Nagra, Ludhiana.
3. Pooja Mahotra, Advocate, 13 R Hukam Chand Colony, Near DAV college Jalnadhar 144623.
4. PS to AS(RA)
5.  Guard File.
6. Spare Copy

  
24/6/21  
Subal (CRM)