

REGISTERED
SPEED POST



F.No. 372/57/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. 28/6/21

Order No. 115/21-Cus dated 28-6-2021 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 Applications filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/CUS(CCP)/AA/1396/2018 dated 31.07.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s Tushar International, Kolkata

Respondent : The Commissioner of Customs (Preventive), Kolkata

ORDER

A Revision Application No. 372/57/DBK/2018-R.A. dated 04.09.2018 has been filed by M/s Tushar International, Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(CCP)/AA/1396/2018 dated 31.07.2018, passed by the Commissioner of Customs (Appeals), Kolkata, wherein the Commissioner (Appeals) has rejected the appeal filed by the Applicant herein, as time barred.

2. Brief facts of the case are that the Applicant exported goods through Petrapole Land Customs Station, vide 54 Bills of Export, during the calendar years 2014 and 2015, under claim of duty Drawback. The Drawback amount of Rs. 6,33,61,053/- was paid to the Applicant against the said Bills of Export. However, on scrutiny of EDI data base vis-a-vis DGFT e-BRC data and Export Outstanding Statement, it was noticed by the department that the export proceeds were either not realized or partially realized in respect of said Bills of Export. Hence, a Show Cause Notice dated 11.07.2016 was issued to the Applicant herein for demand of duty Drawback of Rs. 3,33,29,267/- alongwith interest, in terms of Rule 16A of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995. The Deputy Commissioner of Customs, Drawback Cell, CC(P), Kolkata, vide Order-in-Original No. 09/DC(DBK)/2017-18 dated 27.04.2017, confirmed the recovery of duty drawback of amount of Rs. 3,23,57,151/-, alongwith interest. The appeal filed by the Applicant, 87 days after the date of communication of Order-in-Original, was rejected by the

Commissioner (Appeals), on the grounds of limitation, as the Commissioner (Appeals) refused to condone the delay on account of financial hardship.

3. The present revision application has been filed, mainly, on the grounds that the appeal was filed before the Commissioner (Appeals) with the delay of 27 days as due to financial hardship they took sometime in arranging the pre-deposit amount of Rs. 24,26,786/-; that as held by the Hon'ble Delhi High Court in the case of Mukesh Kumar vs. Commissioner of Customs {2015 (322) ELT 201 (Del.)}, financial hardship is sufficient cause for condoning delay; and that the export proceeds have been realized in full and Bank Realization Certificates (BRCs) have been received. Subsequently, written submissions dated 14.06.2021 have been filed wherein it is contended that, as per Board's Circular No. 05/2009-Cus dated 02.02.2009, negative statement of the CA for all the 54 Bills of Export evidencing the realisation of export proceeds have been submitted; that in terms of Reserve Bank of India's Master Circular No. 14/2014-15 dated 01.07.2014 and Master Circular No. 14/2015-16 dated 01.07.2015, the AD (Authorised Dealer) Bank of the Applicant has regularized the late receipt of partial payments; that the Applicant has complied with all the requirements of Board's Circular dated 02.02.2009 and, hence, no duty drawback is recoverable. It is further contended that Drawback Rules, 1995 provide for repayment of duty drawback amount recovered from the exporter if the exporter produces evidence about realization of export proceeds within one year from the date of such recovery of the amount of drawback. The Applicant has brought out that they had deposited drawback amounting to Rs. 81,180/-, pertaining to bank

charges deducted by the foreign banks, during the proceedings, which should be refunded as Board has, vide Circular No. 33/2019-Cus dated 19.09.2019, clarified that the duty drawback is not recoverable where the export proceeds realized are short on account of 'bank charges' deducted by the foreign banks.

4. Personal hearing, in virtual mode, was held on 23.06.2021. Sh. Alok Agrawal, Advocate appeared for the Applicant and reiterated the contents of the RA and the written submissions dated 14.06.2021. He also stated that a short submission dated 23.06.2021 had been emailed, which may be taken on record. Sh. Agrawal highlighted that:

- (i) The Commissioner (Appeals) has rejected the appeal on grounds of delay even though it was filed within the condonable period of 30 days. The delay occurred due to financial hardship in arranging pre-deposit and ought to have been condoned.
- (ii) On merits, all remittances have been received and BRCs are uploaded on DGFT website. Negative Statements have been issued by the CA, in terms of Board's Circular No. 05/2009-Customs dated 02.02.2009, which was applicable to the exports.
- (iii) The matter relates to drawback, which is an export incentive. Therefore, all the documents being clear, the case should be decided on merits as well instead of being remanded, which will only prolong the proceedings.

Upon being asked, Sh. Agrawal stated that the deduction of Bank Charges is allowed in terms of Board's Circular No. 33/2019-Customs dated 19.09.2019, which is clarificatory in nature and covers past cases as well in terms of para 4 of the Circular. No one appeared for the respondent department nor any request for adjournment has been received. Therefore, the case is taken up for disposal based on records.

5. The Government has carefully examined the matter. The appeal has been rejected by the Commissioner (Appeals) on a finding that financial hardship pleaded by the Applicant herein is not a sufficient cause to condone the delay. The Applicant has pleaded that due to financial hardship they took sometime in arranging the pre-deposit amount of Rs. 24,26,786/-. The Government observes that pre-deposit is a mandatory condition, in terms of Section 129E of the Customs Act, 1962, for appeal to be entertained by the Commissioner (Appeals). Therefore, if the pre-deposit had not been made, the appeal was liable to be not entertained on this ground. In the circumstances, time taken by the Applicant herein in arranging the pre-deposit is sufficient cause to condone delay. As such, the order of the Commissioner (Appeals) denying condonation of delay cannot be sustained.

6.1 On merits, following two issues need to be decided:

- (i) Whether the drawback is recoverable alongwith interest even though the Negative Statements issued by the Chartered Accountant have been produced?

- (ii) Whether drawback amount pertaining to the bank charges deducted by the foreign banks, while remitting the export proceeds, is recoverable?

6.2 The Government observes that both the issues are directly covered by Board's instructions and the matter can be decided on the basis of documents available on record. Therefore, in the interest of justice, the Government is inclined to consider the case on merits itself instead of remanding the matter, which will only prolong the proceedings.

6.3 The Applicant has placed on record copies of BRCs and Negative Statements dated 04.03.2021 for the period 01.01.2014 - 30.06.2014 (UDIN No. 21305118AAAABB2722), 01.07.2014 - 31.12.2014 (UDIN No. 21305118AAAABC1468) and 01.01.2015 - 30.06.2015 (UDIN No. 21305118AAAABD7400) wherein the Chartered Accountant has certified that full amount of export proceeds pertaining to the respective period had been received; that the Bank Advices and e-BRCs uploaded by the DGFT have been verified; that it has also been verified that the AD banks have regularized all the payments received, in view of the RBI Master Circular No. 14/2014-15 dated 01.07.2014. Further, a consolidated Negative Statement dated 13.08.2018 (Certificate No. 18-19/008), certifying that all proceeds for the period 01.03.2013 to 31.03.2016 had been realized, is also on record. The Board has, vide Circular No. 05/2009-Cus dated 02.02.2009, clarified that *"For monitoring the realization of export proceeds for drawback purposes, the Board has decided that the exporters will submit a*

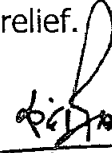
certificate from the authorized dealer (s) or chartered accountant providing details of shipment which remain outstanding beyond the prescribed time limit including the extended time, if any, allowed by the authorized dealer/RBI on a 6 monthly basis."

In the instant case, the negative statement from the Chartered Accountant has been submitted wherein it is also certified that the realization of export proceeds has been regularized by the AD Bank in terms of RBI's Master Circular dated 01.07.2014. As per the said Master Circular (Clause C.19 (i)), the AD banks are permitted to extend the period of realization of export proceeds upto a period of six months, at a time. The Government observes that an identical provision is made in RBI Master Circular No. 14/2013-14 dated 01.07.2013 (Clause C.19 (i)). Therefore, the realization of export proceeds and the regularization of delay, wherever applicable, are established. As such, no drawback is recoverable, on this count.

6.4 In respect of the bank charges deducted by the foreign banks, the Board has, vide Circular No. 33/2019-Customs dated 19.09.2019, issued after consultation with the RBI and taking into account the earlier Circular No. 64/2003-Customs dated 21.07.2003, clarified that *"duty drawback may be permitted on FoB value without deducting foreign bank charges. It is further clarified that since agency commission up to the limit of 12.5% of FoB value has been allowed, such deduction on account of foreign bank charges is allowed within this overall limit of 12.5% of the FoB value."* The Board has further directed that the exporter's requests for regularizing such short realization on account of foreign bank charges may be considered on merits based on documentary evidence. In the instant case, the Chartered

Accountant has with the respective negative statements certified deduction of foreign bank charges, the quantum whereof is far below the 12.5% limit specified by the Board. Therefore, no drawback is recoverable on this count as well.

7. In view of the above, the orders of lower authorities cannot be sustained and are set aside. The revision application is allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India


M/s. Tushar International,
8/1, Balmukund Macker Road,
2nd Floor, R.No. 35,
Kolkata-700 007.

Order No. 115/21-Cus dated 28-6-2021

Copy to:

1. The Commissioner of Customs (Preventive), Custom House, 3rd Floor, 15/1, Strand Road, Kolkata- 700 001.
2. The Commissioner of Customs (Appeals), 3rd Floor, Custom House, Kolkata- 700 001
3. Shri Alok Agrawal, Advocate, A-3/31, Sri Sai Kunj, D-2, Vasant Kunj, New Delhi- 110 070.
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

Attested


आशीष तिवारी / ASHISH TIWARI
सहायक आयुक्त / Asst. Comm. (Preventive)
आय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं
CGST, Central Excise & Custom
राजस्व विभाग / Department of R
विना मंत्रालय / Ministry of Fin
भारत सरकार / Government of
नई दिल्ली / New Delhi