

F.No. 375/106/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. 119/21-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 Application filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CC(A)CUS/D-I/ACC-EXP/198/2018 dated 18.07.2018, passed by the Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi 110037.

Applicant : M/s Jyoti International, Varanasi

Respondent : Commissioner of Customs (Exports), Air Cargo Complex, New Delhi

ORDER

Revision Application No.375/106/DBK/2018-RA dated 09.10.2018 has been filed by M/s Jyoti International, Varanasi, (hereinafter referred to as the Applicant) against the Orders-in-Appeal No. CC(A)CUS/D-I/ACC-EXP/198/2018 dated 18.07.2018, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi. 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. 4575602 dated 07.04.2007, with the Deputy Commissioner of Customs, Drawback, Air Cargo Complex, New Delhi, for a total amount of Rs.93,577/- which was sanctioned. However, subsequently, it was observed by the office of respondent that the Applicant had failed to submit the evidence 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 dated 30.03.2015 was issued to the Applicant for the recovery of drawback availed amount of Rs.93,577/- along with interest, which was confirmed by the Deputy Commissioner of Customs, Drawback, Air Cargo Complex, New Delhi, vide Order-in-Original No. 66/DK/DCE/DBK/2016 dated 18.04.2016. 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 28.06.2021. Sh. Pritam Jaiswal, Advocate, appeared on behalf of the Applicant and reiterated the contents of the revision application. None appeared for respondent nor any request for adjournment has been received. 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 that the Applicant had repeatedly requested the Reserve Bank of India, through their bank, for extension of time. 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, as brought out hereinabove, the rule 16A(1) prescribes for recovery of drawback if the export proceeds are not realized within the period allowed under FEMA, including any extension of such period. 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. Therefore, the requirement of realization within prescribed period, or within the period extended by the competent authority under FEMA, 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.

5.3 As such, the Government finds no infirmity in the impugned Order-in-Appeal.

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


(Sandeep Prakash)


Additional Secretary to the Government of India

M/s Jyoti International
P-15, Industrial Estate,
Varanasi - 221106.

Order No. 119/21-Cus dated 28-6-2021

Copy to:

1. Commissioner of Customs (Exports), Air Cargo Complex, New Custom House, Near IGI Airport, New Delhi - 110037.
2. Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi - 110037.
3. Pritam Jaiswal, Advocate, 147, Balaji Nagar Colony, Samaneghat, Lanka, Varanasi - 221005
4. PS to AS(RA)
5. Guard File.
6. Spare Copy


आशीष तिवारी / ASHISH TIWARI
सहायक आयुक्त / Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi