

F.No. 372/67/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 14/7/21

Order No. 127 /21-Cus dated 14-7-2021 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/1410/2018 dated 01.08.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s S. R. International, Kolkata

Respondent : Commissioner of Customs (Preventive), Kolkata

ORDER

A Revision Application No.372/67/DBK/18-RA dated 13.11.2018 has been filed by M/s S.R. International, Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(CCP)/AA/1410/2018, dated 01.08.2018, 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. 06/DC(DBK)/2017-18 dated 24.04.2017, 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 04 Shipping Bills with the Dy. Commissioner of Customs, Drawback Cell, CC(P), Kolkata. The said claims amounting to Rs. 18,06,980/- were sanctioned. However, subsequently on scrutiny, 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 13.12.2016 was issued to the Applicant for the recovery of availed drawback amount of Rs. 18,06,980/- along with interest. Demand of Rs. 16,34,537/- along with interest accrued thereon was confirmed by the Dy. Commissioner of Customs, Kolkata, vide the above said Order-in-Original dated 24.04.2017. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), who rejected the appeal on the ground that the BRCs submitted by the Applicant clearly evidence that the export proceeds were not realized in full and,

therefore, the lower authority had correctly ordered the recovery of proportionate drawback amount, which was sanctioned earlier. The instant revision application has been filed, mainly, on the ground that the Applicant had realized the export proceeds partially and they had requested the lower authorities to grant further time for submission of BRCs for the balance amount. It is further stated that the Commissioner (Appeals) had passed the order without granting them personal hearing.

3. Personal hearing, in virtual mode, was held on 13.07.2021. Sh. Subir Nagdas, Proprietor of M/s S.R. International, appeared for hearing and reiterated the contents of Revision Application. Applicant, vide email dated 13.07.2021, submitted the copies of BRCs. Respondent department, vide letter dated 30.06.2021, submitted their comments on the revision application filed by the Applicant. It is stated by the respondent that the export proceeds were not realized in full, which is admitted by the Applicant also during the course of hearing before the Deputy Commissioner of Customs, and hence the demand and recovery of the proportionate drawback amount is correct.

4. Government has examined the matter. It is observed that the Applicant has himself admitted, in the revision application, that the partial payment was not realized within the stipulated time period or such extended period as granted by the Reserve Bank of India. As per copies of BRCs submitted by Applicant, only the partial export proceeds were realized within the stipulated time period. Further, the

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Applicant has not submitted proof 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. Evidently, 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. Therefore, there is no infirmity in the impugned OIA.

5. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s S.R. International,
1/H/30, Gouri Bari Lane,
Kolkata 700024.

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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


14/7/2021

GULSHAN BHATIA
Superintendent