

F.No. 380/18/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. 20/7/21

Order No. 128/21-Cus dated 19-7-2021 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(Port)/AA/967/2018 dated 21.05.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Commissioner of Customs (Port), Kolkata

Respondent : M/s Texmaco Rail & Engineering Ltd., Kolkata

ORDER

A Revision Application No.380/18/DBK/18-RA dated 24.07.2018 has been filed by Commissioner of Customs (Port) Kolkata, (hereinafter referred to as the Applicant) against the Order No.KOL/Cus(Port)/AA/967/2018 dated 21.05.2018, passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals), vide the abovementioned Order-in-Appeal, has allowed the appeal of M/s Texmaco Rail & Engineering Ltd., Kolkata, (herein after referred to as the respondent) by setting aside Order-in-Original No. KOL/CUS/DC/5420/DBK/2016 dated 07.11.2016 on the ground that the export proceeds were realized within the stipulated time period.

2. Brief facts of the case are that the respondent filed drawback claims in respect of 08 Shipping Bills with the Dy. Commissioner of Customs, Drawback (Port), Kolkata. However, subsequently, office of the Applicant raised certain queries to the respondent seeking requisite documents for the finalization of drawback claims filed by them. Since the respondent failed to submit the requisite documents, show cause notice dated 04.10.2016 was issued to the respondent to explain in writing as to why Drawback pertaining to the impugned Shipping Bills should not be disallowed under second proviso to sub-section 1 of Section 75 of the Customs Act, 1962. Deputy Commissioner of Customs, Drawback, Kolkata, vide above mentioned Order-in-Original rejected the drawback claims on ex-parte basis. Aggrieved the Applicant, filed an appeal before the Commissioner (Appeals), which was allowed on the

ground that the respondent had realized the export proceeds within the stipulated time period and allowed proportionate drawback to the respondent.

3. The instant revision application has been filed, mainly, on the ground that there are severe discrepancies with respect to the date of realization of export proceeds in respect of the Shipping Bills pertaining to the year 2013 and hence the export proceeds were not realized within the stipulated time period.

4. Personal hearing, in virtual mode, was held on 19.07.2021, which was attended by Sh. Bhaskar Thakkar, CA, on behalf of the respondent who reiterated the contents of the written submissions dated 11.11.2018 & 17.11.2018. Sh. Thakkar highlighted that their Bank had initially reflected incorrect date of realization in the BRCs which were subsequently corrected by the Bank. The Commissioner (Appeals) had passed the impugned OIA based on the amended/corrected dates of realization produced before him. Hence, there is no infirmity in the OIA and it should be maintained. None appeared for the Applicant department nor any request for adjournment has been received. Therefore, the case is taken up for final decision based on records.

7. Government has carefully examined the matter. It is observed from the Order of the original authority that the exporter had failed to produce the BRCs leading to rejection of drawback claims on ex-parte basis. The Commissioner (Appeals) has after taking note of the BRCs submitted before him allowed drawback proportionate

to the amount realized within the stipulated period. The RA has been filed on the ground that there were "some severe discrepancies with respect to date of realization detected." No details of these "severe discrepancies" are forthcoming. It would nevertheless appear that the main dispute here is about the correct date of realization of export proceeds in respect of subject Shipping Bills. The Government observes that the respondent had submitted the copies of State Bank of India's letter dated 07.12.2017 along with the copies of BRCs before the Commissioner (Appeals), clearly indicating that the export proceeds were realized in the year 2013/2014 i.e. within the stipulated time period. No evidence has been produced at this stage to contradict the documents produced and only a bald allegation regarding "severe discrepancies" has been made. Thus, the Government do not find any infirmity in the order of Commissioner (Appeals)

8. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of Customs (Port),
15/1 Strand Road, Custom House,
Kolkata - 700001.


Order No. 129/21-Cus dated 19-7-2021

Copy to:

1. M/s Texmaco Rail & Engineering Ltd, Belgharia, Kolkata – 700056
2. Commissioner of Customs (Appeals), Kolkata, 3rd Floor, 15/1 Strand Road, Custom House, Kolkata- 700001.

3. Deputy Commissioner, (Drawback), Port), 15/1 Strand Road, Custom House, Kolkata - 700001.
4. PS to AS(RA)
5. Guard File.
6. Spare Copy

Attested



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