

F.No. 372/17/DBK/2019-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... 10/8/21

Order No. 146/21-Cus dated 09-08-2021 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 under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CUS(PREV)/SLG(CCP)/18/2019 dated 21.01.2019, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s Anjaney Ferro Alloys Ltd., Kolkata.

Respondent : The Commissioner of Customs (CCP), Kolkata.

ORDER

Revision Application No.372/17/DBK/2019-RA dated 01.04.2019 has been filed by M/s Anjaney Ferro Alloys Ltd., Kolkata, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CUS(PREV)/SLG(CCP)/18/2019 dated 21.01.2019, passed by the Commissioner of Customs (Appeals), Kolkata, Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal of the Applicant, against the Order-in-Original No. 01/DBK/ICD/DGP/2017 dated 22.02.2017 passed by the Assistant Commissioner of Customs, ICD, Durgapur..

2. Brief facts of the case are that the Applicant filed drawback claim in respect of 04 Shipping Bills, with the Assistant Commissioner of Customs, ICD, Durgapur for a total amount of Rs.9,81,801/-, which was sanctioned. Subsequently, 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 Bills had been realized. Accordingly, show cause notice was issued, in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, to the Applicant herein for the recovery of drawback availed amount of Rs.9,81,801/- along with interest, which was confirmed by the original authority, vide aforesaid Order-in-Original dated 22.02.2017. Aggrieved the applicant filed an appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed, mainly, on the ground that the export proceeds had been realized though not within the stipulated period of 09 months; that the payment was delayed because of certain unavoidable circumstances; that under Rule 17 (power to relax) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, Government has the power to relax the provisions of the Drawback Rules, if the exporter has failed to comply with any of the provisions of these rules, for the reasons beyond his control.

4. Personal hearing, in virtual mode, was held on 09.08.2021. Sh. Ashish Agarwal, CA and Sh. Nilay Munshi, appeared for personal hearing. Sh. Ashish Agarwal, CA made submissions for the Applicant and reiterated the contents of Revision Application and written submissions dated 02.08.2021. Upon being asked Sh. Agarwal clarified that condonation of delay has not been applied for till date from the Reserve Bank of India/AD Bank. None appeared on behalf of the Respondent. Further, no request for adjournment has also been received. Therefore, the case is being taken up for final decision, on the basis of facts available on record.

5.1 The Government has examined the matter. It is observed that the Applicants in the revision application as well as during the personal hearing have accepted that the export proceeds were not realized within the stipulated time period of 09 months. Further, the Applicants have also not applied for any condonation of delay with the Reserve Bank of India/AD Bank for the late realization of export proceeds.

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, export proceeds have not been realized within the period allowed nor has the extension been granted by the competent authority under FEMA. Thus, the Government holds that the drawback, sanctioned and paid, is recoverable from the Applicant.

5.2 Applicant has contended that the Government has the power to condone the delay in realizing the export proceeds in terms of Rule 17 of the Customs, Central Excise & Service Tax Drawback Rules, 1995. Government observes that Rule 17 authorizes the Central Government to relax any provision of the Drawback Rules, 1995, provided the Central Government is satisfied that the exporter or his authorized agent has failed to comply with the Drawback Rules, 1995 for the reasons which was beyond their control. As stated hereinabove, realization of export proceeds is governed under the Foreign Exchange Management Act, 1999 and not under the Customs Act, or the Drawback Rules. Therefore, any relaxation in provisions relating to realization of export proceeds can be considered by the authority competent to do so, only under the provisions of FEMA and not under the Drawback Rules. As such, this contention of the Applicant does not have any merit.

5.3 It is also the contention of the Applicant that the export proceeds have been realized and, therefore, as per Rule 16A (4) *ibid* the drawback recovered, is required

to be repaid. It is observed that if this contention of the Applicant were to be accepted, it would mean that upon realization of export proceeds, at any stage, that too without the period of realization being extended by the competent authority, the drawback recovered would have to be repaid. The Government is not persuaded to accept this contention, as the interpretation put forth would render the provisions of Rule 16A (1) otiose in as much the words "including any extension of such period" shall cease to have any effect.

7. In view of the above, the impugned OIA is upheld and the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

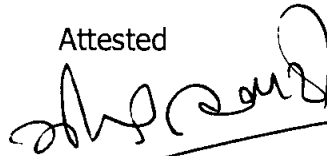
M/s Anjaney Ferro Alloys Ltd.,
9, A.J.C. Bose Road, Ideal Centre
6th floor, Kolkata - 700017

Order No. 146 /21-Cus dated 09-08-2021

Copy to:

1. Commissioner of Customs (CCP), Kolkata, 15/1 Strand Road, Custom House, Kolkata- 700001.
2. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata- 700001.
3. Assistant Commissioner, ICD, Durgapur, P.O. Rajbandh, District Burdwan, Durgapur – 713212.
4. PS to AS(RA).
5. Guard File.
6. Spare Copy.

Attested



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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