

F.No. 372/41/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...19/8/21..

Order No. 156/21-Cus dated 19-8-2021 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/57/2019 dated 28.06.2019, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Mr. Sarwar Khan, Proprietor of M/s S.K. Traders, Kolkata.

Respondent : Commissioner of Customs (Preventive), Kolkata

ORDER

Revision Application No.372/41/DBK/2019-RA dated 04.10.2019 has been filed by Mr. Sarwar Khan, Proprietor of M/s S.K. Traders, Kolkata, (hereinafter referred to as the Applicant) against the Order-in-Appeal KOL/CUS/CCP/57/2019 dated 28.06.2019, 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. 34/DC(DBK)/Kol/CC(P)/2018 dated 23.01.2018 passed by the Deputy Commissioner of Customs, Drawback Cell, CC(P), West Bengal, Kolkata.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of 53 Shipping Bills with the Deputy Commissioner of Customs, Drawback Cell, CCP, West Bengal, Kolkata, for a total amount of Rs.2,84,86,332/-, which was sanctioned. However, 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, a 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 for the recovery of drawback availed amount of Rs.2,29,03,556/- along with interest, out of which an amount of Rs. 1,33,38,712/- was confirmed by the original authority, vide the aforesaid Order-in-Original dated 23.01.2018. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected on the ground that

the Applicant could not produce any documentary evidence to show that they had got proper extension for submission of BRCs from the competent authority/agency.

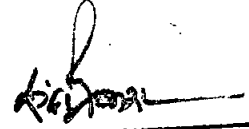
3. The revision application has been filed, mainly, on the ground that the export proceeds had been realized, but the delay was due to the winding up of the business by the foreign buyer. It is further contended that the export proceeds have been eventually realized and the substantial benefit cannot be denied on the basis of technical lapse

4. Personal hearing, in virtual mode, was held on 19.08.2021. Sh. Shovendu Banerjee, Advocate, appeared on behalf of the Applicant and submitted that the extension of time for realization of export proceeds was submitted before the original authority in respect of 35 cases, vide letter dated 12.05.2017. However, the original authority rejected this contention. The commissioner (Appeals) has also rejected their contention without verifying the letters produced. Hence, the matter may be remanded to the Commissioner (Appeals) for deciding the matter afresh after due verification of the documents produced. None appeared on behalf of the Respondent. Further, no 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. The Government has carefully examined the matter. The case of the Applicant is that they had realized the export proceeds and also submitted the extension letters before the adjudicating authority and the Commissioner (Appeals) but these

were not considered by any of these authorities. Government observes that the extension letters in respect of 35 Shipping Bills were apparently submitted by the Applicant, vide letter dated 12.05.2017, and there is nothing on record that these were appropriately verified and considered by the Commissioner (Appeals) while deciding the appeal. Therefore, it would be in the interest of justice that the matter is remanded back to the Commissioner (Appeals) with the direction to decide the case afresh after verifying the claim of the Applicant that the export proceeds were realized within the extended period.

6. In view of the above, the revision application is allowed by way of remand to the Commissioner (Appeals).



(Sandeep Prakash)

Additional Secretary to the Government of India

Mr. Sarwar Khan, Proprietor of
M/s S.K. Traders,
12F, Rai Charan Paul lane,
Kolkata 700046


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Copy to:

1. The Commissioner of Customs (Preventive), Customs House, 3rd Floor, 15/1, Strand Road, Kolkata- 700001.
2. The Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700001.
3. PA to AS(RA)
4. Guard File
5. Spare Copy

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