

F.No. 372/09/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 25/8/21

Order No. 158/21-Cus dated 25-8-2021 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(PORT)/AA/1847/2018 dated 04.10.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Sh. Pramod Kumar Singh, Proprietor of M/s Pooja Fashions, Kolkata.

Respondent : Commissioner of Customs (Port), Kolkata

ORDER

Revision Application No.372/09/DBK/2019-RA dated 03.01.2019 has been filed by Sh.. Pramod Kumar Singh, Proprietor of M/s Pooja Fashions, Kolkata, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(PORT)/AA/1847/2018 dated 04.10.2018, 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. S34M-380/2003-DBK dated 11.05.2004, passed by the Deputy Commissioner of Customs, Drawback, Custom House, Kolkata.

2. Brief facts of the case are that the Applicant filed drawback claim in respect of Shipping Bill No. 5002717 dated 03.03.1999 with the Deputy Commissioner of Customs, Drawback, Customs House, Kolkata, for a total amount of Rs.15,76,963/-, 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 Bill 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.15,76,963/- along with interest, which was confirmed by the original authority, vide the aforesaid Order-in-Original dated 11.05.2004. 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 realized the export proceeds in stipulated time period or such extended period as may be granted by the competent authority.

3. The revision application has been filed, mainly, on the ground that the export proceeds had not been realized and the Applicant had filed a money suit against the foreign buyer; that during the pendency of the money suit Appellate authority should have waited for the outcome thereof before deciding the Appeal.

4. Personal hearing was fixed on 02.07.2021, 28.07.2021 and 23.08.2021. None appeared on behalf of the Applicant on any of the above dates. A request for adjournment dated 22.07.2021 was received and in pursuance thereof the personal hearing was granted on 23.08.2021. No request for adjournment has been received thereafter. Respondent department, vide their letter dated 03.05.2019, has stated that they have no additional submissions to make and accordingly the case may be decided. Vide another letter dated Nil, received on 19.08.2021, the department pointed out that the exporter had applied for extension of period for realization of export proceeds for period up to 31.07.2000 and thereafter up to disposal of the case. No such extension has been granted by the RBI or the AD Bank. As sufficient opportunities have been granted, the case is being taken up for final decision, on the basis of facts available on record.

5.1 The Government has carefully examined the matter. The case of the Applicant is that they had not realized the export proceeds and they had preferred money suit against the buyer and till then the case should not have been decided by the Appellate


authority. Government observes that the export proceeds in the instant case have not been realized till date and this fact is also admitted by the Applicant in the Revision Application. Further, the Applicant has not submitted the 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. 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. In effect, after 22 years of exports neither the export proceeds have been realised nor any extension has been granted by the competent authority.

5.2 Further, the provisions of rule 16A(1) enabling recovery of drawback if the export proceeds are not realized within the period allowed under FEMA, including any extension of such period, is not merely a procedural requirement. 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. If the requirement of realization within prescribed period is not treated as a mandatory condition, the process of recovery shall remain an unending exercise and thereby render the provisions of Rule 16A(1) otiose. As such, the contention of the Applicant that the department should await the outcome of the money suit filed by him can not be accepted, as in such a case the Applicant

would keep enjoying the benefit of the drawback availed with no time frame for realisation of proceeds.

5.3 Thus, Government do not find any infirmity in the impugned Order-in-Appeal.

6. The revision application is rejected .



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Pramod Kumar Singh, Proprietor of
M/s Pooja Fashions,
36/32, Tollygunge, Circular Road,
Kolkata 700053

Order No. 158/21-Cus dated 25-8-2021

Copy to:

1. The Commissioner of Customs (Port), 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

ATTESTED

Gulshan Bhatia
25/8/2021
GULSHAN BHATIA
Superintendent