

REGISTERED  
SPEED POST



F.No.380/12/2019-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue... 13/9/21

Order No. 177/21-Cus dated 10-9-2021 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(Airport)/AA/562/2019 dated 23.07.2019, passed by the passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Commissioner of Customs (Airport & Admin.), Kolkata

Respondent : M/s Andritz Hydro Pvt. Ltd., Mandideep, Distt. Raisen (MP)..

**ORDER**

A Revision Application No.380/12/DBK/2019-RA dated 23.10.2019 has been filed by the Commissioner of Customs (Airport & Admin.) Kolkata, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/Cus(Airport)/AA/562/2019 dated 23.07.2019, passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has allowed the appeal of the M/s Andritz Hydro Pvt. Ltd., Mandideep, Madhya Pradesh (herein after referred to as the Respondent) against the Order-in-Original No. KOL/CUS/ACC/DC/63/2019 dated 30.03.2019 passed by the Dy. Commissioner of Customs, Drawback, Air Cargo Complex, Kolkata.

2. Brief facts of the case are that the respondent had filed a drawback claim in respect of Shipping Bill No. 1996980 dated 04.01.2018, with the Deputy Commissioner of Customs, Drawback, Air Cargo Complex, Kolkata, under Section 74 of the Customs Act, 1962, which was rejected on the ground that the identity of goods was not established to the satisfaction of Assistant/Deputy Commissioner of Customs since the goods were not examined by the Customs authorities at the time of exportation. Aggrieved, the Respondent filed an appeal before the Commissioner (Appeals) who vide the OIA dated 23.07.2019 allowed the appeal on the ground that drawback cannot be denied merely due to the reason that the goods were not examined by the Assistant/Deputy commissioner of Customs.

3. The revision application has been filed on the grounds that as per Section 74, if the Assistant or Deputy Commissioner of Customs is not satisfied that goods which

are imported are re-exported, the drawback is not admissible; and as the goods exported were never examined by the proper officer of Customs so the question of establishing identity does not arise at all.

4. Personal hearing, in virtual mode, was held on 09.09.2021. Sh. Milind Saraf, HOD Indirect Taxation, appeared for the Respondent and supported the order of Commissioner (Appeals). He also reiterated the contents of the cross objections dated 11.12.2019 and written submissions dated 19.08.2021. None appeared for the Applicant nor any request for adjournment has been received. Therefore, the case is being taken up for decision on the basis of records.

5.1 The Government has carefully examined the matter. It is observed that for admissibility of drawback under the provisions of Section 74 of the Customs Act, 1962, the following ingredients are to be satisfied :-

- i) The imported goods should be capable of being easily identified;
- ii) Duty of customs should be paid on importation and the imported goods should be exported within 2 years from the date of payment of duty on imported goods; and
- iii) The re-exported goods should be identified to the satisfaction of Assistant/Dy. Commissioner of Customs as the goods which were imported.

5.2 No doubts have been expressed either by the Dy. Commissioner or by the Commissioner (Appeals) regarding fulfillment of the above mentioned first two ingredients in this case. But the Dy. Commissioner has denied duty drawback for the reason that identity of the goods was not established to the satisfaction of the Dy.

Commissioner of Customs, which is a necessary condition for claim of drawback under Section 74(1)(a) of the Customs Act, 1962, since the goods were never examined by the Dy./Assistant Commissioner of Customs at the time of export. In the revision application, it has also been alleged that the Respondent was required to file the Shipping Bill for claiming drawback under Section 74 in a manual mode instead of an electronic Shipping Bill under EDI, as per the Public Notice No. 100/2018 dated 29.10.2018 issued by Kolkata Custom House and Public Notice No. 78/2017 dated 21.06.2017 issued by the Jawaharlal Nehru Custom House. Government observes that the Shipping Bill in the instant case is dated 04.01.2018 whereas the Public Notice issued by the Kolkata Custom House is dated 29.10.2018, i.e., after the date on which the Shipping Bill was filed. As regards the JNPT Custom House Public Notice, it is observed that the Public Notice is specifically applicable in the Custom House which issued it and a Public Notice issued by another Customs House cannot be used to deny substantive benefit to the Respondent herein. It is also undisputed that the Respondent had made all the required declarations on the face of Shipping Bill. The Shipping Bill was marked for inspection by the RMS and after inspection the Let Export Order was given by the proper officer of Customs. Once the proper officer gives the Let Export Order it is assumed that the declaration by the exporter was correct. It is also to be noted that since proper officer was aware that the export was under the claim of drawback under Section 74, he could have redirected the Shipping Bill for detailed examination, which was not done. Further, the Applicant has not produced any evidence, apart from the fact that the goods were not examined by the proper officer of customs, to prove that the identity of the goods was not established. On the other hand, the Commissioner (Appeals) has relied upon documentary and circumstantial evidence to hold that the goods

covered by the subject Shipping Bill were same as those imported earlier under the B/E No. 2062661 dated 12.06.2017. This includes the confirmation by the foreign supplier that they had received back all the materials supplied to the importer (i.e. the Respondent herein) for installation and commissioning purpose.

5.3 In these peculiar facts and circumstances, the Government does not find any infirmity in the impugned OIA.

6. In view of the above, the Revision Application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

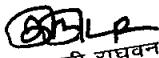
The Commissioner of Customs (Airport & Admin.),  
15/1 Strand Road, Custom House,  
Kolkata, 700001.

ORDER NO.177/21-Cus dated 10-9-2021

Copy to:-

1. M/s Andritz Hydro Pvt Ltd, D, 17, MPAKVN Industrial Area, Mandideep, District Raisen 462046, Madhya Pradesh.
2. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata, 700001.
3. PS to AS(RA)
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5. Spare Copy

ATTESTED

  
(लक्ष्मी राघवण)  
(LAKSHMI RAGHAVAN)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi