

SPEED POST



F.No. 375/134/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...15/09/21

Order No. 183/21-Cus dated 14/09/2021 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. LUD-CUS-001-APP-1219-2018 dated 01.06.2018, passed by the Commissioner, Customs and CGST (Appeals), Ludhiana.

Applicant : M/s Shree Atam Vallabh Industrial Corporation, Ludhiana.

Respondent : The Commissioner of Customs, Ludhiana.

ORDER

Revision Application No.375/134/DBK/2018-RA dated 29.11.2018 has been filed by M/s Shree Atam Vallabh Industrial Corporation, Ludhiana, (hereinafter referred to as the Applicant) against the Orders-in-Appeal No. LUD-CUS-001-APP-1219-2018 dated 01.06.2018, passed by the Commissioner, Customs & CGST (Appeals), Ludhiana. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal of the Applicant on the ground that the Applicant had not realized the export proceeds in the stipulated time period or such extended period as allowed by the Reserve Bank of India.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of 03 Shipping Bills with the Deputy Commissioner of Customs, Drawback, CFS, OWPL, Ludhiana, for a total amount of Rs.7,56,175/-, 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, in terms of Rule 16A of the Customs Central Excise Duties and Service Tax Drawback Rules, 1995, a show cause notice dated 25.07.2013 was issued to the Applicant for recovery of drawback availed amount along with interest, out of which a demand of Rs. 4,65,290/- was confirmed by the adjudicating authority vide Order-in-Original No. 75/DC/BRC/OWPL/LDH/2015 dated 30.05.2015. Aggrieved, the Applicant filed 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 but within the extended period as they had requested the bank for

extension of time period; that under Rule 16A (4) the amount of drawback recovered from the exporter is to be re-paid if the exporter produces evidence about such realization within one year from the date of such recovery.

4. Personal hearing, in virtual mode, was held on 14.09.2021. Sh. R.K. Hasija, Advocate appeared for the Applicant and reiterated the contents of the revision application and the written submissions filed on 13.09.2021. Sh. M.K. Meena, Superintendent appeared on behalf of the Respondent department and supported the orders of lower authorities.

5. Condonation of delay has been sought on the grounds that the Applicants had, in the interim, bonafide pursued remedy in a wrong forum, i.e., CESTAT. Delay is condoned.

6.1 The Government has carefully examined the matter on merits. 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. However, the Applicants had applied for condonation of delay with the Reserve Bank of India/AD Bank for the late realization of export proceeds and that the BRCs have been issued thereafter. Thus, it appears to be the case of Applicants that since the BRCs have been issued after the request for extension of time was made, it should be presumed that such extension had been granted. The Government observes that the issuance of BRCs and the extension of time period for the realization of export proceeds are two separate issues. Once the export proceeds are realized, it is obligatory on the part of the Bank to issue the BRCs and upload the same on DGFT site irrespective of the fact whether the same were realized within the stipulated/extended time period or not. The extension of

the time period for the realization of export proceeds is specifically granted by the Reserve Bank of India/AD bank on a case to case basis, but in the instant case no proof has been submitted that the RBI or the AD Bank had actually done so and regularized the matter. As such, the presumption of the Applicant that issuance of BRCs means the extension of time period automatically is not correct. 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.

6.2 It is also the contention of the Applicant that since the export proceeds have been realized, albeit after the period specified in this behalf, therefore, as per Rule 16A (4) *ibid*, the drawback recovered, is required to be repaid. The Government observes 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.

6.3 The judgment in the case of *Knitwin International vs. Dy. Commissioner of Customs* {2018 (360) ELT 239 (Mad.)} relied upon by the Applicant does not support their case in as much as the Hon'ble High Court has clearly held

that "if the petitioner produces evidence to show that the sale proceeds have been realized within the time provided by the RBI,, the petitioner would be entitled for being repaid the amount, so recovered." In the present case, the sale proceeds have not been realized within the time provided by the RBI. Similarly, the judgment in the case of Handicrafts & Handloom Export Corps of India Ltd. {2018 (359) ELT 170 (Mad.)}, also cited by the Applicants, is not applicable in the facts of the present case.

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 Shree Atam Vallabh Industrial Corporation,
Industrial Phase, 49/1-B, Kabir Nagar,
Daba Road, G.T. Road,
Ludhiana 141001.

Order No. 183/21-Cus dated 14/09/2021

Copy to:

1. Commissioner of Customs , Container Freight Station, OWPL, C,-205, Phase – V, Focal Point Bhandhari Kalan, Ludhiana – 141010.
2. Commissioner (Appeals), Goods and Services Tax, F-Block, Rishi Nagar, Ludhiana.
3. Sh. R.K. Hasija, Advocate, GST Experts, SCO#41, FF Swastik Vihar, Sector – 5, MDC Panchkula – 134 114.
4. PS to AS(RA)
5. Guard File.
6. Spare Copy.

Attested


(LAKSHMI RAGHAVAN)
(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