

F.No. 380/06/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... 18/12/2020

Order No. 20/20-Cus dated 18-12-2020 of the Government of India passed by Sh. Sandeep Prakash, Principal Commissioner & 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)/AA/1613/2017 dated 01.11.2017, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Commissioner of Customs(Preventive), Kolkata

Respondent : M/s Eastern Traders

ORDER

A Revision Application No.380/06/DBK/18-RA dated 01.03.2018 has been filed by Commissioner of Customs (Preventive) Kolkata, (hereinafter referred to as the applicant) against the OrderNo.KOL/Cus(CCP)/AA/1613/2017 dated 01.11.2017, 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 Eastern Traders, (herein after referred to as the respondent) to the extent mentioned therein and modified the Order-in-Original No. 04/DC(DBK)/2017-18 dated 10.04.2017 on the ground that the respondent had realised the export proceeds and has produced proof thereof. The drawback claims of the respondent have been allowed in appeal after deducting the proportionate drawback amount for the short realisation of remittances.

2. Brief facts of the case are that the respondent filed drawback claim in respect of 36 Shipping Bills with the Dy. Commissioner of Customs, Drawback (Port), Kolkata. The said claim were sanctioned by the jurisdictional Dy. Commissioner of Drawback, Custom House, Kolkata. However, on scrutiny of the XOS statement, it was observed by the applicant that the respondent had failed to submit the proof to the effect that the export proceeds in respect of 36 Shipping Bills in dispute had not been realized in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995. Accordingly, a show cause notice was issued to the respondent for the recovery of drawback availed amount of Rs.1,58,00,756/- along with interest. Out of this, demand of Rs. 23,79,189/- was confirmed by the Dy. Commissioner of Customs, Drawback, Custom House, Kolkata vide order dated 13.01.2017. Aggrieved, the respondent filed an appeal before the Commissioner (Appeals) who passed the Order as above, allowing the drawback amount to the extent BRC's evidencing that the export proceeds had been realised were submitted. The Commissioner (Appeals) has also recorded that required documents were submitted well before the O-I-O dated 10.04.2017 was issued but the original

authority proceeded ex-parte ignoring the same and concluded that no/part payment had been realized.

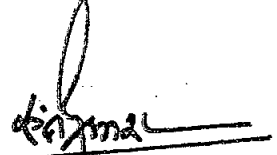
3. The instant revision application has been filed mainly on the ground that the applicant neither produced BRC nor negative statement in spite of lapse of stipulated time allowed under FEMA;99.

4. Personal hearing held on 17.12.2020 was attended by Sh. Arijit Chakrabarti, Advocate, on behalf of the respondent. He reiterated the contents of the written submissions dated 01.06.2018.. He also contended that the department in their revision application has nowhere pointed out any illegality or impropriety in Commissioner (Appeals)'s Order. Therefore, RA is a proforma application and should be rejected. Since, no one appeared for the applicant and no request for any other date of hearing has been received, the case is being taken up for final disposal.

5. The instant RA has been filed with a delay of 73 days. Administrative exigency has been pleaded for condonation. Delay is condoned.

6.. Government has examined the matter on merits. It is observed that the revision application has been filed mainly on the ground that the applicant has not produced evidence to the effect that the export proceeds have been realized in spite of the lapse of legally stipulated time. To the contrary, Commissioner (Appeals) has not only clearly documented the BRCs produced but has also recorded that the required documents were produced before the original authority well before the OIO dated 10.04.2017 was passed. Government observes that the instant Revision Application does not allege that the BRCs are not relevant or were unverified. It is also not disputed that these were produced before the original authority at adjudication stage. As such, the impugned OIA does not merit any interference.

7. Accordingly, the revision application is rejected .



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of Customs (Preventive),
15/1 Strand Road, Custom House,
Kolkata - 700001.

Order No. 20/20-Cus dated 18-12-2020

Copy to:

1. M/s Eastern Traders, 163/B, M.G. Road, Kolkata -700007.
2. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata- 700001.
3. Deputy Commissioner, (Drawback, Preventive), 15/1 Strand Road, Custom House, Kolkata - 700001.
4. PS to AS(RA)
- ✓ 5. Guard File.
6. Spare Copy

Attested



(Nirmala Devi)

Section Officer (REVISION APPLICATION)