

F.No. 375/10/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... 01/10/21

Order No. 202/21-Cus dated 01-10-2021 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/1966/2018 dated 30.11.2018, passed by the Commissioner (Appeals), Customs & CGST, Ludhiana.

Applicant : M/s Blue Star Traders, Ludhiana

Respondent : Commissioner of Customs, Ludhiana

ORDER

Revision Application No.375/10/DBK/2019-RA dated 06.03.2019 has been filed by M/s Blue Star Traders, Ludhiana (hereinafter referred to as the Applicant) against the Order-in-Appeal LUD-CUS-001-APP/1966/2018 dated 30.11.2018, passed by the Commissioner (Appeals), Customs & CGST, Ludhiana. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal of the Applicant, against the order- in-Original No. 81/DC/BRC/OWPL/LDH/2015 dated 30.05.2015, passed by the Deputy Commissioner of Customs, CFS, OWPL, Ludhiana.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of 09 Shipping Bills, with the Deputy Commissioner of Customs, Drawback, CFS, OWPL, Ludhiana, for a total amount of Rs. 27,10,600/-, 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 said Shipping Bills had been realized, in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Accordingly, show cause notice was issued to the Applicant for a demand of Rs. Rs. 27,10,600/-, out of which a demand of Rs. 9,31,951/- was confirmed by the original authority, vide aforesaid Order-in-Original dated 30.05.2015. Aggrieved, the Applicant filed an 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; that the payment was delayed because of certain unavoidable circumstances; and that under Rule 17 (power to relax) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, Government has the power to relax the provisions of the Drawback Rules, if the exporter has failed to comply with any of the provisions of these rules, for the reasons beyond his control.

4. Personal hearing, in virtual mode, was held on 01.10.2021. Sh. Ravi Chopra, Advocate, appeared on behalf of the Applicant and requested that the written

submissions filed on 01.10.2021 by email may be taken on record. Sh. Chopra reiterated the contents of the revision application and the written submissions dated 01.10.2021. None appeared for the Respondent. Further, no request for adjournment has also been received. Therefore, 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. It is observed that the Applicant have, in the revision application as well as in the written submissions dated 01.10.2021, accepted that the export proceeds against the relevant shipping bills were not realized within the stipulated time period. Further, though it is claimed in the RA that the Applicant had applied for extension of time of six months with the Reserve Bank of India but, at the same time, it is admitted that this request was not pursued. Thus, admittedly, the extension of time was not granted by the RBI. The 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.

5.2 Applicant has contended that the Government has the power to condone the delay in realizing the export proceeds in terms of Rule 17 of the Customs, Central Excise & Service Tax Drawback Rules, 1995. Government observes that Rule 17 authorizes the Central Government to relax any provision of the Drawback Rules, 1995, provided the Central Government is satisfied that the exporter or his authorized agent has failed to comply with the Drawback Rules, 1995 for the reasons which was beyond their control. The realization of export proceeds and the time limit therefore are governed under the Foreign Exchange Management Act, 1999 and the Rules/Regulations made thereunder and not under the Customs Act, or the Drawback Rules. Therefore, any relaxation in provisions relating to realization

of export proceeds can be considered by the authority competent to do so, only under the provisions of FEMA and not under the Drawback Rules. As such, this contention of the Applicant does not have any merit.

6. 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 Blue Star Traders,
E-560, Phase VI, Focal Point,
Ludhiana 141010

Order No. 202/21-Cus dated 01-10-2021

Copy to:

1. Commissioner of Customs , Container Freight Station, OWPL, C,-205, Phase – V, Focal Point Bhandhari Kalan, Ludhiana – 141010.
2. Commissioner (Appeals), Customs & CGST, F-Block Rishi Nagar, Ludhiana.
3. Deputy Commissioner of Customs , Container Freight Station, OWPL, C,-205, Phase – V, Focal Point Bhandhari Kalan, Ludhiana – 141010.
4. Sh. Ravi Chopra, Advocate, 444, G.T.B. Nagar, Jalandhar – 144 003.
5. PS to AS (RA).
6. ✓ Guard File.
7. Spare Copy.

Attested

11/10/21
Sandeep Prakash