

SPEED POST



F.No. 372/25/DBK/2021-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 05/7/22

Order No. 210 /22-Cus dated 05-07-2022 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. 84/PAT/CUS/APPEAL/2020-21 dated 26.02.2021, passed by the passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Patna.

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

Respondent : The Commissioner of Customs (Preventive), Patna.

**ORDER**

A Revision Application No.372/25/DBK/2021-RA dated 30.12.2021 has been filed by M/s Andritz Hydro Pvt. Ltd., Mandideep, Distt. Raisen (MP), (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 84/PAT/CUS/APPEAL/2020-21 dated 26.02.2021, passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Patna. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal filed by the Applicant, against the Order-in-Original No. 05-CUS/DBK/DC/RXL/2020 dated 13.04.2020, passed by the Dy. Commissioner of Customs, LCS, Raxaul.

2. Brief facts of the case are that the Applicant had imported Generator Shaft, Turbine Shaft, Inter gate Shaft etc. from China and paid duty on them accordingly. The goods are thereafter stated to have been warehoused and, subsequently, exported to Nepal, vide Shipping Bill Nos.1220020 dated 29.11.2017 and 1220035 dated 29.11.2017, from LCS, Raxaul. The Applicant filed two drawback claims, under Section 74 of the Customs Act, 1962, before the Dy. Commissioner of Customs, DBK, Kolkata, which were returned in original by the Kolkata Customs on the ground that the exports had taken place under the jurisdiction of Patna Customs Commissionerate. Later on, the Applicant filed the drawback claims with the Deputy Commissioner of Customs, LCS, Raxaul, for a total amount of Rs. 67,42,143/-, under Section 74 of the Customs Act, 1962, which were rejected on the ground that the claims were barred by limitation and on the grounds that the identity of goods could not be established as the consignments were not opened for physical examination. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed, mainly, on the grounds that the Commissioner (Appeals) did not consider their submissions raised during the course of personal hearing; that the drawback claims were within condonable period and, hence, were not time barred; and that the identity of goods was duly established.

4. Personal hearing was held on 01.07.2022. Sh. D.S. Rana, Advocate appeared for the Applicant and reiterated the contents of the revision application. He also filed additional submissions dated 01.07.2022. No one appeared on behalf of the Respondent department nor any request for adjournment has been received. Hence, the case is taken up for final disposal.

5.1 Government has carefully examined the matter. It is observed that, in terms of Rule 5 of the Re-export of Imported goods (Drawback of Customs Duties) Rules, 1995, a claim for drawback shall be filed within a period of 03 months from the date on which an order permitting clearance and loading of goods for exportation under Section 51 is made by proper officer of Customs. Further the Assistant/Deputy Commissioner of Customs may extend the aforesaid period of three months by a period of three months and the Commissioner of Customs or Principal Commissioner of Customs may further extend the period by a period of six months. Thus, a drawback claim, under Section 74 *ibid*, can be filed within a period 01 years including the extended period. In the instant case, the order permitting the export was made on 30.11.2017, in both the cases, whereas the claims were filed before the proper officer only on 31.12.2018, i.e. much beyond the normal period of limitation of 03 months. No application for extension of time period appears to have been filed. Further, even if such an application were to have been filed, the delay is beyond the period that could have been extended by the appropriate authorities.

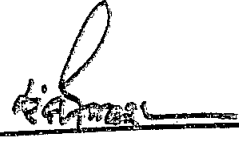
5.2 The Applicant has contended that the claim was filed at the wrong forum and, therefore, the period elapsed in pursuing the claim at wrong forum should not be counted towards limitation. However, no details in this regard are forthcoming. The Applicant has neither substantiated the date of submission at Kolkata Customs nor the date of return by Kolkata Customs. In the OIA, a claim is forthcoming that the drawback claims were filed on 20.11.2018 before Kolkata Customs but there is no mention of date of return. Even if the date of filing before Kolkata Customs is presumed as 20.11.2018, as claimed, it is evident that the claim was filed much

beyond the normal period of limitation even at Kolkata. As such, this plea is also of not any assistance to the Applicant.

5.3 The case laws relied upon have no applicability in the facts of the case.

5.4 In view of the above, it is held that the claims were correctly rejected as time barred. In this light, other contentions of the Applicant on the merits of the case need not be dealt with.

6. The revision application is, accordingly, rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Andritz Hydro Pvt Ltd,  
D - 17, MPAKVN Industrial Area,  
Mandideep, District Raisen 462046,  
Madhya Pradesh.

ORDER NO.210/22-Cus dated 05-07-2022

Copy to:-

1. The Commissioner of Customs (Preventive), Central Revenue Building, 5<sup>th</sup> floor, Birchand Patel Path, Patna 800001.
2. The Commissioner of CGST, Central Excise and Customs (Appeals), Veerchand Patel Path, Patna -800001
3. Sh. Puneet Bansal and Dharmendra Rana, (Advocates), Nitya Tax Associates, B-3/58 Safdarjung Enclave, new Delhi 110092.
4. P.S. to A.S.
- ✓ 5. Guard File
6. Spare Copy

ATTESTED



(लक्ष्मी राघवन)  
(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