

F. No. 375/126-129/DBK/2019-RA
F.No. 375/132/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.....14-10-21

Order No.219-223 /21-Cus dated 14-10-2021 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 Applications filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 219-223 (SM)CUS/JPR/2018 dated 01.08.2018, passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur.

Applicants : 1. M/s Aztech Shiva Handicrafts & Arts Pvt. Ltd., Jodhpur.
2. M/s Noble Art & Craft House, Jodhpur.
3. M/s Cross Country, Jodhpur.
4. M/s Art Centre, Jodhpur.
5. M/s Mec Shot Blasting Equipment Pvt. Ltd., Jodhpur.

Respondent : Commissioner of Customs, Jodhpur.

ORDER

Five revision applications, bearing nos. 375/126-129/DBK/2018-RA dated 01.11.2018 and 375/132/DBK/2018-RA dated 15.11.2018 have been filed by M/s Aztech Shiva Handicrafts & Arts Pvt. Ltd., Jodhpur (Applicant-1), M/s Noble Art & Craft House, Jodhpur (Applicant-2), M/s Cross Country, Jodhpur (Applicant-3), M/s Art Centre, Jodhpur (Applicant-4) and M/s Mec Shot Blasting Equipment Pvt. Ltd., Jodhpur (Applicant-5), respectively, against the Order-in-Appeal No. 219-223 (SM)CUS/JPR/2018 dated 01.08.2018 passed by the Commissioner (Appeals), Customs & CGST, Jaipur. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has disposed of the appeals of the Applicants against the Orders-in-Original No. 572/2016-17 dated 31.01.2017, 667/2016-17 dated 31.03.2017, 624/2016-17 dated 28.02.2017, 666/2016-17 dated 31.03.2017 and 611/2016-17 dated 22.02.2017.

2. Brief facts of the case are that the Applicants filed drawback claims with the jurisdictional Customs authorities and received a total drawback amount of Rs.6,01,978/-. Subsequently, on scrutiny, it was found that the Applicants had failed to submit the proof to the effect that the export proceeds in respect of the relevant Shipping Bills had been realized. Accordingly, show cause notices were issued in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, to the Applicants for the recovery of drawback availed amount of Rs. 6,01,978/- along with interest, out of which the demand of Rs. 52,863/-, Rs. 95,216/-, Rs. 20,202/-, Rs. 38,354/- and Rs. 1,16,346/- was confirmed by the original authority, vide aforesaid Orders-in-Original against Applicant-1, Applicant-2, Applicant-3, Applicant-4 and Applicant-5, respectively. Aggrieved, the Applicants filed appeals before the Commissioner (Appeals), who vide the OIA dated 01.08.2018, rejected the appeals as the Applicants herein failed to submit BRCs evidencing realisation of export proceeds.

3. The revision applications have been filed, mainly, on the ground that the goods were exported on basis of invoices submitted to Customs and full remittance from overseas buyer through proper banking channel have been received.

4. Personal Hearing, in virtual mode, was held on 13.10.2021. Sh. O.P. Agarwal, Chartered Accountant, attended the hearing on behalf of the Applicants and admitted that no BRCs are available in respect of Applicant-1, 3 and 5. In respect of Applicant -4, 2 BRCs in respect of Shipping Bill No. 4728612 dated 30.03.2013 have been placed on record. Upon being asked that the dates of realisation 15.04.2011 and 03.08.2011 are prior to the date of Shipping Bills, Sh. Agarwal submitted that

these could be verified. In respect of Applicant-2, BRCs covering all the 05 Shipping Bills have been received vide email dated 13.10.2021. No one attended the hearing on behalf of the respondent department nor a request for adjournment has been received.

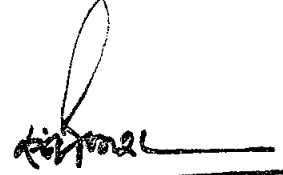
5.1 The Government has carefully examined the matter. The revision applications have been filed canvassing that the export proceeds had been realized well within stipulated period of time. However, it has been admitted by the Applicants-1, 3 and 5 during the course of personal hearing that the BRCs in respect of the impugned Shipping Bills are not available. 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, the BRCs evidencing realization of export proceeds are not available. Therefore, the impugned order of Commissioner (Appeals) does not merit any interference so far as it pertains to Applicants - 1, 3 and 5.

5.2 As regard Applicant -2, five BRCs in respect of Shipping Bills No. 6081173 dated 02.11.2011, No. 5788968 dated 11.10.2011, No. 5789639 dated 11.10.2011, No. 3035803 dated 14.12.2012 and No. 3247811 dated 28.12.2012 have been submitted by the Applicant. It is observed that all the Shipping Bills pertain to the year 2011 and 2012, however, the date of transaction for the realization of export proceeds in the BRCs is of the year July, 2018 i.e., the export proceeds were not realized within the stipulated time period. Further, no proof has been submitted to the effect that any extension was granted by the Reserve Bank of India for the delayed realization of export proceeds either before the Commissioner (Appeals) or even at this stage. 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. Therefore, the impugned order of Commissioner (Appeals) does not merit any interference to this extent. In the respect of SB No. 6081173 dated 02.11.2011, the BRC dated 16.02.2012 has been produced. Therefore, in respect of the SB No. 6081173 dated 02.11.2011, the matter is liable to be remanded to the original authority for verification and decision afresh.

5.3 As regard Applicant -4, two BRCs in respect of Shipping Bill No. 4728612 dated 30.03.2013 have been submitted by the Applicant. It is observed and also admitted by the Applicant-2 during the course of personal hearing that the date of realization of export proceeds as reflected in the BRCs are prior to date of Shipping Bill. No explanation is forthcoming in this regard. However, it would be in the

interest of justice that the matter is remanded to the original authority to verify the BRCs produced and subject to such verification decide the matter afresh, as per law.

6. In view of the above, the revision applications filed by Applicants - 1, 3, and 5 are rejected and revision application filed by Applicant -2 and 4 are allowed, to the extent indicated above, by way of remand to the original authority, with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. M/s Aztech Shiva Handicrafts & Arts Pvt. Ltd.,
E 589-595, EPIP, Boranada Industrial Area,
Jodhpur (Rajasthan) –
2. M/s Noble Art & Craft House,
976/741, 8th Street, MIA Basni Phase -II,
Jodhpur (Rajasthan) –
3. M/s Cross Country,
Khasra No. 1087/740, Opp. Rajesh Motor,
Behind Krishna Dharam Kanta, Basni-II,
Jodhpur (Rajasthan) –
4. M/s Art Centre,
B-14, Opp. K.N. Hall, Rai Ka Bagh,
Jodhpur (Rajasthan) –
5. M/s Mec Shot Blasting Equipments Pvt. Ltd.,
E-279, MIA Phase-II Basni,
Jodhpur (Rajasthan) –


Order No. 219-223/21-Cus dated 14-10-2021

Copy to:

1. The Commissioner of Customs, Jodhpur, New Central Revenue Building,
Statue Circle, C-Scheme, Jaipur – 302 005.
2. The Commissioner (Appeals), Central Excise & CGST, New Central
Revenue Building, Statue Circle, C Scheme, Jaipur-302 005.
3. Sh. O.P. Agarwal, Chartered Accountant, 56, Section 7, N. Power House
Road, Jodhpur (Rajasthan) – 342003.

4. PA to AS(RA).
✓ 5. Guard File.

ATTESTED



आशीष तिवारी / ASHISH TIWARI, I
सहायक, आयुक्ता / Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi