

REGISTERED
SPEED POST



F.No. 375/02/DBK/2021-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 15/7/22

Order No. 229/22-Cus dated 15-07-2022 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 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CC(A)Cus/D-I/Export/NCH/197/2020-21 dated 20.07.2020, passed by Commissioner of Customs (Appeals), New Custom House, New Delhi.

APPLICANT : M/s. NMR Industries, New Delhi.

RESPONDENT : The Commissioner of Customs (Export), Air Cargo, New Delhi.

ORDER

Revision Application No.375/02/DBK/2021-RA dated 11.01.2021 has been filed by M/s. NMR Industries, New Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D- I/Export/NCH/197/2020-21 dated 20.07.2020, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi. Commissioner (Appeals), vide the impugned Order-in-Appeal, has partly allowed the appeal of the Applicant, against the Order-in-Original No.174/AP/ACE/DBK/2017 dated 31.10.2017, passed by the Assistant Commissioner of Customs, Air Cargo Export, New Custom House, New Delhi.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of 06 Shipping Bills, with the jurisdictional Customs authorities, for a total amount of Rs.670,454/-, which was sanctioned. Subsequently, on scrutiny, 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 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 dated 30.06.2017 was issued to the Applicant and a demand of Rs.4,54,844/- (in respect of 04 Shipping Bills), out of total demand of Rs.6,70,454/-, was confirmed, along with the applicable interest, by the original authority, vide the aforesaid Order-in-Original dated 31.10.2017. A penalty of Rs.45,844/- was also imposed under Section 114 (iii) of the Customs Act, 1962. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), who vide the impugned OIA confirmed the demand of Rs. 4,54,844 /- and set aside the order

of dropping of demand for remaining amount of Rs. 2,15,610/-. Further, the demand of interest of Rs. 49,336/- in respect of one Shipping Bill was set aside but the penalty imposed on the Applicant under Section 114 (iii) was upheld.

3. The revision application has been filed, mainly, on the grounds that the subject remittances had been received in full; and that the Bank has amended the Shipping Bills in the BRCs on 14.12.2017 and uploaded the amended BRCs on the DGFT website.

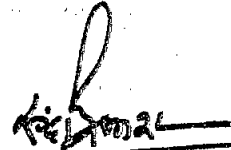
4. Personal hearing was fixed on 15.06.2022, 01.07.2022 and 15.07.2022. In the personal hearing held, in virtual mode, on 15.07.2022, none appeared for the Applicant. However, a letter dated 14.07.2022 has been received from the Applicant requesting that the matter may be decided on the basis of reply and DGFT certificates. Sh. Ajay Kumar Sahu, Superintendent supported the order of Commissioner (Appeals).

5. The Government has examined the matter carefully. It is contended by the Applicant that they had realized the export proceeds in full. On perusal of the BRCs submitted by the Applicant in respect of Shipping Bill Nos. 1433135 dated 26.05.2015, 1439192 dated 26.05.2015, 1580076 dated 03.07.2015, 1731406 dated 12.07.2015, 2567404 dated 23.08.2015 and 8904270 dated 09.04.2015, it is evident that the export proceeds were realized on 07.09.2017 & 30.08.2017, 30.08.2017, 30.08.2017 & 25.08.2017, 25.08.2017, 07.09.2017 and 07.09.2017, respectively. Thus, Commissioner (Appeals) has correctly observed that in all these cases realization was delayed beyond the prescribed period. Government observes that, in terms of the

आयुक्त निदेशक (अपील) के कार्यालय
आयुक्त निदेशक (अपील) के कार्यालय
आयुक्त निदेशक (अपील) के कार्यालय
आयुक्त निदेशक (अपील) के कार्यालय
आयुक्त निदेशक (अपील) के कार्यालय

second proviso to Section 75(1) of the Customs Act, 1962, where any drawback has been allowed on any goods and sale proceeds in respect of such goods are not received within the time period allowed under FEMA, 1999, such drawback shall be deemed never to have been allowed. Further, as per 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. 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, there is no doubt that the drawback paid to the Applicant is recoverable along with applicable interest. As such, there is no infirmity in the impugned Order of Commissioner (Appeals).

6. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s NMR Industries,
Plot No. 4, Office No. A116,
1st floor, R.G. City, Center Motia Khan,
New Delhi 110085

Order No. 229/22-Cus dated 15-07-2022

Copy to:-

1. The Commissioner of Customs (Export), Air Cargo, New Custom House, New Delhi-110037.
2. The Commissioner of Customs (Appeals), New Custom House, New Delhi 110037.
3. P.S TO A.S (RA)
4. Guard File
5. Spare Copy

Attested
2022/07/15
Additional Secretary to the Government of India
Department of Revenue
Ministry of Finance
Room No. 201, 6th Floor, B-Wing
12, Raisa Vihar Building, New Delhi-110002