

REGISTERED  
SPEED POST



F.No. 375/135/DBK/2018-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. 22-10-21

Order No. 233/21-Cus dated 21-10-21 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.CC(A)CUS/D-II/ICD-TKD-EXPORT/1986/2018 dated 13.08.2018, passed by the Commissioner of Customs (Appeals), Delhi.

Applicant : M/s Rangoli International Pvt Ltd., New Delhi.

Respondent : Commissioner of Customs (Export), ICD, Tughlakabad, Delhi.

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**ORDER**

A Revision Application No.375/135/DBK/2018-RA dated 30.11.2018 has been filed by M/s Rangoli International Pvt. Ltd., New Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No.CC(A)CUS/D-II/ICD-TKD-EXPORT/1986/2018 dated 13.08.2018, passed by the Commissioner of Customs (Appeals), New Delhi. Commissioner (Appeals) vide the impugned Order-in-Appeal has upheld the Order-in-Original No. 81/2016 dated 17.08.2016, passed by the Assistant Commissioner of Customs (BRC Cell), ICD, TKD, Exports, New Delhi, confirming the recovery of Rs. 43,03,415/- along with interest against wrongly sanctioned drawback of duty in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995. A penalty of Rs. 43,03,415/- has also been imposed under Section 114/114 AA of the Customs Act, 1962.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of several Shipping Bills with the jurisdictional Customs authorities, and received a drawback amount of Rs.43,03,415/-. However, 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 relevant Shipping Bills had been realized. Accordingly, show cause notice dated 29.04.2015 was issued in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, to the Applicant for the recovery of drawback availed amount of Rs. 43,03,415/- along with interest, which was confirmed by the original authority, vide aforesaid Order-in-Original dated 17.08.2016. Penalty, as above, was also imposed. 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 out of the 10 Shipping Bills in dispute, the Applicant is in possession of 3 BRCs; that the Applicant being a status holder is entitled to write off the outstanding export proceeds up to 10% as per clause 2(b) of RBI Circular No. 88 dated 12.03.2013; and therefore on a conjoint reading of Rule 16A(5) *ibid* and the RBI Circular dated 12.03.2013, it is amply clear that the Applicant can write off "the unrealised portion of drawback". Further, the penalty is not imposable as the export proceeds were not realized due to any lapse on the part of the Applicant.

4. Personal hearing, in virtual Mode, was held on 20.10.2021. Ms. Surabhi Sinha, Advocate, appeared for the Applicant and reiterated the contents of the revision application. She highlighted that the case involves remittances against 10 Shipping Bills, out of which BRCs in respect of 03 Shipping Bills have been placed on record. Upon being asked, Ms. Sinha submitted that the proceeds have been realised beyond the stipulated period in these 03 cases, which has not been regularised by the competent authority. She stated that a similar case of the same Applicant was decided by the Government, vide Order No. 03/2020-Cus dated 01.01.2020, against which a Writ Petition No. 6207/2020 has been preferred by them before the Hon'ble Delhi high Court. Upon being asked, Ms. Sinha submitted that no stay or interim directions; have been issued by the Hon'ble High Court in the matter. No one attended the hearing on

behalf of the respondent department nor a request for adjournment has been received.

5.1 Government has examined the matter carefully. The Applicant's case appears to be that in 03 cases the remittance has been received whereas in respect of balance 07 cases they are entitled to write off the outstanding export proceeds. Hence drawback is not recoverable from them.

5.2 In respect of 03 Shipping Bills, it is contended by the Applicant that they had realized the export proceeds but it is also admitted that the export proceeds were not realized within the stipulated time period and that the delayed realization has not been regularized by the RBI/AD Bank. Government observes that, in terms of the 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 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. 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, there is no doubt that the Applicant is not entitled for drawback corresponding to the export proceeds that were not realized ~~within~~ within the stipulated period. As such,

there is no infirmity in the orders of the authorities below as regard 03 Shipping Bills are concerned.

5.3 The RBI Circular No.03 dated 22.07.2010 has enabled the exporter to write-off the export proceeds not realised subject to "surrender of incentives first to "write off" ". Thus, the surrender of incentives, i.e., drawback, in this case, is a pre-requisite for write off. The contention that pursuant to write off the incentive is also written off amounts to putting the cart before the horse. The Applicant has also sought to take shelter of sub-rule (5) of Rule 16A, inserted vide Notification No. 30/2011-Customs (NT) dated 11.04.2011. The said sub rule (5) reads as under :

*" Where sale proceeds are not realised by an exporter within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but such non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer, the amount of drawback paid to the exporter or the claimant shall not be recovered."*

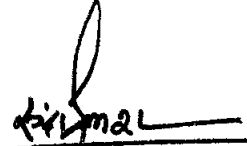
Thus, for drawback to be not recovered by virtue of Rule 16A(5), all the following conditions need to be fulfilled: (i) Non realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India under an insurance cover; and (ii)

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the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits; and (iii) the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer. In the present case, there is nothing on record to establish that all of these conditions are fulfilled. As such, the present contention of the Applicant in respect of balance 07 Shipping Bills is also not acceptable.

5.4 As brought out hereinabove, the Applicant has violated the provisions of Section 75 of the Customs Act, 1962 and the rules made thereunder. Hence, the penalty has been rightly imposed by the lower authorities.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

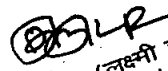
M/s Rangoli International Pvt. Ltd, 9-H,  
9<sup>th</sup> floor, Hansalaya Building,  
15 Barakhamba Road,  
New Delhi 110001.

Order No. 233/21-Cus dated 21-10-2021

Copy to:

1. The Commissioner of Customs (Appeals), New Custom House, Delhi-110037.
2. The Commissioner of Customs (Exports), ICD, Tuglakabad, New Delhi 110020
3. Sh. K.K. Anand, Advocate, A-103, Defence Colony, New Delhi 110024.
4. PS to AS(RA)
5.  Guard File.
6. Spare Copy

ATTESTED

  
(Lakshmi Raghavan)  
अनुपाल अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली - 110001