

F.No. 375/24/DBK/2019-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHICAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 22/10/21

Order No. 235/21-Cus dated 22.10-2021 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-EXCUS-001-APP-2114-2018 dated 19.02.2019, passed by the Commissioner (Appeals), Customs & CGST, Ludhiana.
- Applicant : M/s Anand Concast Limited, Ludhiana
- Respondent : Commissioner of Customs, Ludhiana

ORDER

Revision Application No.375/24/DBK/2019-RA dated 16.04.2019 has been filed by M/s Anand Concast Limited, Ludhiana, (hereinafter referred to as the Applicant) against the Order-in-Appeal LUD-CUS-001-APP-2114-2019 dated 19.02.2019, 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.38/DC/BRC/LDH/2016 dated 22.03.2016 passed by the Deputy Commissioner of Customs, CFS, OWPL, Ludhiana.

2. Brief facts of the case are that the Applicant filed drawback claim in respect of 01 Shipping Bill i.e. Shipping Bill No. 5441055 dated 15.05.2013, with the Deputy Commissioner of Customs, Drawback, CFS, OWPL, Ludhiana, for a total amount of Rs.5,25,408/-, 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 Bill 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 04.08.2015 was issued to the Applicant and the demand of Rs. 5,25,408/- was confirmed by the original authority, vide aforesaid Order-in-Original 22.03.2016. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected on the ground that the export proceeds were realized beyond the stipulated time period.

3. The revision application has been filed, mainly, on the ground that the export proceeds had been realized, though the same was not received within the stipulated time period. The payment was delayed because the foreign buyer did not release the payments due to their poor financial condition. Thus, no drawback is recoverable in the present case considering that actual export of goods and realization of export proceeds is already proved from records and the procedural lapse of delay in receipt of such receipts merits to be condoned.

4. Personal hearing, in virtual mode, was held on 22.10.2021. Sh. Naveen Bindal, Advocate, appeared on behalf of the Applicant and reiterated the contents of the Revision Application. Upon being asked, he admitted that the delayed receipt of remittances has not been regularized by the competent authority. None appeared on behalf of the Respondent nor any request for adjournment has been received. Therefore, the case is being taken up for disposal on the basis of facts available on record.


5.1 The Government has examined the matter carefully. 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 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. 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 realized but not within the stipulated period.

5.2 Further, the provisions of rule 16A(1) enabling recovery of drawback if the export proceeds are not realized within the period allowed under FEMA, including any extension of such period, are not merely a procedural requirement. It is to be observed that drawback is paid before realization of export proceeds and recovery thereof is initiated if such proceeds are not realized within the period prescribed, including any extension of such period. If the requirement of realization within prescribed period is not treated as a mandatory condition, the process of recovery shall remain an unending exercise and thereby render the provisions of Rule 16A(1) otiose. As such, the contentions of the Applicant, on this count, are also not acceptable.

5.3 In view of the above, there is no infirmity in the orders of the authorities below.

6. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India


M/s Anand Concast Limited,
Giaspura Road,
Dhandari Kalan,
Ludhiana 141014.

Order No. 235/21-Cus dated 22-10-2021

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. Sh. Naveen Bindal, Advocate 2307/1, Sector – 38 C, Chandigarh 160036.
4. PS to AS(RA)
- ✓ 5. Guard File.
6. Spare Copy

Attested


(Lakshmi Raghavan)
अधिसूचना अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Dept. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi