

SPEED POST

F. No. 375/69/DBK/2021-RA
F. No. 375/70/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.....20/7/22.....

Order No. 238-239/22-Cus dated 20-07-2022 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. CC(A)CUS/D-II/ICD-PPG/30-31/2021-22 dated 05.04.2021, passed by the Commissioner of Customs (Appeals), New Delhi.

Applicants : 1. Sh. Sudhir Malik, Ghaziabad.
2. M/s Pearl International, Ghaziabad.

Respondent : Commissioner of Customs, ICD Patparganj, New Delhi.

ORDER

Two Revision Applications, bearing Nos. 375/69/DBK/2021-RA & 375/70/DBK/2021-RA both dated 02.12.2021 have been filed by Sh. Sudhir Malik, partner of M/s Pearl International (hereinafter referred to as the Applicant-1) & M/s. Pearl International, Ghaziabad (hereinafter referred to as the Applicant-2) against the Order-in-Appeal No. CC(A)CUS/D-II/ICD-PPG/30-31/2021-22 dated 05.04.2021, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi. The Commissioner (Appeals) has rejected the appeals filed by the Applicants herein against the Order-in-Original, bearing no. 28/ADC/ICD/ PPG/2018 dated 23.05.2018, passed by the Additional Commissioner of Customs, ICD, Patparganj, Delhi, on the ground that the Applicants did not make the mandatory pre-deposit of 7.5%, as per Section 129E of the Customs Act, 1962.

2. Brief facts of the case are that an intelligence was received by the officers of Directorate of Revenue Intelligence, that some unscrupulous exporters were exporting goods described as Floor Covering (Braided) of Manmade Fiber and were availing undue export incentives under Duty Drawback and Focus Product Scheme by resorting to mis-declaration of description. Pursuant thereto, an investigation was initiated in respect of the goods exported from the ICD, Patparganj by the Applicants. On investigation, it was alleged by the department that the goods were mis-declared and value of the exported goods was highly inflated and that the Applicants had attempted to export the goods in question on inflated value with intent to avail higher quantum of drawback, which was otherwise not admissible. Vide the above said Order-in-Original dated 23.05.2018, the value of exported goods was re-determined as Rs. 20,86,930/- for drawback purpose, as against the declared value of Rs. 6,84,85,577/-. Further, goods were allowed to be exported on payment of redemption fine of Rs. 4,00,000/- under Section 125(1) of the Customs Act, 1962. The drawback claim of Rs. 62,32,187/- was rejected. Penalty of Rs. 60,00,000/- and

Rs. 30,00,000/- was also imposed on the Applicant-2 under Section 114(iii) and Section 114AA of the Customs Act,1962, respectively. Further, penalty of Rs. 50,00,000/- and Rs. 25,00,000/- was also imposed on the Applicant-1 under Section 114(iii) and Section 114AA of the Customs Act,1962, respectively. Aggrieved, the Applicants filed appeals before the Commissioner (Appeals), which were rejected as non-maintainable on the grounds mentioned above.

3. The instant revision applications have been filed, mainly, on the ground that the appeal cannot be dismissed on the ground of pre-deposit alone even when the Applicants are likely to be exonerated from the total liability on the disposal of its appeal.

4. Personal hearings were fixed on 22.06.2022, 06.07.2022 and 20.07.2022. No one appeared for either side nor has any request for adjournment been received. Since sufficient opportunities have been granted, the matter is taken up for disposal based on records.

5. The Government has examined the matter carefully. It is observed that the Commissioner (Appeals) has rejected the appeal on the ground that the Applicants herein did not make the mandatory pre-deposit, as per Section 129E of the Customs Act, 1962. The contention that the pre-deposit may not be insisted upon since the Applicants are likely to be exonerated from the total liability has no basis in law. The Government observes that the provisions of Section 129E are plain and unambiguous. In terms thereof, the Commissioner (Appeals) shall not entertain any appeal unless the appellant has deposited seven and a half percent, of the duty and penalty, in case where duty and penalty are in dispute, or penalty, where such penalty is in dispute. Thus, the condition of pre-deposit provided under the statute is of a mandatory nature. There is no authority in law to consider the merits of the

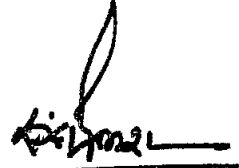
श्री अ. ए. इन्द्रावत
अधीक्षक (आपेल)
कस्टम, मुंबई
कस्टम, मुंबई
कस्टम, मुंबई

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case after waiving the requirement of pre-deposit. As such, there is no infirmity in the impugned Order-in-Appeal.

6. Accordingly, the revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

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West Punjabi Bagh,
New Delhi 110026.
2. M/s Pearl International,
Chamber No. 3, Sumeru Tower,
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Copy to:

1. The Commissioner of Customs, ICD, Patparganj, New Delhi – 110020.
2. The Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi - 110037.
3. Sh. Tarun Chawla & Chetan Kumar, Advocate, G-77, Lajpat Nagar-II, New Delhi-110024.
4. PS to AS(RA)
5. ✓ Guard File.
6. Spare Copy

ATTESTED

Gehata
20/7/22

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