

F.No. 375/45/DBK/2019-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 25/10/21...

Order No. 239/21-Cus dated 25/10/2021 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. CC(A)CUS/D-II/ICD-PPG/3879/18-19 dated 22.03.2019, passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : M/s Rachna Sagar Pvt. Ltd., New Delhi.

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

ORDER

Revision Application No.375/45/DBK/2019-RA dated 25.06.2019 has been filed by M/s Rachna Sagar Pvt. Limited, New Delhi, (hereinafter referred to as the Applicant) against the Order-in-Appeal CC(A)CUS/D-II/ICD-PPG/3879/18-19 dated 22.03.2019, passed by the Commissioner of Customs (Appeals), New Delhi. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal of the Applicant, against the Order- in-Original No.19/IM/AC/Patli/2017 dated 31.03.2017, passed by the Assistant Commissioner of Customs, ICD, Patli, Gurgaon.

2. Brief facts of the case are that the Applicant filed drawback claim in respect of several Shipping Bills, with the Assistant Commissioner of Customs, ICD, Patli, Gurgaon, for a total amount of Rs.49,52,577/-, 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 04.08.2015 was issued to the Applicant and the demand of Rs.5,94,712/-, was confirmed by the original authority, vide aforesaid Order-in-Original 31.03.2017. 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 there was no short realization of export proceeds in terms of provisions of Foreign Exchange

Management Act, 1999 as the Reserve Bank of India, vide letter FED.DEL.EXD/5919/16.35.10/2015-16 dated 29.09.2015, had accorded approval for writing off the amount that was receivable by the Applicant subject to AD Bank's satisfaction. Since, the amount has been written off by the Reserve Bank of India, the drawback already sanctioned can not be recovered.

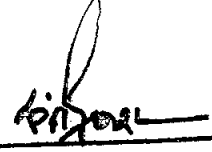
4. Personal hearing, in virtual mode, was held on 22.10.2021. Sh. M.S. Bhatia, Advocate, appeared on behalf of the Applicant and reiterated the contents of the Revision Application. He highlighted that part proceeds that have not been realized have been withheld by the Ghana Government as withholding tax. Consequently, this amount has been written off by the RBI and, hence, the drawback is not recoverable. 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. The Government has examined the matter carefully. It is contended by the Applicant that the amount receivable as export proceeds has been written off by the Reserve Bank of India and, hence, the drawback already disbursed cannot be recovered from them. It is observed by the Government that the RBI's letter dated 29.09.2015 clearly states that the approval for writing off the amount is subject to the concerned AD bank's satisfaction about the bonafides of the transaction. However, the Applicant has not submitted any document evidencing such satisfaction of the AD Bank. Therefore, the condition of write off does not appear to have been satisfied. Further, in the Note below the aforesaid letter dated 29.09.2015, "it is mentioned

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NEW DELHI

that it should not be construed as regularizing or validating any irregularities, contravention or other lapses, if any, under the provisions of any other laws/regulations." 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. Thus, even if the write off is taken to have been accorded, it can not be held to have regularized the contravention of Section 75 ibid and the rules made thereunder. As such, the impugned Order in-Appeal does not merit revision.

6. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India


M/s Rachna Sagar Pvt. Ltd.,
4583/15, Opposite LIC Office,
Darya Ganj,
New Delhi 110002.

Order No. 239 /21-Cus dated 25/10/2021

Copy to:

1. Commissioner of Customs (Exports), ICD, Tughlaqabad, New Delhi - 110020.
2. Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi - 110037.
3. Mr. M.S. Bhatia, Advocate, C-1646, Sushant Lok, Phase - 1, Gurgaon 122009.
4. PS to AS(RA)
- ✓ 5. Guard File.
6. Spare Copy

Attested


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