

F.No. 375/19/DBK/2022-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 27/07/22

Order No. 249 /22-Cus dated 27-07-2022 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/1481/2021-22 dated 15.12.2021, passed by the Commissioner of Customs (Appeals), New Delhi.

Applicants : M/s Angelic Creations, Delhi.

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

**ORDER**

A Revision Application, bearing No. 375/19/DBK/2022-RA dated 06.04.2022, has been filed by M/s Angelic Creations, Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)CUS/D-II/ICD-PPG/1481/2021-22 dated 15.12.2021, passed by the Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original, bearing no. 108/DC/PPG/Atreyee/2018 dated 15.11.2018, passed by the Deputy Commissioner of Customs, ICD, Patparganj.

2. Brief facts of the case are that the Applicant filed 10 Shipping Bills for the export of copper fruit plates and copper fruit baskets under claim of drawback. On the basis of an Alert Circular issued by the Directorate of Revenue Intelligence that proper verification may be conducted regarding the antecedent of the exporters before the disbursement of drawback claim amount, an investigation was initiated by the Respondent department against the Applicant herein. In the meantime, Applicant filed a Writ Petition before the Hon'ble High Court of Delhi for the sanction of drawback claims pertaining to the subject 10 Shipping Bills. While filing the Writ Petition, the Applicant had also submitted copies of the relevant e-BRCs. On examination of the e-BRCs, it was observed by the Respondent department that the said e-BRCs were issued by the ICICI bank, Moradabad, Uttar Pradesh, whereas, Authorized Bank as per the Shipping Bills was M/s DCB Bank Ltd., Barakhamba Road, New Delhi. M/s ICICI bank, Moradabad, vide letter dated 13.09.2018, had confirmed that the said remittances were received from M/s Bright View General Trading LLC, Dubai, whereas, as per the declaration made on the 10 Shipping Bills, the exports were made to M/s Rafaib Trading LLC, Dubai and the third party, namely, M/s AGCL General Trading LLC, UAE was declared by the Applicant as the Notifier. It was also confirmed by the ICICI Bank, Moradabad that the Applicant had neither submitted copy of irrevocable order nor Tripartite Agreement. The Bank also provided the copies of shipping bills and invoices submitted by the Applicant. However, the said invoices were found to be different from those submitted to the Customs in as much as in the invoices submitted to the Bank, name of M/s Bright

View General Trading LLC, Dubai was declared but in the invoices submitted to Customs, the said name was not declared. The original authority, vide the above mentioned OIO dated 15.11.2018, held the drawback amount of Rs. 37,15,274/- to be inadmissible. Aggrieved, the Applicant filed appeal before the Commissioner (Appeals), which has been rejected.

3. The instant revision application has been filed, mainly, on the grounds that no Deficiency Memo was issued; that they had submitted a copy of Tri-Party agreement showing that the payment will be received from M/s Bright View General Trading LLC, UAE; that the remittances had been received in full; that delay in receipt of remittances was due to freezing of their account by the department; and that disallowance of drawback on exports made in July 2015 is barred by limitation.

4. Personal hearing in, virtual mode, was held on 22.07.2022. Sh. Akhil Kishan Maggu, Advocate and Sh. Vikas Sareen, Advocate attended the hearing on behalf of the Applicant and reiterated the contents of revision application. Upon being asked to explain the delay in receipt of remittances, Sh. Maggu stated that the delay occurred as their accounts with the Bank had been frozen. He was further asked whether the permission of RBI/AD Bank to extend the time period was obtained. Sh. Maggu stated that Bank has certified the remittances and hence the extension of time period is implied. Sh. Maggu took leave to file a compilation immediately by e-mail. A compilation dated 22.07.2022 has been submitted by the Applicant, which is taken on record. None appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing further to say in the matter.

5.1 Government has examined the matter carefully. It is contended by the Applicant that no Query Memo/Show Cause Notice was issued in the instant case and, hence, the principles of natural justice were not followed. Government observes that the purpose of issuance of Show Cause Notice is to apprise the Noticee about the allegations levelled against him so as to afford him an effective opportunity to defend his case. Government, further, observes that the Applicant

and Respondent department were in communication on the issue and the Applicant had submitted the copies of the Purchase Bills, ledger Account, statement of DCB Bank Account etc.. Furthermore, the personal hearings were also granted to the Applicant on 09.10.2018, 11.10.2018 and 16.10.2018, which were not attended but the Applicant submitted a Written Reply dated 13.10.2018. From the reply dated 13.10.2018, it is evident that the Applicant was fully aware about the issues involved and had his say in the matter. Thus, it is apparent that the Applicant had an effective opportunity to defend his case. In this light, the subject contention of the Applicant is not acceptable.

5.2 Another contention of the Applicant is that the export proceeds had been realized in full. Government observes that in the instant case the exports were made to M/s Rafaib Trading LLC, Dubai wherein third party, namely, M/s AGCL General Trading LLC, UAE was declared as the Notifier. However, the proceeds claimed to be the export proceeds have been received from another third party, namely, M/s Bright View General Trading LLC, Dubai. It is also on record that the invoices submitted to the ICICI Bank were different than those submitted to Customs in as much as in the invoices submitted to the Bank by the Applicant, the name of M/s Bright View General Trading LLC, Dubai was declared but in the invoices submitted to Customs, the said name was not declared. Thus, it is apparent that the payments have been received from a third party other than the third party declared to Customs. Subsequent change, if any, is not confirmed by the Bank. Thus, the payments received from M/s Bright View General Trading LLC, Dubai cannot be co-related with the export made in respect of the subject 10 Shipping Bills. As such, it has been correctly held by the authorities below that the export proceeds have not been realized.

5.3.1 The Government observes that it has also been held by the authorities below that the proceeds were not realized within the prescribed time period. This position is not denied by the Applicant but it is claimed that the delay occurred due to department's action of freezing their Bank account. However, the Government is not persuaded by this argument in as much there appears to have been no credit freeze

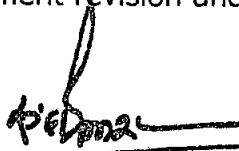
in the account. Therefore, nothing prevented the Applicant from receiving the export proceeds in time.

5.3.2 Applicant has also contended that since the Bank had certified the remittances, hence, the extension of time period is implied. The Government observes that extension of time for realisation of export proceeds requires a positive act to be taken by the RBI/AD Bank and there is no scope for such extension to be granted by implication. Therefore, the present contention of the Applicant is also not acceptable.

5.4 Another contention of the Applicant is that the exports were made in July, 2015 whereas the drawback has been denied in November, 2018, i.e., beyond the period of 03 years and, hence, such denial is time barred. This contention of the Applicant is ostensibly anchored in the judgments of Hon'ble Gujarat High Court in Padmini Export vs. UOI {2012 (284) ELT 235} and Pratibha Syntex vs. UOI {2013 (287) ELT 290}. However, the Government observes that the aforesaid cases related to demand and recovery of drawback already sanctioned and paid, under Rule 16 of the Rules, ibid. In the present case, on the other hand, no drawback has been paid. Thus, the subject matter is not that of demand of drawback paid. Consequently, the issue of limitation does not arise and the aforesaid judgments have no application in the present case.

5.5 Case laws relied upon by the Applicant in support of other contentions are also not applicable in the facts of this case.

6. In view of the above, the impugned Order-in-Appeal does not merit revision and the revision application is rejected.

  
(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Angelic Creations,  
A-124, FF, Hari Nagar,  
New Delhi 110064

Order No. 249/22-Cus dated 27-07-2022

Copy to:

1. Commissioner of Customs, ICD, Patparganj, New Delhi - 110096.
2. Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi - 110037.
3. Lex Works, C-131, First Floor, Lajpat Nagar -1, New Delhi 110024.
4. PS to AS(RA)
- ✓ 5. Guard File.
6. Spare Copy

*Ashward*  
*शुभम*

**अश्वनी कुमार ली / Ashward Kumar Lau**  
**अधीक्षक / Superintendent (R.A. Unit)**  
**राजस्व विभाग / Department of Revenue**  
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