

SPEED POST



F.No. 375/21/DBK/2022-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: 3/8/22

Order No. 251/22-Cus dated 03-08-2022 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 under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 280-Cus/App/ LKO/2021 dated 18.10.2021 passed by the Commissioner (Appeals), Customs, CGST & Central Excise, Lucknow.
- Applicant : M/s Brass & Copper Craftsmen, Moradabad.
- Respondent : The Commissioner of Customs (Preventive), Lucknow.
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ORDER

A Revision Application, bearing no. 375/21/DBK/2022-RA dated 06.05.2022, has been filed by M/s Brass & Copper Craftsmen, Moradabad (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 280-Cus/App/LKO./2021 dated 18.10.2021 passed by the Commissioner (Appeals), Customs, CGST & Central Excise, Lucknow, vide which the appeal filed by the Applicant against the Order-in-Original No. 09/AC/ICD/MBS/2020-21 dated 30.06.2020 passed by the Assistant Commissioner of Customs, ICD Madhosingh, Bhadohi has been rejected.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of 06 Shipping Bills, with the jurisdictional Customs authorities for a total amount of Rs.15,38,570/- which was sanctioned. However, subsequently, 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, a show cause notice dated 08.07.2019 was issued to the Applicant and the original authority confirmed the demand of Rs. 15,38,570/-, alongwith applicable rate of interest, vide the above mentioned Order-in-Original dated 30.06.2020. 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 the export proceeds had been realized though not within the stipulated time period; and that the recovery proceedings are void as the export proceeds had been realized

4. Personal hearing , in virtual mode, was held on 03.08.2022. Sh. R.M. Saxena, Advocate appeared for the Applicant and reiterated the contents of the revision application. Sh. Ajay Mishra, Additional Commissioner appeared for the Respondent department and supported the order of Commissioner (Appeals).

5.1 The Government has examined the matter carefully. Admittedly, the export proceeds, in respect of relevant Shipping Bills, have been realized but not within the stipulated time period. 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. 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, the drawback amount is recoverable alongwith recoverable interest.

5.2 It is to be observed that the provisions of Rule 16A *ibid*, enabling recovery of drawback where export proceeds are not realized within the period allowed under FEMA, including any extension of such period, have been framed to give effect to

the provisions made in the parent statute, i.e, section 75(1) ibid. Further, the 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. The Government finds that if the requirement of realization within prescribed period, including any extension of such period, is not treated as a mandatory condition, the process of recovery shall remain an unending exercise and thereby render the provisions of the second proviso to section 75(1) and the Rule 16A(1) redundant and otiose.

5.3 As such, there is no infirmity in the impugned Order of Commissioner (Appeals).

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


(Sandeep Prakash)

Additional Secretary to the Government of India

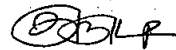
M/s Brass & Copper Craftsmen,
Prince Roa, Galshaheed 29,
Moradabad-
244001

Order No. 251/22-Cus dated 03-08-2022

Copy to:

1. The Commissioner of Customs (Preventive), 5th & 6th Floor, Kendriya Bhawan Aliganj, Lucknow-226024
2. The Commissioner (Appeals) Customs, GST & Central Excise 3/194, Vishal Khand, Gomti Nagar, Lucknow.
3. M/s. LASA Legal Associates, B-117 (3rd Floor), Sector-63, Noida-201301.
4. PA to AS(RA)
5. Guard File
6. Spare Copy.

ATTESTED



(लक्ष्मी राघवन)
(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