

REGISTERED
SPEED POST



F.No. 375/51/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... 02/11/21

Order No. 252/21-Cus dated 02-11-2021 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 under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 128(SM)CUS/JPR/2019 dated 23.05.2019, passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Jaipur.

Applicant : M/s Sparkling Hues Gems Pvt. Ltd., New Delhi

Respondent : The Commissioner of Customs (Preventive), Jaipur.

.....

ORDER

Revision Application No. 375/51/DBK/2019-RA dated 26.08.2019 has been filed by M/s Sparkling Hues Gems Pvt. Ltd., New Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 128(SM)CUS/JPR/2019 dated 23.05.2019, passed by the Commissioner (Appeals), Customs & CGST, Jaipur, vide which the appeal filed by the Applicant against the Order-in-Original No. 71/2018/DC-Refund dated 17.12.2018 passed by Deputy Commissioner of Customs, Jaipur has been rejected.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of several Shipping Bills, with the jurisdictional customs authorities, for a total amount of Rs. 8,42,323/-, which were 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 24.09.2015 was issued to the Applicant and the demand of Rs. 8,42,323/- was confirmed by the original authority, vide the Order-in-Original No. 98/2016-DBK dated 13.05.2016. Applicant deposited the already availed drawback amount of Rs. 8,42,323/- along with interest amount of Rs. 7,40,600/- and the penalty amount of Rs. 10,000/- in compliance of the OIO dated 13.05.2016 and no appeal was filed by the Applicant against the said OIO dated 13.05.2016. Later on, the Applicant filed a refund claim for Rs. 15,92,323/- with the jurisdictional customs authority for the refund of the already deposited drawback amount, interest and penalty on the ground that the export proceeds in the case have already been realized. Dy. Commissioner of Customs, Drawback, ICD, Kanakpura, Jaipur, rejected the refund claim on the ground that the OIO dated 13.05.2016, in compliance whereof the Applicant had deposited the said amount, was not challenged before the appropriate forum and, hence, the same had attained finality. Therefore, the refund claim was not admissible. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed, mainly, on the grounds that the Applicant deposited the subject amount when a shipment was held up by Customs in January 2018; that subject remittances have been received within the period allowed by the RBI; that originally a show cause notice was issued only to reject an amount of Rs. 1,86,179/- under the provisions of Rule 16A(1) and Rule 18(1) of the Customs and Central Excise Duties & Service Tax Drawback Rules, 1995 which was subsequently enhanced to the entire amount; and, therefore, refund claim is admissible.

4. Personal hearing, in virtual mode, was held on 02.11.2021. Sh. Jatin Mahajan, Advocate appeared for the Applicant and reiterated the contents of the RA. No one appeared for the department nor any request for adjournment has been received.

5. The Government has examined the matter carefully. It is contended by the Applicant that they had realized the export proceeds in time and, hence, the refund claim of already deposited drawback amount along with interest is in order. The Government observes that the Applicant had deposited the drawback amount, interest and penalty in compliance of the OIO dated 13.05.2016. It is also on record and also admitted by the Applicant in the revision application that the OIO dated 13.05.2016 was never challenged before the appellate authority. In such a situation, the OIO dated 13.05.2016 had attained finality. In the case of ITC Ltd., vs. Commissioner of Central Excise, Kolkata-IV {2019 (368) ELT 216 (SC)}, the Hon'ble Supreme Court has held "*that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law taking recourse to appropriate proceedings.....*" Applying the ratio of ITC Ltd. (supra), in the present case, the refund claim could not have been entertained unless the order confirming the demand and recovery of drawback alongwith interest and imposing penalty had been set aside in an appropriate proceeding. The Government agrees with the findings of Commissioner (Appeals) on other contentions raised by the Applicant as well.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

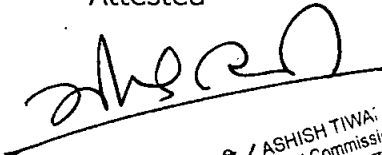
M/s Sparkling Hues Gems Pvt. Ltd.,
206, Siddartha Enclave,
New Delhi 110014.

Order No. 252/21-Cus dated 02-11-2021

Copy to:

1. The Commissioner of Customs, Jaipur, New Central Revenue Building, Statue Circle, "C" Scheme, Jaipur – 302 005.
2. The Commissioner (Appeals), Central Excise & CGST, Jaipur, New Central Revenue Building, Statue Circle, Jaipur – 302 005.
3. Sh. Jatin Mahajan, Advocate, 37, LGF Vinobapuri, Lajpat Nagar – II, New Delhi – 110 024.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

Attested



आशीष तिवारी / ASHISH TIWARI, J
सहायक आयुक्त / Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi