

SPEED POST



F.No. 375/60/DBK/2018-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..10/11/21.

Order No. 253/21-Cus dated 9-11-2021 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 filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CC(A)CUS/D-I/ACC-EXP/537/2018 dated 02.11.2018, passed by the Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi 110037.

Applicant : M/s Kohinoor Enterprises, New Delhi.

Respondent : Commissioner of Customs (Exports), Air Cargo Complex, New Delhi

ORDER

A Revision Application, bearing no. 375/60/DBK/2019-RA dated 24.10.2019, has been filed by M/s Kohinoor Enterprises, New Delhi, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)CUS/D-I/ACC-EXP/537/2018 dated 02.11.2018, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi, vide which the appeal filed by the Applicant against the Order-in-Original No.58DK/DC/DBK/2016 dated 07.04.2016, has been rejected on the ground that the Applicant 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 the Applicant filed drawback claims in respect of 04 Shipping Bills with the jurisdictional Customs authorities and received a drawback amount of Rs. 3,79,308/-. Subsequently, on scrutiny, it was found that the Applicant had failed to submit the proof to the effect that the export proceeds in respect of the relevant Shipping Bills had been realized. Accordingly, show cause notice was issued, in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, to the Applicant for the recovery of drawback availed amount of Rs. 3,79,308/- along with interest, which was confirmed by the original authority, vide aforesaid Order-in-Original dated 07.04.2016. A penalty of Rs. 10,000/- was also imposed under Section 114 ibid. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), who vide the impugned OIA dated 02.11.2018, rejected the appeal as non-maintainable on the grounds mentioned above.

3. The instant revision application has been filed, mainly, on the ground that the balance pre-deposit amount of Rs. 27,700/- had been deposited, vide challan No. 24393 dated 04.05.2017, but the same was not taken on record by the Commissioner (Appeals). On merits, it has been stated that the export proceeds were realised well within time.
4. Personal Hearing, in virtual mode, was held on 08.11.2021. Sh. A.K. Attri, Advocate appeared for the Applicant and stated that a pre deposit of Rs. 28,450/- had been made in terms of Section 129 E and the Commissioner (Appeals) had been informed of the same, vide letter dated 02.05.2017. However, the Commissioner (Appeals) had failed to take this into account and has incorrectly held the appeal to be non-maintainable, vide OIA dated 02.11.2018. Sh. Attri, Advocate accordingly requested that the matter may be remanded to the Commissioner (Appeals) for decision on merits within a specified time period. No one appeared for the respondent department nor any request for adjournment has been received. Therefore, the case is being taken up for final decision.
5. The instant RA has been filed with a delay as the appeal was initially filed at the wrong forum, i.e., CESTAT. Delay is condoned.
6. The Government has examined the matter carefully. It is observed that the Commissioner (Appeals) has rejected the appeal on the ground that the Applicant did not make the mandatory pre-deposit, as required in terms of Section 129E of the Customs Act, 1962. It is not disputed that being a mandatory condition the pre-deposit ought to have been made. Applicants have claimed that the requisite pre-deposit had been made and the Commissioner (Appeals) did not take notice thereof while passing the impugned order. A copy of TR-6 Challan No. 24393 dated

02.05.2017, evidencing the payment of Rs. 27,700/- as pre-deposit has been placed on record. This is in addition to the deposit of Rs. 750/- already made, vide TR6 Challan No. 8062 dated 03.03.2017, which has been noted and taken on record by the Commissioner (Appeals). Thus, a total amount of Rs. 28,450/- has been pre-deposited. As such, it would be in the interest of justice that the matter is remanded to Commissioner (Appeals) with a direction to verify the pre-deposit made and upon such verification, if it is established that the requisite amount as per Section 129 E has been pre-deposited, to decide the appeal afresh, on merits. Keeping in view the facts and circumstances of the case, the Commissioner (Appeals) is requested to decide the appeal afresh within a period of 02 months from the date of receipt of this order.

6. The revision application is, accordingly, allowed by way of remand to the Commissioner (Appeals), with directions as above.



(Sandeep Prakash)

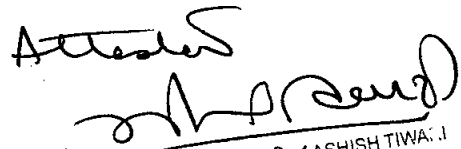
Additional Secretary to the Government of India

M/s Kohinoor Enterprises,
D-17, Maharani Bagh,
New Delhi 110065.

Order No. 253/21-Cus dated 9-11-2021

Copy to:

1. Commissioner of Customs (Exports), Air Cargo Complex, New Custom House, Near IGI Airport, New Delhi - 110037.
2. Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi - 110037.
3. Sh. Amit Kumar Attri, Advocate, Chamber No. 952, Patiala House Court, New Delhi 110001
4. PS to AS(RA)
5. Guard File.
6. Spare Copy



आशीष तिवारी / ASHISH TIWARI
सहायक आयुक्त / Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्तपाद 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