

REGISTERED
SPEED POST



F.No. 375/55/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... 18/11/21

Order No. 963/21-Cus dated 18-11-2021 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. 133(SM)CUS/JPR/2019 dated 12.06.2019, passed by the Commissioner (Appeals), Customs & CGST, Jaipur.

Applicant : M/s V.K. Exports, Jaipur.

Respondent : The Commissioner of Customs, Jaipur.

.....

ORDER

A revision application No. 375/55/DBK/2019-RA dated 25.09.2019 has been filed by M/s V.K. Exports, Jaipur (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 133(SM)CUS/JPR/2019 dated 12.06.2019, passed by the Commissioner (Appeals), Customs & CGST, Jaipur, vide which the appeal filed by the Applicant against the Order-in-Original No. 12/2018-19-DC dated 16.07.2018, passed by Deputy Commissioner of Customs, ACC, Jaipur, has been partly allowed.

2. Brief facts of the case are that the Applicant filed drawback claim in respect of Shipping Bill No. 6477038 dated 05.12.2014 with the jurisdictional customs authorities, for a total amount of Rs. 1,16,789/-, 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 Bill 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 17.12.2016, was issued to the Applicant and the demand of Rs. 1,16,789/- alongwith the applicable interest was confirmed by the original authority, vide the above mentioned Order-in-Original dated 16.07.2018. A penalty of Rs. 500/- was also imposed under Section 117 of the Customs Act, 1962. The appeal filed by the Applicant herein against the above said Order-in-Original was partly allowed by the Commissioner (Appeals), vide the impugned Order-in-Appeal dated 12.06.2019, to the extent of part amount realized amounting to US \$19576.50.

3. The revision application has been filed on the grounds that the export proceeds had been fully realized including the balance amount of US \$4286.50; that the substantial benefit cannot be denied due to procedural lapses; that when drawback is not recoverable, interest is also not recoverable; and that penalty cannot be imposed in absence of mens-rea.

4. Personal hearing, in virtual mode, was held on 17.11.2021. Sh. Suhrid Bhatnagar, Advocate, appeared for the Applicant and reiterated the contents of the revision application. He highlighted that the balance amount of US\$ 4286.50 has been realized on 09.01.2017 and the copy of BRC has been placed on record. Upon being asked, Sh. Bhatnagar admitted that the extension of time by the RBI/AD Bank is not available on record. None appeared for respondent department nor any request for adjournment has been received. Therefore, the case is being taken up for final decision.

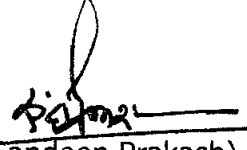
5.1 The Government has examined the matter carefully. It is contended by the Applicant that they had realized the export proceeds in full and also submitted the copies of BRCs. On perusal of the BRCs, it is observed that the date of realization in the BRCs is shown as 07.01.2017 and 09.01.2017 whereas the Shipping Bill is dated 05.12.2014. Further, on the face of Shipping Bill itself the due date for realization of export proceeds is shown as 31.12.2015. Thus, it is clear that the export proceeds were not realized within the stipulated time period of 12 months. Further, the Applicant has not submitted any evidence to prove that the delayed realization has been regularized by the RBI/AD Bank. 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. Admittedly, 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, there is no doubt that the Applicant is not entitled for drawback corresponding to the export proceeds that were realized but not within the stipulated period. The Government observes that the Commissioner (Appeals) has failed to appreciate this legal position and has, therefore, erred in granting relief partly to the Applicant in respect of the proceeds of US \$19576.50, realized on 07.01.2017, i.e., beyond the period allowed under FEMA.

5.2 Further, the provisions of rule 16A(1) *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*. Therefore, by no stretch of imagination, can the provisions of rule 16A be termed merely as a procedural requirement. It is to be observed that 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. If the requirement of realization within prescribed 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. As such, the contentions of the Applicant, on this count, are not acceptable.

5.3 The imposition of penalty under section 117 *ibid*, has also been assailed in the instant RA. The Government observes that section 117 enables imposition of penalty

on any person who contravenes any provisions of the Act or abets any such contravention, where no express penalty is provided elsewhere for such contravention. In the present case, the contraventions, as above, are explicit. Further, the Hon'ble Karnataka High Court has, in the case of *Rajesh Export Ltd. vs. Principal Commissioner of Customs, Bangalore {2018 (362) ELT 945 (Kar.)}*, held that "The imposition of penalty under Section 117 of the Act is discretionary." In the present case, a penalty of only Rs. 500/- has been imposed, which cannot also be termed excessive.

6. In view of the above, the impugned Order-in-Appeal is set aside and the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

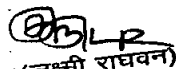
M/s V.K. Exports,
D-81B, Road No. 7,
VKI Area, Jaipur – 302013.

Order No. 263/21-Cus dated 18-11-2021

Copy to:

1. The Commissioner of Customs, Jaipur, New Central Revenue Building, Statue Circle, 'C' Scheme, Jaipur – 302 005.
2. The Commissioner (Appeals), Customs & CGST, New Central Revenue Building, Statue Circle, 'C' Scheme, Jaipur – 302 005.
3. Sh. Suhrid Bhatnagar, Advocate, Acumen Tax Consultants, 127, Carnival Cine Star, Central Spine, Vidyadhar Nagar, Jaipur – 302 039.
4. PA 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