

F.No. 375/44/DBK/2021-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... 16/8/22

Order No. 264/22-Cus dated 16-08-2022 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 filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CC(A)Cus/D-I/Export/NCH/75/2021-22 dated 16.06.2021, passed by Commissioner of Customs (Appeals), New Custom House, New Delhi.

APPLICANT : M/s. Kishore Exports, Agra.

RESPONDENT : The Commissioner of Customs (Export) Air Cargo, New Delhi.

**ORDER**

A Revision Application, bearing no. 375/44/DBK/2021-RA dated 20.09.2021, has been filed by M/s. Kishore Exports, Agra (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Export/NCH/75/2021-22 dated 16.06.2021, passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original, bearing no. 488/TG/DC/ACE/DBK/BRC/2019 dated 14.03.2019, passed by the Deputy Commissioner of Customs, Air Cargo Exports, New Delhi, on the ground that the Applicant did not make the mandatory pre-deposit of 7.5%, as per Section 129 E of the Customs Act, 1962.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of 24 Shipping Bills, during the calendar year 2016, with the jurisdictional Customs authorities, for a total amount of Rs.22,97,827/-. The said claims were sanctioned by the jurisdictional Customs authorities. However, subsequently, on scrutiny of the XOS statement, 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 said 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 27.03.2018 was issued to the Applicant for the recovery of drawback availed amount of Rs.22,97,827/-, along with interest. A demand of Rs. 10,11,253/-, out of the total demand of Rs. 22,97,827/-, was confirmed by the original authority, vide the above mentioned Order-in-Original dated 14.03.2019. Aggrieved, the Applicant filed

an appeal before the Commissioner (Appeals), which has been rejected as non-maintainable on the grounds mentioned above.

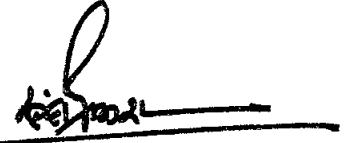
3. The instant revision application has been filed, mainly, on the ground that the requirement of pre-deposit is only technical in nature and appeal can not be dismissed on this ground alone. Several submissions have been made on the merits of the case as well.

4. Personal hearing was fixed on 15.07.2022, 02.08.2022 and 16.08.2022. A request for adjournment of the personal hearing fixed on 02.08.2022 was received and, accordingly, the hearing was fixed on 16.08.2022. However, none appeared on behalf of the Applicant on any of the above mentioned dates. Sh. Ajay Kumar Sahu, superintendent appeared on behalf of the Respondent department, in the personal hearing held on 16.08.2022, and supported the order of Commissioner (Appeals). Since, sufficient opportunities have already been granted, the case is being taken up for final decision based on records.

5. The Government has examined the matter carefully. It is observed that the Commissioner (Appeals) has rejected the appeal on the ground that the Applicant herein did not make the pre-deposit, as per Section 129E of the Customs Act, 1962. The Government further observes that the provisions of Section 129E are plain and unambiguous. In terms thereof, the Commissioner (Appeals) shall not entertain any appeal unless the appellant has deposited seven and a half percent, of the duty and penalty, in case where duty and penalty are in dispute, or penalty, where such penalty

is in dispute. Thus, the condition of pre-deposit provided under the statute is of a mandatory nature. There is no authority in law to waive this requirement. Further, the requirement of pre-deposit, being mandatory in nature, cannot be brushed aside as merely a technical requirement. As such, there is no infirmity in the impugned Order-in-Appeal.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Kishore Exports,  
B-4, Alok Nagar,  
Agra 282010

Order No. 284/22-Cus dated 16-08-2022

1. The Commissioner of Customs (Export), Air Cargo, New Custom House, New Delhi-110037.
2. The Commissioner of Customs (Appeals), New Custom House, new Delhi 110037.
3. P.S TO A.S (RA)
4. Guard File
5. Spare Copy

ATTESTED



(लक्ष्मी राघवन)  
(Lakshmi Raghavan)  
अधुपाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi