

REGISTERED
SPEED POST



F.No. 375/57/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. 23/11/21.

Order No. 267/21-Cus dated 23-11-2021 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. 146(SM)CUS/JPR/2019 dated 28.06.2019, passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur.

Applicant : M/s Lariya Art Palace Pvt. Ltd., Jodhpur.

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

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ORDER

A revision application No. 375/57/DBK/2019-RA dated 07.10.2019 has been filed by M/s Lariya Art Palace Pvt. Ltd., Jodhpur (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 42946(SM)CUS/JPR/2019 dated 28.06.2019, passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur, vide which the appeal filed by the Applicant against the Order-in-Original No. 03/Refund/2018-19 dated 05.07.2018, passed by the Deputy Commissioner of Customs, I.C.D., CONCOR, Jodhpur, 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. 15,67,023/-, 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 29.11.2015 was issued to the Applicant and the demand of Rs. 4,51,228/- was confirmed by the original authority, vide the Order-in-Original No. 593/2016-17 dated 31.01.2017. Applicant deposited the already availed drawback amount of Rs. 4,51,228/- along with interest amount of Rs. 94,572/- + intervening interest of Rs. 12,472/- and the penalty amount of Rs. 45,000/-, i.e., a total amount of Rs. 6,03,272/-, in compliance of the OIO dated 31.01.2017. No appeal was filed by the Applicant against the said OIO dated 31.01.2017. Later on, the Applicant filed a refund claim for Rs. 6,03,272/- 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, vide OIO dated 05.07.2018, on the ground that the OIO dated 31.01.2017, 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.

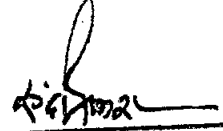
3. The revision application has been filed, mainly, on the grounds that the Applicant had realized the export proceeds but due to fire in their office the entire records including BRCs were destroyed and due to which it could not be submitted before the Customs authorities in time; that subject remittances have been received within the period allowed by the RBI; and that their case is covered by the ratio of the judgment of Hon'ble Delhi High Court in the case of *Aman Medical Products Pvt. Ltd. vs. Commissioner of Customs, Delhi* {2010 (250) ELT 30 (Del.)}.

4. Personal hearing, in virtual mode, was held on 22.11.2021. Sh. O.P. Agarwal, Chartered Accountant, 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. Hence, the matter is taken up for final decision based on records.

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 31.01.2017. It is also on record and also admitted by the Applicant in the revision application that the OIO dated 31.01.2017 was never challenged before the appellate authority. In such a situation, the OIO dated 31.01.2017 had attained finality. Therefore, the question of refund of amounts deposited in compliance of the said Order does not arise. However, the Applicants have relied upon *Aman Medical Products Pvt. Ltd. (supra)* to claim otherwise. The Government observes that the judgment in the case of *Aman Medical Products Pvt. Ltd.* has been set aside by the Hon'ble Supreme Court in the case of *ITC Ltd., vs. Commissioner of Central Excise, Kolkata-IV* {2019 (368) ELT 216 (SC)}, wherein it has been 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. 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

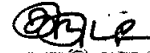
M/s Lariya Art Palace Pvt. Ltd.,
Lariya Village, Pal Chopasni Ring Road,
Chopasni, Jodhpur (Rajasthan) – 342 008.

Order No. 267/21-Cus dated 22-11-2021

Copy to:

1. The Commissioner of Customs (Preventive), Jaipur, New Central Revenue Building, Statue Circle, "C" Scheme, Jaipur – 302 005.
2. The Commissioner (Appeals), Customs, Central Excise & CGST, New Central Revenue Building, Statue Circle, Jaipur – 302 005.
3. Sh. O. P. Agarwal, CA, 56, Section 7, N. Power House Road, Jodhpur, Rajasthan – 342 003.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED



(Raghavan)

(Raghavan)

Section Officer

(राजस्व विभाग)

Finance (Deptt. of Rev.)

सरकार / Govt. of India

दिल्ली / New Delhi