

REGISTERED
SPEED POST



F.No. 380/07/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. 268/21-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. NOI-EXCUS-001-APP-03-19-20 dated 15.04.2019 passed by the Commissioner (Appeals), Customs & CGST, Noida.

Applicant : The Commissioner of Customs, Gautam Budh Nagar, Noida.

Respondent : M/s. Dewan & Sons, Moradabad.

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ORDER

A revision application No. 380/07/DBK/2019-RA dated 23.08.2019 has been filed by the Commissioner of Customs, Gautam Budh Nagar, Noida (hereinafter referred to as the Applicant) against the Order-in-Appeal No. NOI-EXCUS-001-APP-03-19-20 dated 15.04.2019, passed by the Commissioner (Appeals), Customs & CGST, Noida, vide which the Order-in-Original No. R-10/ICD/D&Sons(242/2015)2018 dated 11.06.2018, passed by Deputy Commissioner, Customs, I.C.D., Moradabad, has been set aside and the appeal filed by M/s Dewan & Sons, Moradabad (hereinafter referred to as the Respondent) has been allowed.

2. Brief facts of the case are that the Applicant filed a claim with the jurisdictional customs authorities for the release of differential drawback claim arising out of Order-in-Appeal No. MRT-EXCUS-002-APP-36/2014-15 dated 07.08.2014 passed by the Commissioner (Appeals) Meerut -II. Dy. Commissioner of Customs, ICD, Moradabad, vide letter C.No. VIII(30)Cus./ICD/D&Sons/242/2015/408 dated 14.03.2016 sanctioned the claim but without payment of interest under Section 75 A of the Customs Act, 1962. The respondent again vide their various letters requested the Applicant to release the interest. The original authority, vide the Order-in-Original dated 11.06.2018, rejected the claim of the respondent as regard to interest under Section 75 A of the Customs Act, 1962 on the grounds that the rejection letter dated 14.03.2016 had attained finality. The appeal filed by the respondent herein against the denial of interest was allowed by the Commissioner (Appeals), vide the impugned Order-in-Appeal dated 15.04.2019.

3. The revision application has been filed on the grounds that the respondent had not challenged the rejection letter dated 14.3.2016 and hence it became final. The interest, if any, applicable, is due only from the date, i.e., after one month from the date of OIA dated 07.08.2014 was accepted by the department and till the date of payment of differential drawback amount and not from the date when the original claim was filed. Reply has been filed by the Respondents on 23.09.2019.

4. Personal hearing, in virtual mode, was held on 22.11.2021. Sh. O.P. Singh, Superintendent appeared for the Applicant department and reiterated the contents of the RA. Sh. Shuchimoy Burman, Consultant appeared for the respondent and requested that Written Submissions filed on 19.11.2021 may be taken on records. He reiterated the submissions made therein.

5. The Government has examined the matter carefully. The preliminary issue raised by the Applicant department is that the rejection letter dated 14.03.2016 had become final as no appeal was filed against it. In the OIO dated 11.06.2018, which culminated into the impugned OIA, the original authority has taken this position only. However, the Commissioner (Appeals) has recorded that the letter dated 14.03.2016 was not sustainable as principles of natural justice were not followed before issuing this letter. The moot point that arises for consideration is whether Commissioner (Appeals) could have held the letter dated 14.03.2016 unsustainable while deciding an appeal against the OIO dated 11.06.2018 or this could have been done only in the course of appeal against the letter dated 14.03.2016. The

Government observes that the letter dated 14.03.2016 decided the dispute regarding admissibility of interest in the subject case. Thus, following the ratio of the judgment of Hon'ble Bombay High Court, in the case of *AA's AD AIDS vs. Commissioner of Central Excise, Pune I {2018 (19) GSTL 482 (Bom.)}*, the said letter dated 14.03.2016 was an appellable order. Therefore, it ought to have been challenged in appeal, which was not done. As such, the Commissioner (Appeals) erred in holding the letter dated 14.03.2016 unsustainable in an appeal filed against OIO dated 11.06.2018. Consequently, without traversing the merits of the case, the impugned OIA cannot be sustained on the basis of this preliminary ground.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of Customs, Noida,
Noida CONCOR Complex, P.O. Container Depot,
Greater Noida, Gautam Budh Nagar (U.P.) – 201 311.

Order No. 268/21-Cus dated 23-11-2021

Copy to:

1. M/s Dewan & Sons, Lakri Fazalpur, Mini Bypass, Delhi Road, Moradabad – 244 001.
2. The Commissioner (Appeals), Customs & CGST, Noida, C – 56/42, 4th Floor, Renu Tower, Sector – 62, Noida – 201 301.
3. PA to AS(RA).
4. Guard File.
5. Spare Copy.

ATTESTED

