

SPEED POST



F.No. 372/08/DBK/2022-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... 17/8/22

Order No. 269/22-Cus dated 17.08.2022 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 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/CUS(Port)/AKR/184/20 dated 31.03.2022, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s IFGL Refractories Limited, Kolkata.

Respondent : The Commissioner of Customs (Port), Kolkata.

.....

ORDER

A Revision Application No. 372/08/DBK/2022-RA dated 19.05.2022 has been filed by M/s IFGL Refractories Limited, Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(Port)/AKR/184/20 dated 31.03.2022, passed by the Commissioner of Customs (Appeals), Kolkata, vide which the appeal filed by the Applicant herein against the Order-in-Original No.KOL/CUS/DC/MKK/731/DBK(PORT)/2020 dated 01.12.2020, passed by the Deputy Commissioner of Customs (Port), Drawback Section, Custom House, Kolkata, has been rejected on the grounds that the Applicant herein 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 77 Shipping Bills with the jurisdictional Customs authorities. The said claims, amounting to Rs. 17,24,370/-, were sanctioned by the jurisdictional Dy. Commissioner of Customs, Drawback, Custom House, Kolkata. However, subsequently on scrutiny, it was observed by the Respondent department that the Applicant had failed to submit the proof to the effect that the export proceeds in respect of the subject Shipping Bills have been realized, in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995. Accordingly, a demand notice dated 21.10.2019 was issued to the Applicant to either submit the proof to the effect that the export proceeds had been realized or refund the drawback amount already sanctioned to them. Original authority, vide the above mentioned Order-in-Original dated 01.12.2020, confirmed the demand of Rs. 3,23,704/- along with interest as the

Applicant failed to submit the requisite proof. Balance demand was dropped. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected for the reasons as mentioned above.

3. The revision application has been filed, mainly, on the grounds that the subject matter involved related to demand of drawback and, hence, prima-facie, pre-deposit was not required to be paid; and that Circular No. 993/17/20174-CX dated 05.01.2015 issued by the Board to the effect that mandatory pre-deposit will be payable is not binding on the Applicant.

4. Personal hearing, in virtual mode, was held on 16.08.2022. Sh. Amit Jain, Chartered Accountant appeared for the Applicant and reiterated the contents of the revision application. Upon being asked, Sh. Jain requested that the matter may be remanded subject to pre-deposit being made. Sh. Sarthak Gupta, Appraiser appeared for the Respondent department and supported the orders of the lower authorities.

4. The Government has examined the matter carefully. The Commissioner (Appeals) has rejected the appeal on the ground that the Applicant did not make mandatory pre-deposit of 7.5%, as required in terms of Section 129E of the Customs Act, 1962. At this stage, it is not disputed that the pre-deposit ought to have been made for the appeal to have been entertained by the Commissioner (Appeals). Only plea is that the matter should, now, be remanded back to Commissioner (Appeals) for decision on merits subject to the pre-deposit being made. It is observed that the order of Commissioner (Appeals) is more than five months old and the Applicant was having

sufficient time to make the pre-deposit, but the same was not done. Even at this late stage, the Applicant has not sought a remand after making the pre-deposit but has made pre-deposit conditional to the remand order being passed. There is no explanation as to why the Applicant could not approach with this plea after making the pre-deposit when they are admittedly, now, inclined to do so. In the circumstances, the request made by Applicant does not merit consideration.

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



(Sandeep Prakash)

Additional Secretary to the Government of India


M/s IFGL Refractories Limited,
3, Netaji Subhas Road,
Kolkata 700001.

Order No. 269/22-Cus dated 17.08.2022

Copy to:

1. The Commissioner of Customs (Port), Customs House, 15/1, Strand Road, Kolkata - 700001.
2. The Commissioner of Customs (Appeals), Customs House, 15/1, 3rd Floor, Strand Road, Kolkata - 700001.
3. Sh. Amit Jain, Chartered Accountant, C/o 3, Netaji Subhas Road, Kolkata-700001.
4. PS to AS (RA).
5. Guard File.
6. Spare Copy.

ATTESTED


20/20/22
SUPERVISOR / Superintendent (R.A. Unit)
CUSTOMS HOUSE / Department of Revenue
MINISTRY OF FINANCE
Room No. 606, 6th Floor, B-Wing
14, Minto Market Building, New Delhi-110006