

**SPEED POST**



F. No. 375/34/DBK/2022-R.A.  
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. 17/08/22

Order No. 271 / 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 Customs Act, 1962.

**SUBJECT** : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CC(A)Cus/D-II/ICD/PPG/1477/2021-22 dated 14.12.2021, passed by Commissioner of Customs (Appeals), New Custom House, New Delhi.

**APPLICANT** : Sh. Rajinder Arora, Amritsar.

**RESPONDENT** : The Commissioner of Customs, ICD Patparganj, New Delhi.

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**ORDER**

A Revision Application No.375/34/DBK/2022-RA dated 31.05.2022 has been filed by Sh. Rajinder Arora, Amritsar (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-II/ICD/PPG/1477/2021-22 dated 14.12.2021, passed by Commissioner of Customs (Appeals), New Custom House, New Delhi. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal of the Applicant, against the Order in Original No. 31/ADC/GKJ/PPG/2017, dated 19.06.2017, passed by the Additional Commissioner of Customs, ICD Patparganj, New Delhi.

2. Brief facts of the case are that, on the basis of an intelligence that M/s Pintu Trading was indulging in fraudulent exports by overvaluation to claim undue export benefits, the Officers of the Commissionerate of Customs (Preventive), New Delhi initiated an investigation. During the course of investigation, it was found that the Applicant is also one of the accomplice along with other entities/persons who had connived in the fraudulent export by grossly over-invoicing the export goods in order to avail undue drawback and, thus, knowingly and intentionally defrauded the Government. Accordingly, a show cause notice dated 20.10.2015 was issued to the Applicant and other persons/entities for the recovery of drawback availed along with interest, in terms of Rule 16/16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, read with the provisions of Section 75(1) of the Customs Act, 1962, and for the imposition of penalty etc. Additional Commissioner of Customs, vide the OIO dated 19.06.2017, inter-alia ordered that the value of the export goods is redetermined as Rs. 13,91,666/- from Rs. 2,07,52,047/-. Penalty of Rs. 5,00,000/- was also imposed on the Applicant under Section 114 of the Custom Act, 1962. 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 Show Cause Notice was not served upon the Applicant and, hence, the entire proceedings were vitiated and can not be sustained; and that the penalty cannot be imposed under Section 114 (iii) of the Customs Act, 1962.

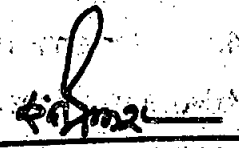
4. Personal hearing, in virtual mode, was held on 16.08.2022. Sh. Jitin Singhal, Advocate appeared for the Applicant and reiterated the contents of the revision application. He also relied upon the case laws indicated in the compilation emailed on 16.08.2022. None appeared on behalf of the Respondent department nor any request for adjournment has been received. Therefore, the matter is taken up for disposal based on records.

5.1 The Government has examined the matter carefully. Applicant has contended that he had not received the Show Cause Notice and, therefore, could not defend the case before the original authority. It is also on record that this issue was raised by the Applicant before the Commissioner (Appeals). Commissioner (Appeals) had, however, rejected the plea of the Applicant on the ground that the Show Cause Notice was sent by Speed post and, therefore, the plea of violation of natural justice does not survive. The Commissioner (Appeals), therefore, appears to have presumed that since the notice was sent by speed post, it was delivered to the Applicant.

5.2 The Government observes, that with effect from 29.03.2018, the provisions of Section 153 of the Customs Act, 1962 were substituted and new sub-section (3) was added, which provides that "When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved". However, it is observed that in the present case show cause notice was issued on 20.10.2015, i.e, much before the new provisions of Section 153 come into effect. Thus, the presumption made by Commissioner (Appeals) has no legal basis.

5.3 As such, it would be in the interest of justice that the matter is remanded to the original authority for decision afresh, after supplying a copy of the show cause notice along with the supporting documents to the Applicant, and after following the principles of natural justice. It is clarified that matter is to be decided afresh only to the extent it relates to the Applicant herein.

6. Accordingly, the revision application is allowed by way of remand to the original authority, with directions as above:



(Sandeep Prakash)

Additional Secretary to the Government of India

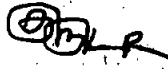
Sh. Rajinder Arora,  
20-A, Maqbool Road,  
Amritsar (Punjab)-143001.

Order No. 271/22-Cus dated 17-08-2022

Copy to:-

1. The Commissioner of Customs, ICD Patparganj, New Delhi-110096.
2. The Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi 110037.
3. Sh. Jitin Singh, Advocate, 961, (LFG), Sector-15, Part-II, Gurgaon-122001.
4. P.S. To A.S (RA)
5. Guard File
6. Spare Copy

ATTESTED



(लक्ष्मी राघवन)  
(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