

SPEED POST



F.No. 380/19/DBK/2015-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... 7/11/22

Order No. 337/22-Cus dated 04-11-2022 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 under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 34/2015-CE dated 30.01.2015 passed by the Commissioner of Central Excise (Appeals-I), Bengaluru
- Applicant : The Commissioner of CGST & Central Excise, North West Commissionerate, Bengaluru.
- Respondent : M/s GCL India Pvt. Ltd., Bengaluru.
-

ORDER

A Revision Application, bearing no. 380/19/DBK/2015-RA dated 30.04.2015, has been filed by the Commissioner of Central Excise, Bengaluru-II, presently, Commissioner of CGST & Central Excise, North West Commissionerate, Bengaluru (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 34/2015-CE dated 30.01.2015, passed by the Commissioner of Central Excise (Appeals-I), Bengaluru, vide which the appeal filed by department against the Order-in-Original No. 326/2013 (R) dated 17.07.2013, passed by the Assistant Commissioner of Central Excise, E-2 Division, has been disposed of by way of remand with certain directions.

2. Brief facts of the case are that the Respondents herein filed a drawback claim amounting to Rs.8,89,920/- in respect of supplies made to the SEZ Unit, which was sanctioned by the original authority. Aggrieved, the Applicant department filed an appeal before the Commissioner (Appeals) on the grounds that the SEZ Unit had not issued the Disclaimer Certificate in favour of the Respondent herein and further that the payments had not been received from the foreign currency account which is a mandatory requirement under Rule 30(8) of SEZ Rules, 2006. Commissioner (Appeals), vide the impugned OIA dated 30.01.2015, directed the original authority to verify the authenticity of the Disclaimer Certificate produced in appeal and thereafter pass a fresh speaking order.

3. The revision application has been filed, mainly, on the grounds that the Commissioner (Appeals), in the impugned OIA, had not commented about the

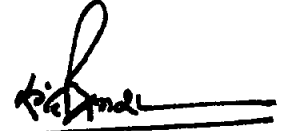
second aspect of the department's appeal that the export proceeds were not realized from the foreign currency account and, therefore, the condition of Rule 30(8) of the SEZ Rules, 2006 is not fulfilled; and that, therefore, the Order of remand with directions only to verify the Disclaimer Certificate is incorrect.

4. Personal hearing in the matter was fixed on 12.10.2021, 20.10.2021, 22.03.2022, 29.03.2022, 03.10.2022, 21.10.2022 and 04.11.2022. In the hearing held, in virtual mode, on 04.11.2022, Sh. Ravi G., Superintendent appeared for the Applicant department and reiterated the contents of the revision application. No one appeared for the Respondent on any of the above mentioned dates nor any request for adjournment has been received. Therefore, it is presumed that the Respondent has nothing to add in the matter.

5. The Government has examined the matter carefully. The Applicant department has contended that the payment in respect of the goods supplied to the SEZ Unit was not received from the foreign currency account. Government observes that for granting drawback, realization of export proceeds is an essential condition. Further, Rule 30(8) of the SEZ Rules, 2006 prescribes that drawback, against supply of goods from DTA supplier, shall be admissible provided payments for supply are made from the foreign currency account of the SEZ Unit. In the present case, the DTA Unit has made the claim for drawback based on Disclaimer Certificate issued by the SEZ Unit. Therefore, while considering the admissibility of drawback, it was imperative for the sanctioning authority to verify that all the conditions prescribed under relevant Rules and Regulations had been fulfilled by the claimant. It is further

observed that the Respondent has not disputed the fact that the export proceeds were not realized from the foreign currency account of the SEZ Unit either during the Appellate proceeding or under the instant proceedings. In these facts and circumstances, Government holds that since the essential condition, i.e., realization of the export proceeds from the foreign currency account was not fulfilled, therefore, the drawback was not admissible in the instant case.

6. In view of the above, the revision application is allowed and orders of the both the lower authorities are set aside.



(Sandeep Prakash)

Additional Secretary to the Government of India

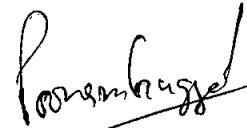
The Commissioner of CGST & Central Excise,
Bengaluru North West Commissionerate,
2nd Floor, BMTC Bus Stand Complex,
Shivaji Nagar,
Bengaluru-560051.

Order No. 337/22-Cus dated 4-11-2022

Copy to:

1. M/s. GCL India Pvt. Ltd., No. 419/420, 2nd Stage, 10th Main Road, Peenya Industrial Area, Bengaluru-560058.
2. The Commissioner of Central Excise (Appeals-I), Traffic & Transit Management Centre, BMTC Bus Stand, HAL Airport Road, Bengaluru-560071.
3. PA to AS(RA)
4. Guard File
5. Spare Copy

ATTESTED



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