

SPEED POST



F. No. 373/182/DBK/2016-RA  
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...16/12/22

Order No. 385/22-Cus dated 16-12-2022 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 C. Cus II No. 587/2016 dated 01.06.2016, passed by the Commissioner of Customs (Appeals-II), Chennai.

**Applicant** : M/s Eli Lilly Asia Inc., Bengaluru.

**Respondent** : The Commissioner of Customs, Chennai-IV Commissionerate, Chennai.

**ORDER**

A Revision Application No. 373/182/DBK/2016-RA dated 12.09.2016 has been filed by M/s Eli Lilly Asia Inc., Bengaluru (hereinafter referred to as the Applicant) against the Order-in-Appeal C.Cus II No. 587/2016 dated 01.06.2016, passed by the Commissioner of Customs (Appeals-II), Chennai. The Commissioner (Appeals) has upheld the order of the Assistant Commissioner of Customs, ( Drawback), Chennai-IV Commissionerate, Chennai, bearing Order-in-Original No. 45778 dated 17.03.2016. The Assistant Commissioner had rejected the drawback claim of the Applicant under the provisions of Section 74 of the Customs Act, 1962, as the identity of the re-exported goods was not established vis-à-vis the imported goods.

2. The revision application has been filed, mainly, on the ground that Commissioner (Appeals) has erred in holding that the identity of the goods was not established, as the test report given by the laboratory was not conclusive. Further, the test report was not given to them and in the absence of testing facility available with the Customs laboratory, the drawback claim cannot be rejected.

4. Personal hearing, in virtual mode, was held on 16.12.2022. None appeared on behalf of the Applicant. The counsel for the Applicant has, vide email dated 16.12.2022, submitted that the Company itself has been closed and requested that the case may be decided, as deemed appropriate, on the basis of revision application filed by them. Sh. R. S. Suntharavadanam, Assistant Commissioner appeared for the Respondent department and supported the order of Commissioner (Appeals).

5.1 The Government has examined the matter. It is observed that the instant revision application is not accompanied by the revision application fee of Rs. 1000/-, as required under Section 129DD (3) of the Customs Act, 1962. Thus issue has been raised for rectification with the Applicant, vide letters dated 19.10.2016 and 18.11.2022. However, the Applicants have failed to comply. Further, the Counsel for the Applicant had, vide letter dated 24.11.2022, informed that the TR-6 Challan for fee of Rs. 1,000/- will be forwarded shortly. However, vide letter dated 25.11.2022

and email dated 16.12.2022, it has been informed by the learned counsel that the company itself has been closed. No evidence has been furnished that the fee of Rs. 1,000/- has been deposited.

5.2 Sub-section (3) of the Section 129 DD reads as under:

*"An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of, -*

*(a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is one lakh rupees or less;*

*(b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is more than one lakh rupees ." (emphasis supplied).*

On a plain reading of the above said provision and specifically in view of usage of word "shall" by the legislature, it is clear that the payment of fee is mandatory. Thus, the instant revision application, which is not accompanied by fee, cannot be entertained.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

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Level 3, Nitesh Broadway,  
9/3, M.G. Road,  
Bengaluru 560001

Order No. 385/22-Cus dated 16-12-2022

Copy to:

1. The Commissioner of Customs (Seaport-Export), Chennai, IV Commissionerate, Custom House, 60, Rajaji Salai, Chennai-600001.
2. The Commissioner of Customs (Appeals), Custom House, 60, Rajaji Salai, Chennai-600001.
3. PA to AS(RA)
4. Guard File
5. Spare Copy
6. Notice Board.

*Praveen Negi*  
16/12/2022

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