

SPEED POST



F.No. 372/13/DBK/2021-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.....22/02/22

Order No. 59/22-Cus dated 22-02-2022 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. KOL/CUS(CCP)/AKR/200/2021 24.02.2021 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s Nupur Viniyog Pvt. Ltd., Kolkata.

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

**ORDER**

A Revision Application, bearing no. 372/13/DBK/2021-RA dated 08.06.2021, has been filed by M/s Nupur Viniyog Pvt. Ltd., Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(CCP)/AKR/200/2021 dated 24.02.2021 passed by the Commissioner of Customs (Appeals), Kolkata, vide which the appeal filed by the Applicant against the Order-in-Original No. 29/AC(DBK)/2019-20 dated 24.12.2019, passed by the Assistant Commissioner of Customs, Drawback Cell, CCP, Kolkata, has been rejected.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of 18 Shipping Bills with the jurisdictional customs authorities, for a total amount of Rs. 10,18,273/-, which were sanctioned. Subsequently, on scrutiny, it was observed by the office of Respondent that the Applicant had failed to submit the proof to the effect that the export proceeds in respect of the aforesaid Shipping Bills had been realized, in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Accordingly, Show Cause Notice dated 22.10.2018 was issued to the Applicant and out of the total demand of Rs. 10,18,273/-, the demand of Rs. 3,17,769/- was confirmed by the original authority along with the interest payable thereon, vide the above mentioned Order-in-Original. The appeal filed by the Applicant herein against the said Order-in-Original was rejected by the Commissioner (Appeals), vide the impugned Order-in-Appeal dated 24.02.2021 on the ground that the export proceeds were not realized within the stipulated time period or such extended period as may be extended by the competent authority.

3. The revision application has been filed, mainly, on the grounds that they had applied to the concerned AD bank for the extension of time limit for realization of export proceeds; that short realization was due to the charges deducted by foreign bank and agency commission; and that no personal hearing was granted before the passing of the impugned Order-in-Appeal. Written submissions dated 19.02.2022 have also been filed wherein, broadly, the contents of the revision application have been reiterated.

4. Personal hearings in the matter was held on 21.02.2022, in virtual mode. Sh. Aditya Dutta, Advocate appeared for the Applicant and reiterated the contents of the revision application. It is his contention that the acknowledgement due in terms of Section 153(1) of the Customs Act, 1962 has not been produced. None appeared for the respondent department. No request for adjournment has also been received. Therefore, the matter is taken up for disposal based on records.

5.1 Government has examined the matter carefully.

5.2.1 It is observed that, in terms of the second proviso to Section 75(1) of the Customs Act, 1962, where any drawback has been allowed on any goods and sale proceeds in respect of such goods are not received within the time allowed under FEMA, 1999, such drawback shall be deemed never to have been allowed. Further, as per Rule 16A(1) *ibid*, the drawback is recoverable if the export proceeds are not realized within the period allowed under the Foreign Exchange Management Act, 1999, including any extension of such period.

5.2.2 In the present case, the Applicant has apparently applied for extension of time from the AD Bank, vide, letter dated 16.01.2020 and it is contended that since the AD Bank has not rejected the request the request should be deemed to have been

accepted. At the outset, it is observed that the request for extension has been made on 16.01.2020 i.e. after the recovery of drawback had been already ordered by the original authority vide OIO dated 24.12.2019. Thus, the Applicant herein approached the AD Bank for extension after having suffered an adverse order. It is also apparent that the Bank has not granted the extension. The contention that since Bank has not rejected the request it should be deemed to have been accepted is misconceived. The extension of time for realisation of export proceeds requires a positive act to be taken by the RBI/AD Bank. That positive act not having been taken by the AD Bank, there is no question of extension being deemed to have been granted.


5.2.3 Thus, in the instant case, export proceeds have not been realized within the period allowed nor has the extension been granted by the competent authority under FEMA. As such, there is no doubt that the Applicant is not entitled for drawback corresponding to the export proceeds that were either not realized or were realized but not within the stipulated period.

5.3 Another contention of the Applicant is that the short realisation was due to the charges deducted by the foreign bank and the drawback is admissible on such short realisation in terms of CBIC Circular No. 33/2019 -Cus dated 19.09.2019. Government observes that the Applicant has not submitted any documentary evidence to prove that these charges were indeed deducted by the foreign bank nor any confirmation from the concerned bank i.e., the AD Bank has been placed on record, in this regard. Therefore, this contention of the Applicant also does not merit consideration.

5.4 The last contention of the Applicant herein is that no personal hearing was granted to them before the matter was decided by the Commissioner (Appeals). It is also alleged that they had not received any notice for personal hearing when the

same had been adjourned to the next date at their request. Government observes that the Commissioner (Appeals) has brought out that personal hearing was fixed before him on 15.01.2021 and 08.02.2021 but no one appeared for the Applicant herein nor any request for adjournment was received. Further, in terms of Section 153(3) ibid, when 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. No evidence has been placed on record by the Applicant to prove the contrary, in the present case. As such, the Government does not find any infirmity in the order of Commissioner (Appeals) on this count as well. In any case, the matter being absolutely clear on merits, as above, no useful purpose would be served by remanding the case to Commissioner (Appeals) for de-novo consideration.

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

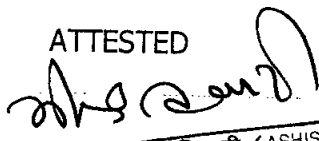
  
 (Sandeep Prakash)  
 Additional Secretary to the Government of India

M/s Nupur Viniyog Pvt. Ltd.,  
 1/A, Vansittart Row,  
 Kolkata- 700001.

Order No. 59/22-Cus dated 22-02-2022

Copy to:

1. The Commissioner of Customs (Preventive), Custom House, 15/1, Strand Road, Kolkata- 700001.
2. The Commissioner of Customs (Appeals), Custom House, 15/1, Strand Road, Kolkata – 700001.
3. Sh. Aditya Dutta, Advocate, Hastings Chambers, Room No. B/G (Basement), 7C, Kiran Sankar Roy Road, Kolkata 700001
4. PA to AS(RA)
5. Guard File
6. Spare Copy

ATTESTED  
  
 आशीष तिवारी / ASHISH TIWARI  
 सहायक आयुक्त/ Assistant Commissioner  
 केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क  
 CGST, Central Excise & Customs  
 राजस्व विभाग / Department of Revenue  
 वित्त मंत्रालय / Ministry of Finance  
 भारत सरकार / Government of India  
 नई दिल्ली / New Delhi