

SPEED POST



F.No. 372/06/DBK/2021-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. 28/2/22

Order No. 63/22-Cus dated 28-02-2022 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/122/2021 03.02.2021 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Mrs. Moumita Ghosh, Prop. of The Blossom, North 24 Paraganas.

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

ORDER

A Revision Application, bearing no. 372/06/DBK/2021-RA dated 30.03.2021, has been filed by Mrs. Moumita Ghosh, Proprietor of The Blossom, North 24 Paraganas (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(CCP)/AKR/122/2021 dated 03.02.2021 passed by the Commissioner of Customs (Appeals), Kolkata, vide which the appeal filed by the Applicant against the Order-in-Original No. 2/DC(DBK)/2019-20 dated 20.09.2019, passed by the Deputy Commissioner of Customs, Drawback Cell, CCP, Kolkata, has been rejected.

2. Brief facts of the case are that, during the period 2012-13,2013-14,2014-15 and 2016-17, Applicant filed drawback claims in respect of 93 Shipping Bills with the jurisdictional customs authorities, for a total amount of Rs. 3,61,223/-, 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 25.10.2018 was issued to the Applicant and a demand of Rs. 3,61,223/- was confirmed by the original authority along with the interest payable thereon, vide the above mentioned Order-in-Original dated 20.09.2019. 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 03.02.2021 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 the export proceeds had been realized and the BRCs were uploaded in the DGFT website; that as per practice no BRC would not be uploaded until export proceeds were regularized by the Reserve Bank of India/AD bank; that delay in receipt is only a technical defect; and, that, therefore, recovery of proportionate drawback claim does not arise.


4. Personal hearing in the matter was held on 21.02.2022, in virtual mode. Sh. R.N. Bandyopadhyay, Advocate appeared for the Applicant. After proceeding with the hearing for some time, Sh. Bandyopadhyay requested for 03 days time to produce evidence to substantiate the contentions put forth in the revision application. Accordingly, the personal hearing was again fixed for 25.02.2022. However, none appeared for the hearing on 25.02.2022. No request for adjournment has also been received nor any evidence has been produced to substantiate the claims made in the revision application. Therefore, the matter is taken up for disposal based on records.

5.1 The Government has carefully examined the matter. It is observed that the Applicant has, in the revision application as well as during the personal hearing, accepted that the export proceeds were realized but not within the stipulated time period. However, as regard the extension of time limit by the RBI/AD Bank for realization of export proceeds, the Applicant has contended that once the BRCs are uploaded on the DGFT website, it should be presumed that such extension had been granted by the competent authority. The Government observes that the issuance of BRCs and the extension of time period for the realization of export proceeds are two separate issues. Once the export proceeds are realized, it is obligatory on the part of the Bank to issue the BRCs and upload the same irrespective of the fact whether the same were realized within the stipulated/extended period of time or not. The extension of the time period for the realization of export proceeds is specifically granted by the Reserve Bank of India/AD Bank, on a case to case basis. In the instant case, no evidence has been submitted that the RBI or the AD Bank had actually done so. As such, the presumption of the Applicant that issuance of BRCs means the extension of time period automatically is not correct.

5.2 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 period 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. Admittedly, 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. Thus, there is no doubt that the drawback, sanctioned and paid, is recoverable from the Applicant. It is also evident that recovery of drawback in the event of export proceeds not being realized within the time period allowed under FEMA, is a substantive provision and not merely a matter of procedure or a technical issue.

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


 (Sandeep Prakash)

Additional Secretary to the Government of India

Mrs. Moumita Ghosh Proprietor of the Blossom,
 Village uttar Chatra, Dakshin para,
 P.o- Dakshin Chatra, P.s. Baduria,
 District North 24 Paraganas, West Bengal
 Pin code - 743247

Order No. 63/22-Cus dated 28-02-2022

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. R.N. Bandyopadhyay, Advocate, 9, Queen's Mansion, 12, Park Street, Ist gate, Room No. 412 A, Kolkata – 700001.
4. PA to AS(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
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