

REGISTERED  
SPEED POST



F. No. 372/04/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 28/2/22

Order No. 65/22-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 filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/CUS(Port)/AKR/101/2021 dated 28.01.2021, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Sh. Biplab Chakraborty, Proprietor of M/s. Chakraborty Air Cargo, Kolkata.

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

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**ORDER**

A Revision Application No. 372/04/DBK/2020-RA dated 09.03.2021 has been filed by Sh. Biplab Chakraborty, Proprietor of M/s. Chakraborty Air Cargo, Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(Port)/AKR/101/2021 dated 28.01.2021, passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal of the Applicant against the Order-in-Original No. KOL/CUS/AC/SD/449/DBK(Port)/2019 dated 14.05.2019 passed by the Assistant Commissioner of Customs, Drawback Department (Port), Customs House, Kolkata.

2. Brief facts of the case are that the Applicant filed drawback claim in respect of 01 Shipping Bill No. 9816084 dated 27.05.2015, with the Deputy Commissioner of Customs, Drawback department (Port), Custom House, Kolkata, for a total amount of Rs. 6,17,792/-, which was sanctioned. However, subsequently, 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 said 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 23.09.2016 was issued to the Applicant for a demand of Rs. 6,17,792/-, out of which a demand of Rs. 5,36,973/- was confirmed by the original authority, vide aforesaid Order-in-Original dated 14.05.2019. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed, mainly, on the ground that the export proceeds had been realized though not within the stipulated period; and that the time period for realization of export proceeds had been extended by the AD Bank, vide their letter dated 24.07.2019. Written submissions dated 03.05.2021 and 24.02.2022 have been submitted by the Respondent department.

4. Personal hearing, in virtual mode, was held on 25.02.2022. Sh. Arijit Chakraborty, Advocate appeared for the Applicant and reiterated the contents of the revision application. None appeared for the Respondent department nor any request for adjournment has been received. Therefore, the matter is taken up for disposal based on written submissions.

5.1 The Government has carefully examined the matter. It is observed that out of the total receivable export proceeds an amount of US \$ 9534 was received on 16.06.2015 whereas an amount of US \$ 89883 had been realized on 22.05.2019. Thus, only the amount of US \$ 9534 was realized within the time period allowed under FEMA whereas the remaining amount was realized much beyond the specified time period. It is claimed, in the revision application, that, as per letter dated 24.07.2019 of the AD Bank, the Reserve Bank of India had extended the time limit upto 30.09.2019. Para 2 and 4 of the letter dated 24.07.2019 are re-produced here below:

*"2. As per RBI Master Direction on Export of Goods and Services Para C 28 (1), the exporters would be caution listed if any shipping bill against them remains open for more than two years in EDPMS provided no extension is granted by AD category Bank/RBI. Date of Shipment will be considered for reckoning the realization period.*

3. ....

*4. As a last time opportunity, RBI has given an extension of 3 months period i.e. up to September 30, 2019 to clear the pendency in EDPMS, particularly with respect to shipping bills which are more than 2 years old. Accordingly, till September 30, 2019 the provisions of caution listing will not be effective. "*

On a plain reading of the above letter dated 24.07.2019, it is thus clear that the said letter is only regarding the extension of time limit for not putting the exporter in caution list under Export Data Processing and Monitoring System (EDPMS) of RBI. The said letter does not in any way convey that the time period for realisation of export proceeds has been extended by the RBI, in general – what this letter conveys, in effect, is that in case export proceeds are not realised by 30.09.2019, the exporter will be caution listed and in that eventuality the Bank shall be handling the shipping documents of the caution listed exporter in the manner laid down in the

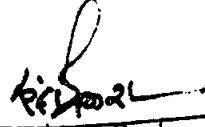
RBI Master Direction. Thus, it is apparent that the subject contention of Applicant with reference to the said letter dated 24.07.2019 of the AD Bank is, to say the least, misleading. The Government also observes that in the proceedings before the lower authorities a letter dated 10.10.2016, purportedly conveying extension of time by the AD Bank, was submitted, which was on verification confirmed to be a forged letter. Thus, the affairs of Applicant appear to be tainted by fraud and misrepresentation. The Hon'ble Supreme Court has, in the case of *Commissioner of Customs, Kandla vs. Essar Oil Ltd. {2004 (172) ELT 0433 (SC)}*, held that fraud vitiates even the most solemn proceedings. As such, the present proceedings deserve to be dismissed on this ground itself.

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, the Government holds that the drawback, sanctioned and paid, is recoverable from the Applicant.

5.3 Further, the provisions of Rule 16A *ibid*, enabling recovery of drawback where export proceeds are not realized within the period allowed under FEMA, including any extension of such period, have been framed to give effect to the provisions made in the parent statute, i.e., Section 75(1) *ibid*. It is to be observed that drawback is paid before realization of export proceeds and recovery thereof is initiated if such proceeds are not realized within the period prescribed, including any extension of such period. If the requirement of realization within prescribed period is not treated as a mandatory condition, the process of recovery shall remain an

unending exercise and thereby render the provisions of the second proviso to section 75(1) and the Rule 16A(1) redundant and otiose.

6. In view of the above, the impugned OIA is upheld and the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

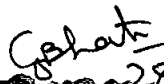
Sh. Biplab Chakraborty,  
Proprietor of M/s. Chakraborty Air Cargo,  
S.S. Hogg Market, Shop No. W2-62,  
New Complex, 2<sup>nd</sup>, West, Kolkata – 700087.

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

Copy to:

1. The Commissioner of Customs (Port), Kolkata, 15/1, Strand Road, Custom House, Kolkata – 700001.
2. The Commissioner of Customs (Appeals), 15/1, 3<sup>rd</sup> Floor, Strand Road, Kolkata – 700001.
3. Sh. Arijit Chakraborty, Advocate, Hastings Chambers, Room No. B/G & B/J, 7C, Kiran Sankar Roy Road, Kolkata - 700001.
4. PS to AS (RA).
5. Guard File.
6. Spare Copy.

ATTESTED



28/2/22

**SECRETARY (RA) / CUSTOMS**  
**GOVERNMENT OF INDIA**  
**15/1, STRAND ROAD, KOLKATA - 700001**  
**OFFICE OF THE SECRETARY (RA) / CUSTOMS**  
**GOVERNMENT OF INDIA**  
**15/1, STRAND ROAD, KOLKATA - 700001**