

REGISTERED
SPEED POST



F.No. 375/31/DBK/2020-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 08/03/22

Order No. 78/22-Cus dated 08-03-2022 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. 396(CRM)CUS/JPR/2019 dated 25.11.2019, passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur.

Applicant : M/s Attitudes, Jaipur.

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

.....

ORDER

A revision application No. 375/31/DBK/2020-RA dated 03.03.2020 has been filed by M/s Attitudes, Jaipur (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 396(CRM)CUS/JPR/2019 dated 25.11.2019, passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur, vide which the appeal filed by the Applicant against the Order-in-Original No. 70/2018/DC-Refund dated 18.12.2018, passed by the Deputy Commissioner of Customs, I.C.D., CONCOR, Kanakpura, Jaipur, has been rejected.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of 02 Shipping Bills, with the jurisdictional customs authorities, for a total amount of Rs. 1,38,255/-, 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 27.04.2015 was issued to the Applicant and the demand of Rs. 1,38,255/- was confirmed by the original authority, vide the Order-in-Original No. 50/2016-DBK dated 04.04.2016. Applicant deposited the already availed drawback amount of Rs. 1,38,255/- along with interest amount of Rs. 1,09,470/- and the penalty amount of Rs. 8,000/-, i.e., a total amount of Rs. 2,55,725/-, in compliance of the OIO dated 04.04.2016. No appeal was filed by the Applicant against the said OIO dated 04.04.2016. Later on, the Applicant filed a refund claim for Rs. 2,55,725/- with the jurisdictional customs authority for the refund of the already deposited drawback amount, interest and penalty on the ground that the

export proceeds in the case have already been realized. Dy. Commissioner of Customs, Drawback, ICD, Kanakpura, Jaipur, rejected the refund claim, vide OIO dated 18.12.2018, on the ground that the OIO dated 04.04.2016, in compliance whereof the Applicant had deposited the said amount, was not challenged before the appropriate forum and, hence, the same had attained finality. Therefore, the refund claim was not admissible. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected.

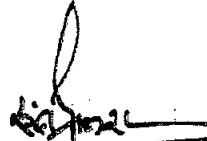
3. The revision application has been filed, mainly, on the grounds that the Applicant had realized the export proceeds; that subject remittances have been received within the period allowed by the RBI; and, that, therefore the Applicant can not be fastened with a liability of recovery of drawback, interest and penalty.

4. Personal hearing, in virtual mode, was held on 07.03.2022. Sh. Suhrid Bhatnagar, Advocate, appeared for the Applicant and reiterated the contents of the revision application. Sh. M. C. Meena, Superintendent appeared for the respondent department and supported the order of Commissioner (Appeals).

5. The Government has examined the matter carefully. It is contended by the Applicant that they had realized the export proceeds in time and, hence, the refund claim of already deposited drawback amount along with interest and penalty is in order. The Government observes that the Applicant had deposited the drawback amount, interest and penalty in compliance of the OIO dated 04.04.2016. It is also

an admitted fact that the OIO dated 04.04.2016 was never challenged before the appellate authority. In such a situation, the OIO dated 04.04.2016 has attained finality. Therefore, the question of refund of amounts deposited in compliance of the said Order does not arise. The Hon'ble Supreme Court has, in the case of *ITC Ltd., vs. Commissioner of Central Excise, Kolkata-IV {2019 (368) ELT 216 (SC)}*, held "*that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law taking recourse to appropriate proceedings.....*" Applying the ratio of ITC Ltd. (supra), in the present case, the refund claim could not have been entertained unless the order confirming the demand and recovery of drawback alongwith interest and imposing penalty had been set aside in an appropriate proceeding. As such, there is no infirmity in the impugned Order-in-Appeal.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Attitudes, 42, Madrampura,
Civil Lines, Jaipur - 302006
Rajasthan.

Order No. 78 /22-Cus dated 08-03-2022

Copy to:

1. The Commissioner of Customs (Preventive), Jaipur, New Central Revenue Building, Statue Circle, "C" Scheme, Jaipur – 302 005.
2. The Commissioner (Appeals), Customs, Central Excise & CGST, New Central Revenue Building, Statue Circle, Jaipur – 302 005.

3. Sh. Surhid Bhatnagar, Advocate, F-127, Cine Star, Central Spine, Vidhyadhar Nagar, Jaipur 302039
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
नई दिल्ली / New Delhi