

F. Nos. 375/34/DBK/2020-RA
375/43/DBK/2020-RA

REGISTERED
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F. Nos. 375/34/DBK/2020-RA
375/43/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... 08/3/22

Order No. 81-82/22-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 filed under section 129 DD of the Customs Act 1962 against the Orders-in-Appeal Nos. 424(CRM)CUS/JPR/2019 dated 10.12.2019 & 12(SM)CUS/JPR/2020 dated 11.02.2020, both passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur.

Applicant : M/s Variety Crafts Exports, Jaipur

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

ORDER

Two Revision Applications, bearing nos. 375/34/DBK/2020-RA dated 17.03.2020 & 375/43/DBK/2020-RA dated 14.07.2020 have been filed by M/s Variety Craft Exports, Jaipur (hereinafter referred to as the Applicants) against the Orders-in-Appeal Nos. 424(CRM)CUS/JPR/2019 dated 10.12.2019 & 12(SM)CUS/JPR/2020 dated 11.02.2020, both passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur. The Commissioner (Appeals), vide the impugned Orders-in-Appeal, has rejected the appeals of the Applicant in both cases against the Orders-in-Original Nos. 196/2014-15/DC dated 30.08.2014 & 95/2014-15/DC dated 30.05.2014, both passed by the Deputy Commissioner of Customs, Air Cargo Complex, Sanganer, Jaipur, as time barred.

2.1 Brief facts of the case, in respect of revision application no. 375/34/DBK/2020-RA, are that the Applicant filed drawback claim in respect of two Shipping Bills, with the jurisdictional customs authorities, for a total amount of Rs.1,22,996/-, which was 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 16/16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Accordingly, Show Cause Notice dated 21.05.2014 was issued to the Applicant and the demand of Rs. 1,22,996/- was confirmed by the original authority, alongwith applicable interest, vide the above-mentioned Order-in-Original dated 30.08.2014. A penalty of Rs. 5,000/- was also imposed under Section 117 of the Act *ibid*. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected as time barred.

2.2 Brief facts of the case, in respect of revision application no. 375/43/DBK/2020-RA, are that the Applicant filed drawback claim in respect of Shipping Bill no.105 dated 01.05.2010, with the jurisdictional customs authorities, for a total amount of Rs.80,172/-, which was 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 16/16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Accordingly, Show Cause Notice dated 20.11.2013 was issued to the Applicant and the demand of Rs. 80,172/- was confirmed by the original authority, alongwith applicable interest, vide the above-mentioned Order-in-Original dated 30.05.2014. A penalty of Rs. 20,000/- was also imposed under Section 117 of the Act ibid. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected as time barred.

3.1 The revision application no. 375/34/DBK/2020-RA has been filed, mainly, on the grounds that the Applicant had received the OIO dated 30.08.2014 only on 31.07.2019 and, hence, the appeal filed before the Commissioner (Appeals) was in stipulated time period.

3.2 The revision application no. 375/43/DBK/2020-RA has been filed, mainly, on the grounds that the Applicant had received the OIO dated 30.05.2014 only on 31.07.2019 and, hence, the appeal filed before the Commissioner (Appeals) was in stipulated time period.

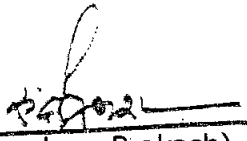
4. Personal hearing, in virtual mode, was held on 07.03.2022. Sh. Suhrid Bhatnagar, Advocate appeared for the Applicant. Since the issue involved in both the cases is same, these were taken together for hearing. Sh. Bhatnagar reiterated the contents of the revision applications. He highlighted that the Commissioner (Appeals) has relied upon the amended provision of Section 153 of the Customs Act, 1962 whereas these provisions came into effect only in March 2018. None appeared for the Respondent department nor any request for adjournment has been received. Therefore, the matter is taken up for disposal based on records.

5.1 The Government has examined the matter carefully. It is observed that, in terms of Section 128 of the Customs Act, 1962, the appeal before the Commissioner (Appeals) can be filed within a period of sixty days or further extended period of thirty days, i.e., maximum period (including condonable period) within which the appeal can be filed is 90 days. In the instant cases, the appeal before the Commissioner (Appeals) was filed after a period of about 5 years. Government further observes that while rejecting the appeal, the Commissioner (Appeals) has observed that the impugned OIO dated 30.08.2014 was sent through Speed Post on 30.08.2014 and OIO dated 30.05.2014 was sent through Speed post on 30.05.2014 and the OIO dated 30.08.2014 was never returned to the office of the original authority.

5.2 Contention of the Applicant is that the subject OIOs were received by them only on 31.07.2019. The Government observes that the show cause notices dated 21.05.2014 & 20.11.2013 were issued by the department by 'registered post' but the Applicant claims to have not received them. Further, it is stated in the department's letter dated 04.10.2019 that the OIO dated 30.05.2014 was sent to the Applicant through 'speed post' and the same was returned undelivered with remark of postal authorities – "non-availability of addressee on the address". Further, the Applicant filed an RTI application for providing a copy of impugned OIO dated 30.05.2014 and the reply of the RTI application sent by Speed post was also returned back undelivered with remarks "left dated 20.07.2019". Thus, it is apparent that the Applicant was, in 2014 itself, not available on the address. There is also nothing on record to indicate that the Applicant, at any stage, apprised the department of change in address. In these facts and circumstances, it is apparent that if the OIOs were not received by the Applicant, the same was due to omission on part of the Applicant and not due to any fault of the department. The case laws relied upon are not applicable in the facts of the present case.

5.3 As such, the Government does not find any infirmity in the impugned orders of Commissioner (Appeals).

6. In view of the above, the revision applications are rejected.


(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Variety Craft Exports,
D-81B, Road No. 7, VKI Area,
Jaipur – 302013.

Order No. 21-22/22-Cus dated 08-03-2022

Copy to:

1. The Commissioner of Customs, Jaipur, New Central Revenue Building, Statue Circle, "C" Scheme, Jaipur – 302005.
2. The Commissioner (Appeals), Central Excise & CGST, Jaipur, NCRB, Statue Circle, Jaipur – 30205.
3. Sh. Suhrid Bhatnagar, Advocate, M/s Acumen Tax Consultants, F-127, Cine Star, Central Spine, Vidhyadhar Nagar, Jaipur – 302039.
4. PS to AS (RA).
5. ~~Guard File.~~
6. Spare Copy.

ATTESTED

