

REGISTERED
SPEED POST



F. No. 372/20/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. 21/3/22

Order No. 89/22-Cus dated 21-03-2022 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 Order-in-Appeal No. KOL/CUS(CCP)/KA/148/D/2020 dated 06.07.2020, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s K.G.N. International, Kolkata.

Respondent : Commissioner of Customs (Preventive), Kolkata.

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ORDER

A Revision Application No. 372/20/DBK/2020-RA dated 24.12.2020 has been filed by M/s K.G.N. International, Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(CCP)/KA/148/D/2020 dated 06.07.2020, 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. 18/DC(DBK)/2017-18 dated 15.05.2017 passed by the Deputy Commissioner of Customs, Drawback Cell, CC(P), Kolkata.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of 220 Shipping Bills, during the calendar years 2012, 2013, 2014 and 2015, with the Deputy Commissioner of Customs, Drawback, CC(P), Kolkata, for a total amount of Rs. 10,67,96,373/-, 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, a show cause notice dated 20.05.2016 was issued to the Applicant for a demand of Rs. Rs.9,92,42,274/-, out of which a demand of Rs.6,39,21,965/- was confirmed by the original authority, vide the aforesaid Order-in-Original dated 15.05.2017. 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 payment of Rs. 5,07,43,554/- has been realized out of the confirmed demand of Rs. 9,92,42,274/-. As such the total demand comes to Rs. 4,84,98,720/- only out of Rs. 9,92,42,274/- instead of Rs. 6,39,21,965/- as confirmed by the original authority.

4. Personal hearing was fixed on 07.02.2022, 25.02.2022 and 21.03.2022. None appeared on behalf of the Applicant or Respondent department on any of the dates mentioned above nor any request for adjournment has been received. An email dated 21.03.2022 has been received from Sh. Debaditya Banerjee, Advocate for the

Applicant reiterating the grounds urged in the revision application and requesting for the matter to be decided in favour of the Applicant with consequential relief. Therefore, the matter is taken up for disposal based on records.

5.1 The Government has carefully examined the matter. Applicant in the revision application has contended that they had realized an amount of Rs. 5,07,43,554/- against the demand of Rs. 9,92,42,274/- and as such only the demand of Rs. 4,84,98,720/- is pending against them whereas the adjudicating authority and as well as the Commissioner (Appeals) have confirmed the demand of Rs. 6,39,21,962/- . Government observes that the demand of Rs. 6,39,21,962/- represent the amount of drawback which was paid to the Applicant whereas the Applicant appears to have considered the amount of Rs. 6,39,21,962/- as the amount of payment to be realized as export proceeds. The original demand was of Rs. 9,92,42,274/- and the original adjudicating authority had confirmed the demand of Rs. 6,39,21,962/- only, makes it evident that the export proceeds realized by the Applicant had duly been taken into account while confirming the demand. No evidence has been placed on record to show that any remittance, over and above that already considered by the lower authorities, has been received. As such this contention of the Applicant does not have any merit and is, accordingly, rejected.

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5.2 Government observes 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 period allowed under FEMA, 1999, such drawback shall be deemed never to have been allowed. Further, as per Rule 16A *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 corresponding drawback, sanctioned and paid, is recoverable from the Applicant.

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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. As such, there is no infirmity in the impugned Order of Commissioner (Appeals).

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



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s K.G.N. International,
101/B, C.R. Avenue, Room No. – 4A,
Kolkata – 700073.

Order No. 89/22-Cus dated 21-03-2022

Copy to:

1. The Commissioner of Customs (Preventive), Kolkata, 15/1, Strand Road, Custom House, Kolkata.
2. The Commissioner of Customs (Appeals), 15/1, 3rd Floor, Strand Road, Kolkata – 700001.
3. Sh. Debaditya Banerjee, Advocate, Room No. 508, 5th Floor, 4, Govt. Place (North), Kolkata – 700001.
4. PS to AS (RA).
5. Guard File.
6. Spare Copy.

ATTESTED

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नई दिल्ली / New Delhi

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