

REGISTERED
SPEED POST



F. No. 372/19/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. 21/3/22

Order No. 90/22-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(Port)/AKR/210/2021 dated 26.02.2021, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s SSK Exports Limited, Kolkata.

Respondent : Commissioner of Customs (Port), Kolkata.

ORDER

A Revision Application No. 372/19/DBK/2021-RA dated 10.08.2021 has been filed by M/s SSK Exports Limited, Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(Port)/AKR/210/2021 dated 26.02.2021, 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/DC/6319/Port/DBK/2016 dated 22.12.2016 passed by the Deputy Commissioner of Customs, Drawback department (Port), Custom House, Kolkata.

2. Brief facts of the case are that the Applicant filed drawback claim in respect of Shipping Bill No. 4584781 dated 22.03.2013, with the Deputy Commissioner of Customs, Drawback department Port, Kolkata, for a total amount of Rs. 20,100/-, 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 29.05.2015 was issued to the Applicant for a demand of Rs.20,100/-, which was confirmed by the original authority, vide the aforesaid Order-in-Original dated 22.12.2016. 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 time period; and that the BRC was produced within 30 days of notice.

4. Personal hearing, in virtual mode, was held on 21.03.2022. Ms. Shruti Jain and Mr. S.L. Mandal, Authorized representatives appeared on behalf of the Applicant and reiterated the contents of the revision application. Upon being asked whether the AD Bank/RBI had extended the time period for realization of export proceeds, Ms. Jain

admitted that such extension has not been granted. None appeared on behalf of the Respondent department nor any request for adjournment has been received. Therefore, the matter is taken up for disposal based on records.

5. The Government has examined the matter carefully. Admittedly, the export proceeds have been realized but not within the stipulated time period. 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(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. 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 paid to the Applicant is recoverable along with applicable interest.

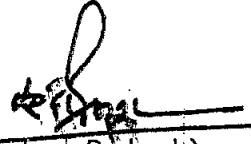
5.2 Further, the provisions of Rule 16A *ibid*, enabling recovery of drawback where export proceeds are not realized within the period allowed under FEMA, including any extension of such period, have been framed to give effect to the provisions made in the parent statute, i.e, section 75(1) *ibid*. It 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.

5.3 The contention that the BRC had been produced within 30 days of the notice under Rule 16A(2) is also of no assistance to the Applicant in as much as the realization

of export proceeds is not in dispute herein. The relevant factor here is that the proceeds were not realized within the period prescribed.

5.4 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 SSK Exports Limited,
37, Shakespeare Sarani,
1st floor,
Kolkata – 700017.

Order No. 90/22-Cus dated 21-03-2022

Copy to:

1. The Commissioner of Customs (Port), Kolkata, 15/1, Strand Road, Custom House, Kolkata.
2. The Commissioner of Customs (Appeals), 15/1, 3rd Floor, Strand Road, Kolkata – 700001.
3. PS to AS (RA).
4. ✓ Guard File.
5. Spare Copy.

ATTESTED


(Lakshmi Raghavan)
(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