

SPEED POST



F. No. 372/08/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 22/12/22

Order No. 91/22-Cus dated 22-03-2022 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. KOL/CUS(PORT)/AKR/919/2020 dated 21.12.2020, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s Danieli India Ltd., Kolkata.

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

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ORDER

A Revision Application No. 372/08/DBK/2021-RA dated 22.03.2021 has been filed by M/s Danieli India Ltd., Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(PORT)/AKR/919/2020 dated 21.12.2020, passed by the Commissioner of Customs (Appeals), Kolkata vide which the appeal filed by the Applicant against the Order-in-Original No. KOL/CUS/AC/2669/DBK(Port)/2018 dated 03.08.2018, passed by the Assistant Commissioner of Customs, Drawback Department (Port), Kolkata, has been rejected.

2. Brief facts of the case are that the Applicant had exported "Project Cargo [Design, Engineering and Supply of Plan and equipment for 2 Nos Ladle Refining Furnaces and 2 Nos Continuous Casting Machines]" under claim of drawback for an amount of Rs. 8,91,176/-, which was sanctioned. However, subsequently, it was observed by the office of Respondent that the export proceeds were not realised within the stipulated time period of nine months. Accordingly, a show cause notice dated 19.02.2016 was issued to the Applicant for a demand of Rs.8,91,176/-, out of which a demand of Rs. 2,61,942/- was confirmed by the original authority, vide the aforesaid Order-in-Original dated 03.08.2018. 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 project duration had been extended by the AD Bank; that the entire export proceeds had been realized within the extended time period; that the balance 5% retention was also received within the extended time period; and that the interest under section 288 AA of the Customs Act, 1962 is not payable as the Applicant had realized export proceeds within the extended time period. Written submissions have been filed by the department vide letter F.No. S34M-09/2016 DBK dated 03.05.2021.

4. Personal hearing, in virtual mode, was held on 21.02.2022 when Sh. Pankaj Agarwal, Authorised Representative for the Applicant requested for 15 days time to

make additional submissions. Additional submissions were received on 10.03.2022. The hearing was again held on 11.03.2022. Sh. Pankaj Agarwal, appeared for the Applicant and requested for 10 days time to submit a certificate from the AD Bank that the export proceeds were realised within the period extended by the competent authority. Sh. Agarwal, further, stated that in case they fail to submit the same within 10 days, the matter may be decided without any further reference. In either case, they also do not desire any further PH. Applicant vide email dated 17.03.2022 has submitted the copy of letter dated 16.03.2022 issued by the Deutsche Bank Group Technology & Operations wherein it is stated that that for project export approval No. PEM/DANIELI/BANGLADESH/01 the project timeline was extended up to September, 2017 and confirmed that both the retention payments were received within the timeline mentioned in the PEM extension i.e. within September, 2017. No one appeared for the Respondent department nor any request for adjournment has been received.

5. The Government has examined the matter carefully. It is observed that the case against the Applicants is that they had not realized the export proceeds within the stipulated time period. It is contended by the Applicant that the Authorized Dealer had, vide letter dated 14.03.2017, extended the contract duration to September, 2017 and also accepted the payment terms of the contract. Thus, the essential grain of the argument advanced by the Applicant is that since project duration was extended, the extension of time period for realisation of export proceeds should also be inferred therefrom. The Government has not been persuaded by this contention. The time period for realisation of export proceeds is specified by the Reserve Bank of India in terms of Regulations/Instructions, issued under FEMA, from time to time. The authority and manner of extension of time period so specified is also laid down in these Regulations/Instructions. Thus, extension of time period for realisation of export proceeds is a positive act to be done by the authority competent to do so. There is no scope for inference in such a case. Being aware of this position, the Applicant had, in the personal hearing held on 11.03.2022, requested for time to produce a certificate to this effect. However,

the letter dated 16.03.2022 is only a repetition of the earlier narration that the project period had been extended and the export proceeds had been realised within this extended project period. This letter is conspicuously silent on the core issue, i.e., whether the time period for realisation of export proceeds had been extended. As such, the Government is left with no option but to conclude that the period of realisation of export proceeds had not been extended by the authority competent to do so.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

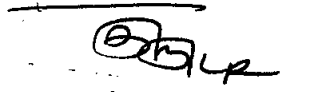
M/s Danieli India Ltd.,
Technipolis, Plot-4, Block-BP,
5th Floor, Wing-B, Sector – V,
Salt Lake, Kolkata – 700091.

Order No. 91/22-Cus dated 22-03-2022

Copy to:

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