

SPEED POST



F.No. 380/12/DBK/2020-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 31/3/22

Order No. 116 /22-Cus dated 31-03-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 19(SM)/CUS/JPR/2020 dated 02.03.2020, passed by the Commissioner (Appeals), Central Excise, CGST & Customs, Jaipur.

Applicant : The Commissioner of Customs (Preventive), Jodhpur.

Respondent : M/s. Excel Creation, Jodhpur.

**ORDER**

A Revision Application No. 372/12/DBK/2020-RA dated 03.09.2020 has been filed by the Commissioner of Customs (Preventive), Jodhpur (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 19(SM)/CUS/JPR/2020 dated 02.03.2020, passed by the Commissioner (Appeals), Central Excise, CGST & Customs, Jaipur. Commissioner (Appeals), vide the impugned Order-in-Appeal, has allowed the appeal of M/s Excel Creation, Jodhpur, (herein after referred to as the Respondent) by setting aside Order-in-Original No. 06/Refund/2019-20 dated 05.08.2019, passed by the Deputy Commissioner of Customs, ICD CONCOR, Bhagat Ki Kothi, Jodhpur.

2. Brief facts of the case are that the Respondent filed drawback claims in respect of 02 Shipping Bills, with the jurisdictional customs authorities, for a total amount of Rs. 1,12,893/-, which were sanctioned. Subsequently, on scrutiny, it was observed by the office of Applicant that the Respondent 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 03.11.2015 was issued to the Respondent and the demand of Rs. 1,12,893/- was confirmed by the original authority, vide the Order-in-Original No. 614/2016-17 dated 20.02.2017. Respondent deposited the already availed drawback amount of Rs. 1,12,893/- along with interest amount of Rs. 1,10,500/- and the penalty amount of Rs. 10,000/-, i.e., a total amount of Rs. 2,33,433/-, on 15.03.2019, in compliance of the OIO dated 20.02.2017. No appeal was filed by the Respondent against the said OIO dated 20.02.2017. Later on, the Respondent filed a refund claim for Rs.

2,33,4335/- 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. Deputy Commissioner of Customs, ICD CONCOR, Bhagat Ki Kothi, jodhpur, rejected the refund claim, vide OIO dated 05.05.2019, on the ground that the OIO dated 22.02.2017, in compliance whereof the Applicant had deposited the said amount, was not challenged before the appropriate forum and, hence, the same had attained finality. Further, there is no provision in Drawback Rules, which authorize the adjudicating authority to accept the BRCs after issue of Adjudication Order. Therefore, the refund claim was not admissible. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was allowed.

3. The revision application has been filed, mainly, on the ground that the export proceeds were not realized within the stipulated time period or such extended period as may be extended by the RBI/AD Bank; and that the OIO dated 22.02.2017 was not challenged before the Appellate authority and as such OIO dated 22.02.2017 had attained finality and, thus, benefit can not be granted by way of reopening of a settled case beyond limitation.

4. Personal hearing, in virtual mode, was held on 30.03.2022. Sh. Pradeep Jain, CA appeared for the Respondent and reiterated the contents of cross objections dated 28.11.2020. None appeared on behalf of the Applicant nor any request for adjournment has been received. Therefore, the matter is taken up for disposal based on records.

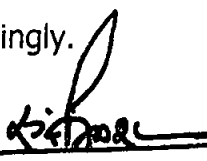
5.1 The Government has carefully examined the matter. It is contended by the Respondent that they had realized the export proceeds in time and, hence, the

refund claim of already deposited drawback amount along with interest and penalty is in order. To support their contention Respondent submitted a certificate dated Nil from Sh. Manish Kumar Bohtra, Chartered Accountant wherein it is stated that the export proceeds in respect of the relevant Shipping Bills were realized within the stipulated time period and the date of realization in the export proceeds realization certificate issued by the AD Bank was wrongly printed. Government observes that in terms of the Regulations/Instructions issued by the RBI, under FEMA 1999, the AD Bank is authorized to monitor and certify realization of export proceeds. Therefore, the AD Bank is the authority competent to issue a BRC. In case of any mistake in the BRC, it is the AD Bank only that can correct/rectify the mistake. A Chartered Accountant cannot be seeking to rectify the mistake, if any, specially behind the back of the AD Bank. As such, as per records available, the date certified by the AD Bank has to be reckoned as the date of realization of export proceeds and, accordingly, it has to be held that the export proceeds were not realized within the period prescribed. In this light, the recovery of drawback etc. cannot be disputed on merits.

5.2 Further, the Government also observes that the Respondent had deposited the drawback amount, interest and penalty in compliance of the OIO dated 22.02.2017. It is also an admitted fact that the OIO dated 22.02.2017 was never challenged before the appellate authority. In such a situation, the OIO dated 22.02.2017 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.....".* Even earlier, in the case of Priya Blue Industries Ltd. {2004 (172) ELT 145 (SC)}, the Apex Court had similarly held that a refund claim contrary to assessment is not maintainable without the order of assessment having been modified in appeal or reviewed. Applying the ratio of the aforesaid judgments of the Hon'ble Supreme Court, in the present case, the refund claim could not have been entertained unless the order confirming the demand and recovery of drawback along with interest and imposing penalty had been set aside in an appropriate proceeding, which has not been done in this case. As such, the Commissioner (Appeals) has erred on this count as well in allowing the appeal of the Respondent herein.

6. In view of the above, the impugned OIA is set aside and the OIO dated 05.08.2019 is restored. The revision application is disposed of, accordingly.



(Sandeep Prakash)

Additional Secretary to the Government of India


The Commissioner of Customs, Jodhpur,  
HQRS., New Central Revenue Building,  
Statue Circle, "C" Scheme,  
Jaipur- 302005,  
Rajasthan.

Order No. 116/22-Cus dated 21-03-2022

Copy to:

1. M/s Excel Creation, 67, Prem Nagar Pal Road, Jodhpur 342005.
2. Commissioner (Appeals), Central Excise, CGST & Customs, New Central Revenue Building, Statue Circle, Jaipur 302005.
3. Sh. Pradeep Jain
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED



(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त विभाग (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi

