



F.No. 380/1-3/DBK/2023-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. 11/01/24

Order No. 12-14/24-Cus dated 11-01-2024 of the Government of India passed by Smt. Shubhagata Kumar, 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. CC(A) CUS/D-II/ICD/TKD/Export/1069-1071/2022-23 dated 14.11.2022, passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : The Commissioner of Customs (Export), ICD TKD, New Delhi

Respondent : M/s. Sana Enterprises, Kolkata

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**ORDER**

Revision Application No. 380/1-3/DBK/2023-RA dated 23.01.2023 has been filed by The Commissioner of Customs (Export), ICD Tughlakabad (TKD), New Delhi (hereinafter referred to as the Applicant department) against the Order-in-Appeal No. CC(A) CUS/D-II/ICD/TKD/Export/1069-1071/2022-23 dated 14.11.2022, passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has, vide the above-mentioned Order-in-Appeal, allowed the appeal filed by M/s. Sana Enterprises, Kolkata (hereinafter referred to as the Respondent), against the Order-in-Original No. 79/2021/Priyanka Gulati/DC/Export/ICD/TKD dated 21.06.2021, passed by the Deputy Commissioner of Customs (Export), ICD TKD, New Delhi. Aggrieved, the department has moved this revision application.

2. Brief facts of the case are that the Respondent availed drawback, in respect of exports made by them from ICD, Tughlakabad, for a total amount of Rs. 5,77,344/- in respect of two Shipping Bills, where FOB was yet to be realized. However, subsequently, it was observed by the office of Applicant department 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 within six/nine months from the date of export. Accordingly, a Show Cause Notice dated 14.02.2020 was issued, in terms of Rule 16A(2) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, to the Respondent for the recovery of drawback availed amount of Rs. 5,77,344/-, out of which an amount of Rs. 5,77,157/- in respect of Shipping Bill No. 3215754 dated 10.06.2014 was confirmed by the original authority vide the aforesaid Order-in-Original dated 21.06.2021. A penalty of Rs. 2,500/- was also imposed upon the Respondent under Section 117 of the Act, *ibid*. Aggrieved, the Respondent filed an appeal before the Commissioner (Appeals), which has been allowed.

3. The revision application has been filed mainly on the ground that in terms of Circular No. 6/2017-Customs dated 28.02.2017 source of truth for Bank Realization of Sale Proceeds against each Shipping Bill has to be the data transmitted by RBI and populated in the RBI-BRC module/EDPMS (Export Data Processing and Monitoring System) and

neither the Bank Certificate nor CA certificate nor DGFT e-BRC can be accepted as proof of realization of export proceeds. Since the concerned Shipping Bill in this case pertains to a period later than 31.03.2014, and export proceeds against the Shipping Bill have not been realized as per the data on the EDPMS portal, the e-BRC from DGFT's website submitted by the Respondent cannot be accepted as proof of realization of export proceeds leading to a demand of Rs. 5,77,157/-.

4. Personal hearing was first held on 30.10.2023, in which no one appeared from the Respondent's side. Sh. Virendra Kumar, Assistant Commissioner & Sh. Sandeep Singh, Inspector appeared for the Applicant department and reiterated the submissions in their revision application; that post 01.04.2014, export proceeds realization details have to be verified from the EDPMS portal; that RBI's letter dated 12.09.2023 clarifies that EDPMS portal is to be updated by the concerned authorized bank. They also stated that ICD TKD has issued a Public Notice dated 29.03.2022 clarifying the same. They prayed for the OIA to be set aside and for restoration of the OIO. Since the respondents did not appear, another opportunity for PH was granted on 20.11.2023 in the interest of natural justice. In the hearing held on 20.11.2023, Sh. Nilotpal Chowdhury, Advocate appeared for the Respondent and submitted that the OIA clearly states that the bank realization of export proceeds was verified from the DGFT's website and also certified by the concerned bank. That being so, the department's case does not survive. He prayed for the RA to be dismissed. Sh. Virendra Kumar, Assistant Commissioner reiterated the submissions made in the previous P.H.

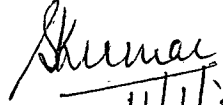
5. The Government has carefully examined the matter. It is observed that the Commissioner (Appeals) has set aside the Order-in-Original on the grounds that the e-BRC produced by the Respondent proves realization of export proceeds in the subject Shipping Bill and that the e-BRC has been verified from DGFT website. It is not the Applicant's case that the evidence of realization of export proceeds furnished by the exporter as well as the additional documentation furnished by him (i.e. bank certification, RBI's letter etc.) are either erroneous or inaccurate or false. Thus even though the e-BRC is visible on the DGFT's website and verified by the Commissioner (Appeals), the applicant department

seems to hold the view that merely because this data is not visible on a particular portal, the EDPMS in this case, the e-BRC from DGFT's website merits rejection. This appears unjustified and unreasonable, especially because no evidence has been adduced by the applicants to establish that the requirements of Foreign Exchange Management Act, 1999 (i.e. that export proceeds realization should take place within 9 months from the date of shipment) have not been met in this case.

From the documents on record, the Shipping Bill No. 3215754 is dated 10.06.2014 and date of realization of export proceeds is 11.08.2014 which is well within the statutory period of Foreign Exchange Management Act, 1999. It is noted that the Respondent have submitted a communication from HDFC bank vide email dated 09.07.2021, that the Shipping Bill Nos. 3215754 & 5601494 are already closed in EDPMS & archived by RBI. It is also noted that the Customs Circular No. 06/2017-Customs dated 28.02.2017 does not say anywhere that e-BRC verified through the DGFT's website shall not be accepted as proof of realization of export proceeds. It is also not the case of the Applicant department that certificate visible in DGFT's website is erroneous or wrong. Further, it is seen from the documents on record that RBI vide letter No. ND.FED.EXD.No. S1322/16.35.013/2023-24 dated 12.09.2023 has clarified that the EDPMS and IDPMS are not primary databases, rather data in these systems are based on the reporting done by different stakeholders like Customs, STPI, SEZ and AD banks. It is thus clear that the exporter is in no way responsible if the EDPMS portal is not kept updated by the concerned authority. To penalize the exporter in such a case is unfair and unjustified for the reasons mentioned above.

In view of the above, the Government holds that since the authenticity of the e-BRC has been verified by the Commissioner (Appeals) as noted by him in para 5.3 of the OIA and the closure of the same in EDPMS has also been certified by the concerned bank, the order of Commissioner (Appeals) is in order and merits no interference.

6. The revision application is rejected and OIA is upheld.

  
11/11/24  
(Shubhagata Kumar)

Additional Secretary to the Government of India

The Commissioner of Customs (Export),  
Inland Container Depot, Tughlakabad  
New Delhi-110020.

Order No. 12-14/24-Cus dated 11-01-2024

Copy to:

1. M/s. Sana Enterprises, 2/1A Bangali Shah Warshi Lane Flat-A, 2<sup>nd</sup> Floor, Aqua Apartment, Kolkata, West Bengal-700023.
2. The Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi-110037.
3. PPS to AS(RA)
4. Guard File
- ✓ 5. Spare Copy
6. Notice Board.

ATTESTED



रीतेश कुमार / RITESH KUMAR  
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