

SPEED POST



F.No. 380/04/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...7/4/22

Order No. 124/22-Cus dated 07-04-2022 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.394(CRM)/CUS/JPR/2019 dated 28.10.2019, passed by the Commissioner (Appeals), Central Excise, CGST & Customs, Jaipur.

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

Respondent : M/s. Surface Finishing Equipment Co., Jodhpur.

**ORDER**

A Revision Application No. 380/04/DBK/2020-RA dated 20.01.2020 has been filed by the Commissioner of Customs (Preventive), Jodhpur (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 394(CRM)/CUS/JPR/2019 dated 28.10.2019, 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. Surface Finishing Equipment Co., Jodhpur, (herein after referred to as the Respondent) by setting aside Order-in-Original No. 01/2019-20-Demand (DBK) dated 11.06.2019, passed by the Assistant Commissioner of Customs, ICD, The Thar Dry Port, Jodhpur.

2. Brief facts of the case are that the Respondent filed drawback claims in respect of 02 Shipping Bills No. 8420058 dated 10.04.2012 and No. 5530907 dated 21.05.2013, with the jurisdictional customs authorities for a total amount of Rs. 83,748/-, which was sanctioned. However, subsequently, 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 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 17.05.2017 was issued to the Respondent for a demand of Rs. 83,748/-, which was confirmed along with applicable interest by the original authority, vide the Order-in-Original No. 21/2017-18 dated 06.03.2018. Aggrieved, the Respondent filed an appeal before the Commissioner (Appeals) on the ground that the export proceeds were realized but the Bank had not uploaded the BRC. Commissioner (Appeals), vide the OIA No.324(SM)CUS/JP/2018 dated 29.09.2018, remanded the matter back to original authority with the direction to verify the BRCs and pass a fresh order. Original authority, vide the above mentioned OIO dated 11.06.2019, confirmed the demand of Rs. 83,748/-, along with applicable rate of interest, on the ground that the export proceeds were not realized within the stipulated time period. A penalty of Rs. 10,000/- was also imposed under Section 117 of the Customs Act, 1962. Aggrieved,

the Applicant filed an appeal before the Commissioner (Appeals), which was allowed on the ground that the export proceeds had been realized.

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.

4. Personal Hearing, in virtual mode, was held on 21.03.2022. Sh. O.P. Agarwal, Chartered Accountant, attended the hearing on behalf of the Respondent and requested that documents emailed on 16.03.2022 may be taken on record. After proceeding with the hearing for sometime, Sh. Agarwal requested for one week time to submit a detailed dated certificate from the AD Bank certifying that export proceeds had been received in time. Request of the Respondent was acceded to. The Respondent, vide e-mail dated 28.03.2022, again requested for one more week time to submit the certificate from Bank, which was also granted. However, the Respondent has thereafter neither submitted the requisite certificate nor any request for extension of time has been received till date. No one attended the hearings on behalf of the Applicant department nor any request for adjournment has been received. Hence, the matter is taken up for final decision based on available records and submissions.

5.1 The Government has carefully examined the matter. Applicant in the revision application has contended that the export proceeds had not been realized within the stipulated time period or such extended period as may be extended by the RBI/AD bank. In response, the Respondent had vide submissions dated 16.03.2022, placed on record an undated letter from the State Bank of India, SME Branch, Jodhpur claiming that the export proceeds were realised in time. However, the Government observes that the aforesaid letter, besides being undated, does not even mention the name of the Respondent herein. When this inadequacy was revealed during the PH, the Respondent had prayed for time to produce appropriate certificate. However, despite sufficient time having elapsed, the Respondent have failed to do

so. Thus, there is no option left but to conclude that the export proceeds against the said Shipping Bills were not realized within the stipulated time period.

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. 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.

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, the Commissioner (Appeals) has erred, as contended in the revision application.

5.4. However, keeping in view the facts and circumstances of the case, the penalty imposed by the lower authority is waived.

6. In view of the above, the revision application is allowed <sup>but</sup> with above <sup>by</sup> mentioned modification in respect of penalty.

  
(Sandeep Prakash)

Additional Secretary to the Government of India

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

Order No. 124/22-Cus dated 07-04-2022

Copy to:

1. M/s Surface Finishing Equipment Co., E 100 MIA, Phase – II, Jodhpur - 342005.
2. Commissioner (Appeals), Central Excise, CGST & Customs, New Central Revenue Building, Statue Circle, Jaipur 302005.
3. M/s. Om P. Agarwal & Co., Chartered Accountant, 56, Section 7, N. Power House Road, Jodhpur (Rajasthan) – 342003.
4. PA to AS(RA).
5. ☒ Guard File.
6. Spare Copy.

ATTESTED



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