

REGISTERED  
SPEED POST



F.No. 375/63/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... 8/4/22

Order No. 13/22-Cus dated 08-04-2022 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. LUD-EXCUS-001-APP-2376-2019 dated 08.05.2019, passed by the Commissioner, Customs and CGST (Appeals), Ludhiana.

Applicant : M/s Sukhmani International, Ludhiana.

Respondent : The Commissioner of Customs, Ludhiana

**ORDER**

Revision Application No.375/63/DBK/2020-RA dated 01.10.2020 has been filed by M/s Sukhmani International, Ludhiana, (hereinafter referred to as the Applicant) against the Orders-in-Appeal LUD-EXCUS-001-APP-2376-2019 dated 08.05.2019, passed by the Commissioner, Customs & CGST (Appeals), Ludhiana, stated to have been received by the Applicant on 15.09.2020. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal of the Applicant, against the Order in Original No. 80/DC/BRC/OWPL/LDH/15 dated 28.04.2015, passed by the Dy. Commissioner of Customs, BRC, CFS, OWPL, Ludhiana, on the ground that the Applicant had not realized the export proceeds in the stipulated time period or such extended period as allowed by the Reserve Bank of India.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of 09 Shipping Bills, with the Deputy Commissioner of Customs, Drawback, CFS, OWPL, Ludhiana, for a total amount of Rs.29,39,367/- which was sanctioned. However, on scrutiny of the XOS statement, 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 aforesaid Shipping Bill 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 13.05.2011 was issued to the Applicant for the recovery of drawback availed amount of Rs.29,36,367/- along with interest, out of which a demand of Rs. 10,97,326/-, along with applicable of interest, was confirmed by the Deputy Commissioner of Customs, Drawback CFS, OWPL, vide the

above mentioned Order-in-Original dated 28.04.2015. 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 recovery proceedings are void as the export proceeds had been realized.

4. Personal hearing, in virtual mode, was held on 08.04.2022. Sh. Virendra Prabhakar, Advocate appeared on behalf of the Applicant and reiterated the contents of the revision application. Upon being asked, Sh. Prabhakar stated that the extension of time period for realization of export proceeds, by the RBI/AD Bank, is not on record. 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.

5.1 The Government has examined the matter carefully. Admittedly, the export proceeds, in respect of relevant Shipping Bills, 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, including any extension of such 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 submissions made in the instant revision application with reference to the individual proviso of Rule 16 A are also not tenable for the reason that the Rule 16A is a comprehensive provision and its individual provisions cannot be read in isolation. Even otherwise, as held by the Hon'ble Supreme Court in the case of Uttam Steels Ltd {2015(319)ELT0589(SC)}, a subordinate legislation (i.e. Rule 16 A in this case) can not be interpreted in a manner so as to dispense with the requirements of the parent statute (i.e. proviso to Section 75 (1)).

5.4 Applicant has also contended that the export proceeds had been realized before the issuance of Show Cause Notice and hence the Show Cause Notice should not have been issued at the first stage itself. Government observes this contention is misconceived in as much as the Applicant had not submitted the proof of realization

before the issue of Show Cause Notice. It is only thereafter that the details were produced. In any case, even if the Applicant had submitted the BRCs before the customs authorities even then the Show Cause Notice was imminent as the proceeds were not realized within the period prescribed.

5.5 As such, there is no infirmity in the impugned Order of Commissioner (Appeals).

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

  
(Gandeep Prakash)

Additional Secretary to the Government of India


M/s Sukhmani International,  
612, Urban Estate, Phase – II,  
Focal Point  
Ludhiana - 141010.

Order No. 131/22-Cus dated 08-04-2022

Copy to:

1. Commissioner of Customs, Container Freight Station, OWPL, C-205, Phase – V, Focal Point Bhandhari Kalan, Ludhiana – 141010.
2. Commissioner (Appeals), Goods and Services Tax, F-Block, Rishi Nagar, Ludhiana.
3. Sh. Virender Prabhakar, Advocate, R/o 4, Vasant Vihar Extension, Jalandhar 144014.
4. PS to AS(RA)
5. ☒ Guard File.
6. Spare Copy

ATTESTED

  
(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