

**SPEED POST**



**F. No. 375/50/DBK/2020-R.A.  
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. 10/5/22

Order No. 135/ 22-Cus dated 10.05.2022 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 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 94-CUS/APPL/LKO/2020 dated 08.05.2020, passed by the Commissioner (Appeals) CGST, Central Excise & Customs, Lucknow.

**APPLICANT :** M/s. Jap Jee Overseas, Agra.

**RESPONDENT:** The Commissioner of Customs(Preventive), Lucknow.

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**ORDER**

Revision Application No.375/50/DBK/2020-RA dated 31.08.2020 has been filed by M/s Jap Jee Overseas, Agra (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 94-CUS/APPL/LKO/2020 dated 08.05.2020, passed by the Commissioner (Appeals) CGST, Central Excise & Customs, Lucknow. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal of the Applicant, against the Order in Original No. 75/BRC/JapJee/ICD/ Agra/2019 dated 30.09.2019, passed by the Assistant Commissioner of Customs, ICD, Agra, 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 claim in respect of 01 Shipping Bill No. 2447698 dated 17.08.2015, with the Assistant Commissioner of Customs, ICD, Agra, for a total amount of Rs.1,72,674/- which was sanctioned. However, on scrutiny, 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 05.07.2018 was issued to the Applicant for the recovery of drawback availed amount of Rs.1,72,674/-, which was confirmed by the original authority, vide the above mentioned Order-in-Original dated 30.09.2019. 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 and the payment was sent by the sister concern of the overseas buyer; and that the bank had not issued any BRC despite repeated request.

4. Personal hearing, in virtual mode, was held on 09.05.2022. Sh. Anil Singh Sisodia, Advocate, appeared on behalf of the Applicant and reiterated the contents of the revision application. None appeared on behalf of the Respondent department nor any request for adjournment has been received.

5.1 The Government has examined the matter carefully. Applicant has contended that the export proceeds, in respect of relevant Shipping Bill, have been realized though not from the overseas buyer but instead from another entity, ostensibly the sister concern of the overseas buyer. Government observes that the payment received from an entity, other than the overseas buyer, cannot be correlated with the subject experts. It is, perhaps, for this reason that the AD Bank has not issued the BRC. As such, the contention of the Applicant that the export proceeds had been realized cannot be accepted.

5.2 It is observed 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, as already held above, the export

proceeds have not been realized. Thus, there is no doubt that the drawback paid to the Applicant is recoverable along with applicable interest.

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

5.4 However, keeping in view the facts and circumstances of the case and the small amount of drawback involved, the penalty imposed by the lower authority is reduced to Rs. 2000/-.

6. In view of the above, the revision application is allowed only to the extent of modification in respect of penalty, as above.

  
(Sandeep Prakash)

Additional Secretary to the Government of India

M/s. Jap Jee Overseas, 212/13-14,  
Krishna Colony, Jeoni, Mandi,  
Agra-282004.

Order No. 135/22-Cus dated 10-05-2022

**Copy to:-**

1. The Commissioner of Customs (Preventive), Lucknow, Hall No.3, 5<sup>th</sup> and 11<sup>th</sup> Floor, Kendriya Bhawan, Sector-H, Aliganj, Lucknow-226024.
2. Commissioner of Central Goods & Services Tax (Appeals), Lucknow 3/194, Vishal Khand, Gomti Nagar, Lucknow-226010
3. Shri Anil Singh Sisodia, Advocate, B-35, Pratap Nagar, Agra-282010
4. P.S TO A.S (RA)
5. ☒ Guard File
6. 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