

SPEED POST



**F. No. 375/57/DBK/2020-R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

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

Date of Issue. 10/05/22

Order No. 136 / 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. CC(A)Cus/D-I/Export/NCH/202-203/2020-21 dated 28.07.2020, passed by Commissioner of Customs (Appeals), New Custom House, New Delhi.

APPLICANT : M/s. A.D. Exports, New Delhi.

RESPONDENT : The Commissioner of Customs (Export) Air Cargo, New Delhi.

ORDER

A Revision Application No.375/57/DBK/2020-RA dated 28.09.2020 has been filed by M/s A.D. Exports, New Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D- I/Export/NCH/202-203/2020-21 dated 28.07.2020, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has partly allowed the appeal of the Applicant, against the Order in Original No. SKM/JC/ACE/122/2018 dated 15.03.2018, passed by the Joint Commissioner of Customs, Air Cargo, Export Commissionerate, New Delhi.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of 25 Shipping Bills, with the jurisdictional Customs authorities, for a total amount of Rs.79.73 lakhs, which was sanctioned. However, subsequently 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 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 02.01.2017 was issued to the Applicant for the recovery of drawback availed amount of Rs. 79,73,774/- along with interest, which was confirmed by the Joint Commissioner of Customs, Air Cargo, Export Commissionerate, vide the above mentioned Order-in-Original dated 15.03.2018. Penalty of Rs. 1,00,000/- each was also imposed on the Applicant herein as well as two Partners of the Applicant firm. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals) who, vide the above mentioned OIA dated 28.07.2021, reduced the demand to Rs. 7,52,892/- as the Applicant had submitted the relevant BRCs for remaining export. Penalty imposed on the Applicant was also reduced to Rs. 10,000/-.

3. The revision application has been filed, mainly, on the ground that the Show Cause Notice was time barred as the drawback has been demanded for the period June 1999 to June 2001 and the Show Cause Notice was issued in 2017.

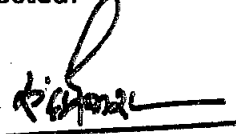
4. Personal hearing in the matter was fixed on 21.03.2022, 04.04.2022 and 09.05.200. In the hearing, in virtual mode, which was held on 09.05.2022, Sh. Nitin Ranjjian, Inspector appeared on behalf of the Respondent department and submitted that the drawback recovery had been ordered as the Applicant failed to submit proof of realization of export proceeds despite sufficient opportunities being provided. None appeared on behalf of the Applicant on any of the above mentioned dates nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for disposal based on records.

5.1 The Government has examined the matter carefully. 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, in respect of the demand of drawback upheld by the Commissioner (Appeals), have evidently not been realized till date nor has the extension for such realization 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 Applicant has ^(nr) ~~not~~ ^(nr) ~~not~~ ^(nr) ~~not~~ contended that the demand was barred by limitation as the same was not issued within the five years period as prescribed under the provision of Customs Act, 1962. The Government, however, observes that no limitation has been prescribed under Rule 16 A of the Customs & Central Excise Duties & Service Tax Drawback Rules, 1995. Hon'ble Supreme Court has, in the case of GOI Vs. Citadel Fine Pharmaceuticals {1989(42)ELT 515 (SC)}, held that a rule conferring powers on executive but not providing time limit for exercise of such power cannot be invalidated on this ground but such powers should be exercised within a reasonable period. In the present case, it was incumbent upon the Applicant to produce proof of realization of export proceeds before the authorities. Any delay in initiating action under Rule 16 A due to the default of the

Applicant in providing such proof cannot be held against the authorities. Hence, the subject contention of the Applicant cannot be accepted.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

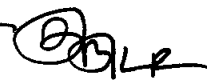
M/s. A.D. Exports, Y-16,
Okhla Industrial Area, Phase-II,
New Delhi- 110020

Order No. 136/22-Cus dated 10-05-2022

Copy to:-

1. The Commissioner of Customs (Export), Air Cargo, New Custom House, New Delhi- 110037.
2. The Commissioner of Customs (Appeals), New Custom House, new Delhi 110037.
3. P.S TO A.S (RA)
4. ☒ Guard File
5. 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