

SPEED POST



**F. No. 375/69/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...11-5-22

Order No. 137/22-Cus dated 11-5-2022 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-II/Export/ICD/TKD/370/2020-21 dated 07.08.2020, passed by The Commissioner of Customs (Appeals), NCH, New Delhi.

APPLICANT : M/s. Rainbow Worldwide Pvt. Ltd., New Delhi.

RESPONDENT: The Commissioner of Customs (Export), ICD, Tughlakabad.

ORDER

A Revision Application No.375/69/DBK/2020-RA dated 07.12.2020 has been filed by M/s Rainbow Worldwide Private Ltd., New Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)CUS/D-II/ICD-TKD-EXPORT/370/2020-21 dated 07.08.2020, passed by the Commissioner of Customs (Appeals), New Delhi. Commissioner (Appeals), vide the impugned Order-in-Appeal, has upheld the Order-in-Original No. 64/2017 - Cus dated 20.09.2017, passed by the Assistant Commissioner of Customs (BRC Cell), ICD, TKD, Exports, New Delhi, confirming the recovery of drawback amounting to Rs. 30,44,580/- along with interest, in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995. A penalty of Rs. 30,44,580/- has also been imposed under Section 114 of the Customs Act, 1962.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of seven Shipping Bills with the jurisdictional Customs authorities, and received a drawback amount of Rs.30,44,580/-. 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 relevant Shipping Bills had been realized. Accordingly, show cause notice dated 05.05.2016 was issued in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, to the Applicant for the recovery of drawback availed amount of Rs. 30,44,580/- along with interest, which was confirmed by the original authority, vide aforesaid Order-in-Original dated 20.09.2017. Penalty, as above, was also imposed. 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 case may be remanded back as they may be provided sufficient time to produce documents which are not available with them as the CBI had seized these documents; that the Applicant being a status holder is entitled to write off the outstanding export proceeds up to 10% as per clause 2(b) of RBI Circular No. 88 dated 12.03.2013; and therefore on a conjoint reading of Rule 16A(5) ibid and the RBI Circular dated 12.03.2013, it is amply clear that the Applicant can write off "the unrealised portion of drawback". Further, the penalty is not imposable as there was no lapse on part of the Applicant due to which the export proceeds were not realized.

4. Personal hearing, in virtual Mode, was held on 09.05.2022. Ms. Surabhi Sinha, Advocate, appeared for the Applicant and reiterated the contents of the revision application. No one attended the hearing on behalf of the respondent department nor a request for adjournment has been received.

5.1 Government has examined the matter carefully. The Applicant's case appears to be that they are entitled to write off the outstanding export proceeds. Hence drawback is not recoverable from them. Thus, it is not in dispute that the export proceeds have not been realized and the non-realization has not been regularized by the RBI/AD Bank. 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 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. Admittedly, 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 Applicant is not entitled for drawback corresponding to the export proceeds that were not realized. As such, there is no infirmity in the orders of the authorities below.

5.2.1. The RBI Circular No.03 dated 22.07.2010, cited by the Applicant, enable the exporter to write-off the export proceeds not realised subject to "surrender of incentives first to "write off" ". Thus, the surrender of incentives, i.e., drawback, in this case, is a pre-requisite for write off. Therefore, contention that pursuant to write off the incentive is also written off cannot be countenanced.

5.2.2. The Applicant has also sought to take shelter of sub-rule (5) of Rule 16A, inserted vide Notification No. 30/2011-Customs (NT) dated 11.04.2011. The said sub-rule (5) reads as under :

" Where sale proceeds are not realised by an exporter within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but such non-realisation of sale proceeds is compensated by the Export Credit Guarantee

Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer, the amount of drawback paid to the exporter or the claimant shall not be recovered."

Thus, for drawback to be not recovered by virtue of Rule 16A(5), all of the following conditions need to be fulfilled: (i) Non realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India under an insurance cover; (ii) the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits; and (iii) the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer. In the present case, there is nothing on record to establish that these conditions have been fulfilled. Thus, the subject contention of the Applicant is also not acceptable.

5.3 The Government observes that the present proceedings were initiated on 05.05.2016 with the issue of show cause notice. Therefore, the Applicants have had six years to obtain the documents which are claimed to have been seized by the CBI. Other than a bland assertion that the Applicant "is in the process of recovering" these documents from the CBI, there is nothing substantive placed on record to confirm that CBI had indeed seized the relevant records and that the competent court had been approached by the Applicant to obtain such documents. Thus, contention of the Applicant to remand the matter is non-bonafide and nothing but dilatory tactics.

5.4 As brought out hereinabove, the Applicant has violated the provisions of Section 75 of the Customs Act, 1962 and the rules made thereunder. Hence, the penalty has been rightly imposed by the lower authorities. However, keeping in view the facts and circumstances of the case, the penalty imposed is reduced to Rs. 6,10,000/-.

6. In view of the above, the revision application is rejected, except to the extent of reduction in penalty as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

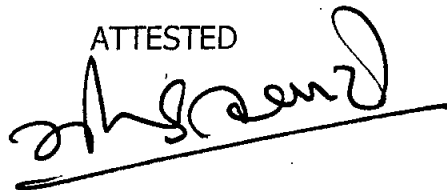
M/s. Rainbow Worldwide Pvt. Ltd.,
A-37, Milap Nagar, Uttam Nagar,
New Delhi-110059.

Order No. 137/22-Cus dated 11.5.2022

Copy to:-

1. The Commissioner of Customs (Export), ICD TKD, Tughlakabad, New Delhi-110020.
2. The Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi-110037.
3. Shri K.K. Anand, Advocate, A-103, Defence Colony, New Delhi-110024.
4. P.S TO A.S (RA)
5. Guard File
6. Spare Copy

ATTESTED



अश्विष टिवाड़ी / ASHISH TIWARI
सह. प्रका. अधिकारी / Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, वित्त मंत्रालय एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi