

F.No. 375/11/DBK/2019-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. 20/10/21..

Order No. 230/21-Cus dated 20/10/2021 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-2030-2019 dated 23.01.2019, passed by the Commissioner (Appeals), Customs & CGST, Ludhiana.

Applicant : M/s Bharti International, Ludhiana

Respondent : Commissioner of Customs, Ludhiana

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**ORDER**

Revision Application No.375/11/DBK/2019-RA dated 25.03.2019 has been filed by M/s Bharti International, Ludhiana, (hereinafter referred to as the Applicant) against the Order-in-Appeal LUD-CUS-001-APP-2030-2019 dated 23.01.2019, passed by the Commissioner (Appeals), Customs & CGST, Ludhiana. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal of the Applicant, against the Order-in-Original No. 82/DC/BRC/OWPL/LDH/2015 dated 30.05.2015 passed by the Deputy Commissioner of Customs, CFS, OWPL, Ludhiana.

2. Brief facts of the case are that the Applicant filed drawback claim in respect of 04 Shipping Bills, with the Deputy Commissioner of Customs, Drawback, CFS, OWPL, Ludhiana, for a total amount of Rs.10,29,915/-, 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 impugned Shipping Bills had been realized. Therefore, in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, a Show Cause Notice dated 23.05.2011 was issued to the Applicant and the demand of Rs. 6,30,956/- was confirmed by the original authority, vide aforesaid Order-in-Original 30.05.2015. Aggrieved, Applicant filed an appeal before the Commissioner (Appeals), which was rejected as the Applicant failed to substantiate that the export proceeds were realized within the stipulated time period or extended period as granted by the Reserve Bank of India/AD bank.

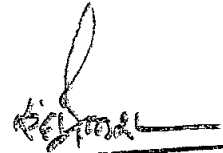
3. The revision application has been filed, mainly, on the ground that the export proceeds had been realized although the same were not realized within the stipulated time period.

4. Personal hearing, in virtual mode, was held on 20.10.2021. Sh. Sachin Mahendru, Advocate, appeared on behalf of the Applicant and reiterated the contents of the Revision Application and the written submissions dated 18.10.2021. Upon being asked, Sh. Mahendru admitted that the findings of the original authority regarding the receipt of export remittances are factually correct and that part of the proceeds have been realized after the stipulated period of time which has not been regularized by the competent authority. None appeared on behalf of the Respondent nor any request for adjournment has been received. Therefore, the case is being taken up for disposal on the basis of facts available on record.

5. The Government has examined the matter carefully. It is contended by the Applicant that they had realized the export proceeds but it is also admitted that the part of export proceeds were not realized within the stipulated time period and that the delayed realization has not been regularized by the RBI/AD Bank. Thus, the findings of the original authority, as upheld by the Commissioner (Appeals), regarding the receipt of export remittances are admittedly factually correct. 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 either not realized or were realized but not within the stipulated period. As such, there is no infirmity in the orders of the authorities below.

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



(Sandeep Prakash)  
Additional Secretary to the Government of India

M/s Bharti International,  
D-179, Phase - VI,  
Focal Point,  
Ludhiana -141010

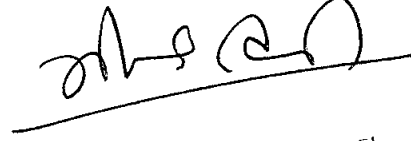
Order No. 230 /21-Cus dated 20/10/ 2021

Copy to:

1. Commissioner of Customs , Container Freight Station, OWPL, C,-205, Phase – V, Focal Point Bhandari Kalan, Ludhiana – 141010.
  2. Commissioner (Appeals), Customs & CGST, F-Block Rishi Nagar, Ludhiana.
  3. Deputy Commissioner of Customs , Container Freight Station, OWPL, C,-205, Phase – V, Focal Point Bhandari Kalan, Ludhiana – 141010.
  4. Sh. Sachin Mahendru, Advocate, 1530/1-A, New Prem Nagar, PAU Road, Ludhiana – 141001.
- PS to AS(RA).

- 6. ~~Guard File.~~
- 7. Spare Copy.

Attested



आशीष तिवारी / ASHISH TIWARI  
सहायक आयुक्त/Assistant Commissioner  
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद 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