

F. No. 375/26/DBK/2022-R.A.  
F. No. 375/27/DBK/2022-R.A.  
F. No. 375/28/DBK/2022-R.A.

**SPEED POST**



F. No. 375/26/DBK/2022-R.A.  
F. No. 375/27/DBK/2022-R.A.  
F. No. 375/28/DBK/2022-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 17/8/22

Order No. 265-267/22-Cus dated 17-08-2022 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 Nos. CC(A)/Cus/D-II/TKD/Exp/1554-56/21-22 dated 19.01.2022, passed by Commissioner of Customs (Appeals), New Delhi.

APPLICANTS : M/s. Shah Impex, Delhi.  
Sh. Shah Alam Khan, Delhi.  
Sh. Wasi Mohd. Khan, Delhi.

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

\*\*\*\*\*

**ORDER**

Three revision applications, bearing nos. 375/26//DBK/2022-RA, 375/27/DBK/2022-RA & 375/28/DBK/2022-RA, all dated 24.05.2022 have been filed by M/s. Shah Impex, Delhi, Sh. Shah Alam Khan, Delhi and Sh. Wasi Mohd. Khan, Delhi, respectively, (hereinafter referred to as the Applicants) against the Order-in-Appeal No. CC(A)/Cus/D-II/TKD/Exp/1554-56/21-22 dated 19.01.2022 passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeals filed by the Applicants herein against the Order-in-Original No. 75/2019 dated 29.04.2019 passed by the Assistant Commissioner of Customs ICD Exports, Tughlakabad, New Delhi.

2. Brief facts of the case are that the Applicant, M/s. Shah Impex, had exported goods under claim of drawback against 112 shipping bills. Subsequently, upon verification, it was found that exporters had failed to produce proof of realisation of export proceeds. Jurisdictional customs authority issued letter dated 16.02.2017 requesting them to submit pending BRCs, which was returned undelivered by the postal authority with the remarks "untraceable." Thereafter, a show cause notice dated 31.08.2018 was issued to Applicant demanding recovery of drawback, amounting to Rs. 4,91,38,989/- along with interest, in terms of Rules 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with sub-section (2) of Section 75A of the Customs Act, 1962. The original authority, vide the aforesaid Order-in-Original dated 24.09.2019, confirmed the demand of duty drawback along with applicable interest. A penalty of Rs. 4,91,38,989/- was also imposed on each of the Applicants herein under Section 114AA of Customs Act,

1962. The appeals filed by the Applicants herein have been rejected by the Commissioner (Appeals), on the grounds of pre-deposit under Section 129E of the Customs Act, 1962 not having been made.

3. The revision applications have been filed, mainly, on the grounds that the economic condition of the Applicants is very bad and, therefore, they were not in a position to deposit the requisite pre-deposit amount under the provisions of Section 129E *ibid*; that in the case of *Nawal Kishore Singh vs. Commissioner of Customs (Exports)* {2019 (366) ELT 968 (Del.)} the Hon'ble Delhi High Court has after considering the poor condition of the petitioner directed the CESTAT to hear the appeals on its merits without requiring pre-deposit of any amounts. Several submissions have been made on the merits of the case as well.

4. Personal hearing, in virtual mode, was fixed on 03.08.2022 and 16.08.2022. In the hearing held on 16.08.2022, Sh. Rahul Chaudhary, Advocate appeared for the Applicants and reiterated the contents of the RAs. He requested that the requirement of pre-deposit may be waived and matter may be remanded to Commissioner (Appeals) for decision on merits. No one appeared for the Respondent department nor any request for adjournment has been issued. Therefore, it is presumed that the department have nothing to add in the matter.

5.1. The Government has carefully examined the matter. The Commissioner (Appeals) has rejected the appeals as not maintainable due to non-compliance with the provisions of

Section 129E of the Customs Act, 1962. It is the contention of the Applicants that due to their bad financial condition they are not in a position to make the requisite pre-deposit and hence, the requirement thereof may be waived.

5.2 Section 129E ibid reads as under:

"Deposit of certain percentage of duty demanded or penalty imposed before filing appeal. – The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,-

- (i) under sub-section (1) of Section 128, unless the appellant has deposited seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Principal Commissioner of Customs or Commissioner of Customs;
- (ii) against the decision or order referred to in clause (a) of sub-section (1) of section 129A, unless the appellant has deposited seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;
- (iii) against the decision or order referred to in clause (b) of sub-section (1) of section 129A, unless the appellant has deposited ten per cent of the duty, in case where duty or duty and penalty are in dispute or penalty,

where such penalty is in dispute, in pursuance of the decision or order appealed against:

Provided that the amount required to be deposited under this section shall not exceed rupees ten crores:

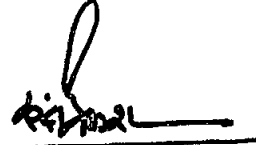
Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014. ”

5.3 On a plain reading, it is apparent that the Commissioner (Appeals) shall not entertain any appeal unless requisite pre-deposit has been made. Therefore, the requirement of Section 129E is mandatory. Further, the law provides no discretion to any authority to waive the requirement of pre-deposit. The Applicants have relied upon the judgment of the Hon'ble Delhi High Court in the case of Nawal Kishore Singh (supra) in support of their contention. In the said case Hon'ble High Court was considering the case of an employee of a Custom House Agent when it observed and directed that "having regard to the financial condition of the petitioner as well as the subsequent development by which the penalty imposed upon the Customs House Agent was set aside; the petitioner's claim for relief is reasonable and ought to be granted. In these circumstances, if the petitioner prefers an appeal within four weeks from today, the CESTAT shall proceed to hear it on its merits uninfluenced on the question of limitation and without requiring pre-deposit of any amount in the facts and circumstances of the case." Therefore, the judgment in the case of Nawal Kishore Singh has been rendered in the facts of that

(निदेशक विभाग)  
(J. Kishore Singh)  
निदेशक विभाग  
Ministry of Finance  
New Delhi

case, which do not obtain in the present case under consideration. As such, the subject contention of the Applicants herein cannot be sustained.

6. In view of the above, the revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. M/s. Shah Impex,  
R/o 109/2, 2<sup>nd</sup> Floor,  
Ramesh Park, Laxmi Nagar,  
Delhi-110092.
2. Mr. Shah Alam Khan,  
Partner M/s. Shah Impex,  
M-304, Taj Enclave,  
Geeta Colony, New Delhi-110031.
3. Mr. Wasi Mohd. Khan,  
Partner M/s. Shah Impex,  
M-304, Taj Enclave,  
Geeta Colony, New Delhi-110031.

Order No. 265-267/22-Cus dated 17-08-2022

Copy to:-

1. The Commissioner of Customs (Export), ICD, Tughlakabad, New Delhi-110020.
2. The Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi-110037.
3. Shri Piyush Kumar & Associates, B-25, Lajpat Nagar, III, New Delhi-110024.
4. P.S. To A.S (RA)
5. Guard File
6. Spare Copy

ATTESTED



(Lekshmi Raghavan)

(Lekshmi Raghavan)

अनुभाग अधिकारी / Section Officer

वित्त मंत्रालय (राजस्व विभाग)

Ministry of Finance (Deptt. of Rev.)

भारत सरकार / Govt. of India

नई दिल्ली / New Delhi