

REGISTERED
SPEED POST



F.No. 372/12/DBK/2020-RA
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. 28/01/22

Order No. 29 /2022-Cus dated 27-01-2022 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. KOL/Cus(port)/AKR/20/2020 dated 22.01.2020, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s Calcutta Laminating Industries, Kolkata.

Respondent : Commissioner of Customs (Port), Kolkata

ORDER

A Revision Application No.372/12/DBK/2020-RA dated 24.09.2020 has been filed by M/s Calcutta Laminating Industries (hereinafter referred to as the Applicant) against the Order No.KOL/Cus(port)/AKR/20/20230 dated 22.01.2020, issued by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal of the Applicant, against the Order- in-Original No.KOL/Cus/DC/633(DBK)/2015 dated 07.04.2015, passed by the Deputy Commissioner of Customs, Drawback Department (Port), Customs House, Kolkata.

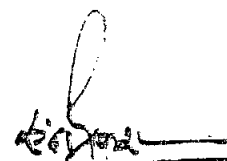
2. Brief facts of the case are that the Applicant filed drawback claims in respect of 13 Shipping Bills with the Deputy Commissioner of Customs, Drawback, Port, Kolkata, which were sanctioned. Subsequently, on scrutiny, it was observed by the office of Respondent that the Applicant had failed to submit 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, demand Notice dated 21.05.2013, was issued to the Applicant and the partial demand of Rs. 37,092/-, out of total demand of Rs. 37,67,024/-, was confirmed, along with applicable interest, by the original authority, vide the aforesaid Order-in-Original dated 08.04.2015, due to alleged short realization of an amount of Rs. 5,42,893/- as export proceeds. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected, vide Order-in-Appeal No. KOL/CUS(PORT)/AA/1373/2017 dated 17.10.2017, on grounds that the Applicant did not make the mandatory pre-deposit. The Applicant filed revision application against the OIA dated 17.10.2017 before the Government. Vide the GOI Order No. 47/2019-Cus dated 19.11.2019, the matter was remanded to the Commissioner (Appeals) as the Applicant had deposited the mandatory pre-deposit with the observation that the "adjudicating authority has confirmed the demand on the basis of short realisation of export proceeds in Rupee terms which does not seems to be tenable as the export proceeds have to be realized in foreign exchange only and the fluctuations of exchange rate should not have a bearing on drawback amount paid to the Applicant". Commissioner (Appeals), on

remand, decided the matter afresh vide the impugned OIA dated 24.01.2020 and rejected the appeal of the Applicant. Aggrieved, the Applicant filed the instant revision application on the ground that the export proceeds had to be realised in foreign convertible currency and it has nothing to do with INR.

3. Personal hearing in, virtual mode, was held on 27.01.2022. Sh. Hiralal Bhandari, Authorised representative, of M/s Calcutta Laminating Industries, attended the hearing on behalf of the Applicant and stated that the export proceeds have been realised in full in convertible foreign currency. The shortfall is only in INR terms due to exchange rate fluctuations. This contention is uncontroverted by the department. Therefore, revision application may be allowed. No one from respondent's side appeared for personal hearing nor any request for adjournment has been received. Therefore, case is being taken up for final decision on the basis of evidence available on records.

4. Upon careful examination of the matter, the Government observes that the revision application has been filed on the ground that the sale proceeds have been realized in full in foreign currency. It is further observed that the Applicant has maintained this stand right from the beginning, but this contention of the Applicant remains uncontroverted by the department. The Commissioner (Appeals) has also failed to controvert this aspect despite specific observations made in the GOI Order dated 19.11.2019, as extracted in para 3 above. As such, the impugned Order-in-Appeal cannot be sustained.

5. In view of the above, the revision application is allowed.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Calcutta Laminating Industries
30, Chittaranjan Avenue,
Kolkata 700012

Order No.

29 /2022-Cus dated 27-01-2022

Copy to:

1. The Commissioner of Customs (Port), 15/1 Strand Road, Custom House, Kolkata - 700001.
2. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata- 700001.
3. Deputy Commissioner, (Drawback, Port), 15/1 Strand Road, Custom House, Kolkata - 700001.
4. PS to AS(RA)
- ✓ 5. Guard File.
6. Spare Copy

ATTESTED

Poonam Guggal
31/01/22

(Poonam Guggal)
Supt. RA