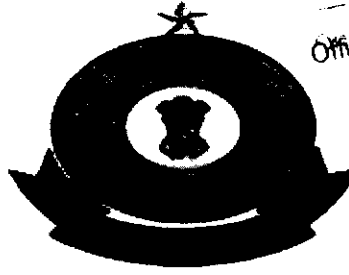


DIN - 2022 0576 NL00 0022 2AED

Sevottam Receipt  
Office of the Commissioner of Customs  
Airport and Air Cargo Complex  
Content No. Verified

493  
618  
Date: 25-5-2022  
Time: 12:60 P.M. M. Saha

भारत सरकार / Government of India

सीमा शुल्क प्रधान आयुक्त का कार्यालय (विमान पतन एवं हवाई-मालभर परिसर)

Office of the Pr. Commissioner of Customs (Airport &amp; ACC)

एयर कार्गो कॉम्प्लेक्स, एन एस सी बी आई एयरपोर्ट, कोलकाता - 700052

Air Cargo Complex, NSCBI Airport, Kolkata-700052

Tel: - 033-2243 5372 Fax No. -033-2210 5102 Email Id: - accadm-n-apkolcus@gov.in

मूल आदेश सं. / ORDER NO.: KOL/CUS/ACC/DC/NR/BRC(AP)/2022-23/ 09

आदेश की तिथि/ DATE OF ORDER: 11.05.2022

जारी करने की तिथि /DATE OF ISSUE: 11.05.2022

द्वारा पारित /Passed by-

श्री नवीन राणा/ Shri Naveen Rana

सीमा शुल्क उपायुक्त/ Deputy Commissioner of Customs

बी आर सी सेल/ BRC Cell

एयर कार्गो कॉम्प्लेक्स, एन एस सी बी आई एयरपोर्ट, कोलकाता - 700052

Air Cargo Complex, NSCBI Airport, Kolkata-700 052

ORDER - IN - ORIGINAL

1. यह प्रति, उस व्यक्ति को उपयोग करने हेतु निःशुल्क दी जाती है जिसे यह जारी की गई हो।  
THIS COPY IS GRANTED FREE OF CHARGE FOR THE PRIVATE USE OF THE PERSON TO WHOM IT IS ISSUED.
2. सीमा शुल्क अधिनियम, 1962 की धारा 128 i) के तहत इस आदेश के विरुद्ध कोई भी अपील इस पत्राचार के प्राप्त होने के साथ (60) दिनों के भीतर, आयुक्त सीमा शुल्क) अपील, (सीमा शुल्क सदन, कोलकाता 700001-के समक्ष की जा सकती है। अपील प्रतिलिपि में होनी चाहिए व सीमाशुल्क) अपील (नियम, 1982 में संलग्न प्रपत्र सी ए) 1), में दाखिल करनी होगी। अपील पर 200 रुपये मात्र का कोर्ट की स्टैम्प होनी अनिवार्य है तथा इसके साथ यह निर्णय अथवा उसकी प्रति होनी आवश्यक है।

ANY APPEAL AGAINST THIS ORDER LIES TO THE COMMISSIONER OF CUSTOMS(APPEAL), KOLKATA, 15/1 STRAND ROAD, KOLKATA- 700001 UNDER SECTION 128 (1) OF THE CUSTOMS ACT 1962 WITHIN SIXTY DAYS FROM THE DATE OF COMMUNICATION OF THIS ORDER. THE APPEAL SHOULD BE IN DUPLICATE AND SHOULD BE FILED IN FORM C.A. (I) APPENDED TO THE CUSTOMS (APPEAL) RULES 1982. THE

APPEAL SHOULD BEAR A COURT FEE STAMP OF 200 PAISE ONLY AND SHOULD ACCOMPANY BY THIS DECISION OF A COPY THEREOF. IF A COPY OF THIS DECISION IS ENCLOSED, IT SHOULD ALSO BEAR A COURT FEE STAMP OF 200 PAISE ONLY PRESCRIBED UNDER SCHEDULE(I) ITEM, 6 OF THE COURT FEE ACT OF 1970.

3. इस आदेश के विरुद्ध सीमाशुल्क आयुक्त ,अपील में अपील करने पर 7.5% का अग्रिम पेमेंट करना अनिवार्य है। यह अग्रिम पेमेंट डिमांड की गई इयूटी या इयूटी और पेनल्टी के 7.5% के बराबर होगी जहाँ दोनों विवादित हैं, या पेनल्टी के 7.5% के बराबर होगी जहाँ सिर्फ पेनल्टी विवादित है।

AN APPEAL AGAINST THIS ORDER SHALL LIE BEFORE THE COMMISSIONER (APPEAL) ON PAYMENT OF 7.5% OF THE DUTY DEMANDED WHERE DUTY OR DUTY AND PENALTY ARE IN DISPUTE OR PENALTY, ARE IN DISPUTE OR PENALTY, WHERE PENALTY ALONE IS IN DISPUTE.

4. इस आदेश अथवा निर्णय के विरुद्ध अपील करने को इच्छुक किसी भी व्यक्ति को संबन्धित अपील, शुल्क मांग या लगाए गए जुर्माने के भुगतान का प्रमाण अपील के साथ देना होगा, ऐसा न करने पर अपील को सीमा शुल्क अधिनियम, 1962 की धारा 129 ई में दिये गए प्रावधानों की गैर अनुपालन के कारण अस्वीकार किया जा सकता है।

ANY PERSON DESIROUS OF APPEALING AGAINST THIS DECISION OR ORDER SHALL PENDING THE APPEAL DEPOSIT THE DUTY IN TERMS OF THIS ORDER AS LAID DOWN UNDER SECTION 129 OF THE C.A.1962.

-----  
**Subject : Adjudication of Demand Notice No. 16/2019 dated 28.01.2019 issued under section 75 of Customs Act, 1962 read with rule 18(1) & (2) of Customs, Central Excise Duties and Service Tax Drawback Rules, 2017 for non/ late realization of export proceeds against 02 Shipping bills bearing Nos. 5837020 dated 07.06.2013 and 7525938 dated 18.09.2013 in respect of Exporter M/s M. K. International (IEC No.: 0211027073), 6E/1B, Topsia 2<sup>nd</sup> Lane, Kolkata, West Bengal – 700 039.**  
 -----

**Brief Facts of the Case, submission and Personal Hearing of Exporter**

1. In pursuance of audit query No. RA/CRA/Inspn./ACC/2014-15/2 dated 31.10.2014, Demand Notice No. 03/2015 dated 19.01.2015 was issued to the exporter M/s M. K. International (IEC No.: 0211027073) (herein after referred as 'Exporter') regarding either to submit the documentary evidence(s), if any, or refund the drawback along with applicable interest in respect of Non/ late/ part realization of export proceeds against 02 shipping bills bearing nos. 5837020 dated 07.06.2013 and 7525938 dated 18.09.2013 effected through Kolkata Airport Commissionerate (INCCU4). Further, the exporter M/s M. K. International was submitted the e-BRCs against both the shipping bills vide letter dated 01.08.2016 and 05.12.2016. After scrutiny of documents, it is found that export proceeds against both the shipping bills has been realised after permissible time under FEMA, 1999. As such, **personal hearing notice** was issued to the exporter vide F. No. S41 (Misc) – 107/16 BRC/ACC/Pt. 10/2737 dated 02.03.2017 and directed to present his case before then adjudicating authority on 15.03.2017.



**Table A**

Sl No.	SB No.	SB Date	Drawback Amount (in Rs.)	Invoice value to be Realized (In USD)	Realized Value (in USD)	Realization Date as per e-BRC certificate	Prorate Drawback need to be refunded (in Rs.)	Remarks
1	5837020	07.06.2013	3,25,808	78075	11245	29.09.2014	3,25,808	Export proceeds were realized after expiry of permissible time under FEMA, 1999.
					19926	27.09.2014		
					14947	26.09.2014		
					19947	25.09.2014		
					4974	24.09.2014		
					7036	22.09.2014		
					<b>78075</b>			
2	7525938	18.09.2013	2,83,232	60750	4964	31.12.2015	2,83,232	Export proceeds were realized after expiry of permissible time under FEMA, 1999.
					4960	18.09.2015		
					9960	25.08.2015		
					4960	15.07.2015		
					4926.67	08.04.2015		
					4960	07.01.2015		
					4960	19.12.2014		
					9955	07.11.2014		
					9963	24.09.2014		
<b>59608.67</b>								
<b>Total</b>			<b>6,09,040</b>	<b>1,38,825</b>	<b>1,37,683.67</b>		<b>6,09,040</b>	

iii. I also find that, the exporter M/s M. K. International (IEC No.: 0211027073) has failed to produce any valid extension of time granted by RBI/ AD Bank for realization of export proceeds after permissible time under FEMA, 1999.

iv. In terms of second proviso to section 75(1) of Customs Act, 1962 read with rule 18

(1) & (2) of Customs, Central Excise Duties and Service Tax Drawback Rules, 2017, 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 granted by RBI/ AD Bank. Therefore, the exporter M. K. International (IEC No.: 0215011139) is liable to refund the Principal/ Prorate Drawback amount against 02 shipping bills mentioned at above Table A. The exporter is also liable to deposit the applicable interest (@18% before 01.04.2016 and @15% from 01.04.2016) up to the date of payment of refundable drawback under section 75A (2) of Customs Act, 1962 (which referred to section 28AA of the Customs Act, 1962) from the scroll date.

- v. Also by doing such Act, the exporter the exporter M/s. M. K. International (IEC No.: 0215011139) rendered himself liable to be penalized under section 117 of Customs Act, 1962.

### ORDER

6. In light of the discussion and findings herein mentioned above and as per provision of 75 (1), 75A (2) & 117 of Customs Act, 1962 read with rules 18(1) & (2) of Customs, Central Excise Duties and Service Tax Drawback Rules, 2017 :-

I order the exporter – M/s. M. K. International (IEC No.: 0215011139) registered address at 6E/1B, Topsia 2<sup>nd</sup> Lane, Kolkata, West Bengal – 700039 to:-

- i. Refund the drawback amount of Rs. 6,09,040/- (Rupees Six Lakhs Nine Thousand Forty only) in respect of 02 shipping bills bearing nos. 5837020 dated 07.06.2013 and 7525938 dated 18.09.2013, whose export proceeds were realized after the expiry of permissible time under FEMA, 1999 and exporter was failed to produce any valid extension of time granted by AD Bank/ RBI for realization of export proceeds.
- ii. Pay applicable Interest on drawback amount as per section 75A (2) of Customs Act, 1962 (which referred to section 28AA of the Customs Act, 1962) amounting to Rs. 8,17,286.00 (Rupees Eight Lakhs Seventeen Thousand Two Hundred Eighty-Six only) calculating interest upto 30.06.2022 (*Interest Calculation Sheet enclosed herewith*). If drawback amount paid before or after 30.06.2022, interest may be calculated accordingly.
- iii. I, impose penalty to the tune of Rs. 70,000.00 (Rupees Seventy Thousand only) on the exporter M/s M. K. International (IEC No.: 0215011139), registered address at 6E/1B, Topsia 2<sup>nd</sup> Lane, Kolkata, West Bengal – 700 039.

All the amount mentioned in above order should be made in the favour of S.B.I A/c – Commissioner of Customs, Kolkata by Pay Order/ Demand Draft from any nationalized bank within 30 days from the receipt of this order failing which action will be initiated against the said exporter under section 142 (1) of Customs Act, 1962.



(Naveen Rana)

Date : 11.05.2022

Deputy Commissioner of Customs(Airport),  
BRC Cell, Air Cargo Complex,  
NSCBI Airport, Kolkata – 700 052.

**Copy to:**

1. M/s M. K. International, 6E/1B, Topsia 2<sup>nd</sup> Lane, Kolkata, West Bengal – 700 039 .
2. The Principal Commissioner of Customs (Airport & Administration), 15/1, Strand Road, Kolkata – 700 001 for necessary information please.

3. The Deputy/ Assistant Commissioner of Customs, Adjudication Cell, Custom House, Kolkata – 700 001 for necessary information please.
4. The Deputy/ Assistant Commissioner of Customs, Review Cell, Custom House, Kolkata – 700 001 for necessary information please.
5. The Computer Cell, A & A Commissionerate, 15/1, Strand Road, Custom House, Kolkata – 700 001 with a direction to upload the O-i-O on Kolkata Custom Website u/s 153 (1) (e) of Customs Act, 1962.
6. Notice Board/ Guard File.

*Ajay*  
11/05/2022  
(Ajay Kumar Gupta)  
Appraiser

Date : 11.05.2022

BRC Cell, Air Cargo Complex,  
NSCBI Airport, Kolkata – 700 052.

### Interest Calculation Sheet

Sl No.	SB No.	SB Date	Scroll Date	Prorate Drawback to be refunded (in Rs.)	No of days as on 31.03.2014	Interest as on 31.03.2014 @ 18% (in Rs.)	No of days between 31.03.2014 to 30.06.2022	Interest from 31.03.2014 to 30.06.2022 @ 15% (in Rs.)
1	5837020	07.06.2016	15.08.2013	3,25,808	230	36955	3010	403020
2	7525938	18.09.2013	21.09.2013	2,83,232	193	26957	3010	350354
<b>Total Interest as on 30.06.2022</b>						<b>63,912</b>		<b>7,53,374</b>

**Total Interest: Rs. 63,912/- + Rs. 7,53,374/- = Rs. 8,17,286/-  
(Rupees Eight Lakhs Seventeen Thousand Two Eighty-Six only).**

**Signed by Naveen Rana**  
Date: 11-05-2022 16:37:04  
Reason: Approved