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SPEED POST



सत्यमेव जयते

F.No. 372/06/DBK/14-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... 5/11/18

Order No. 03/18-Cus dated 3-1-2018 of the Government of India passed by Shri R.P.Sharma, Principal Commissioner & 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.14/Cus/DBK/Kol/P/2013 dated 19.2.2013, passed by the Commissioner of Customs (Appeals), Kolkata

Applicant : M/s Frontier Garments Co., Hawrah

Respondent : Commissioner of Customs, Kolkata

ORDER

A revision application No. 372/06/DBK/14-RA dated 15.7.14 is filed by M/s Frontier Garments Co., Hawrah (hereinafter referred to as the applicant) against the Commissioner (Appeals)'s Order No.14/Cus/DBK/Kol/P/2013 dated 19.2.2013, who has rejected the applicant's appeal on the ground that their appeal is not admissible since it is barred by time limitation.

2. The above revision application has been filed mainly on the ground that they had not received order-in-original dated 25.7.11, they came to know about this order only subsequently and thus the Commissioner (Appeals) has committed an error by rejecting their appeal for the reason of time limitation.

3. A personal hearing was held in this case on 14.11.17 which was attended by Shri S.Mukherjee, Assistant Commissioner of Customs (DBK), Kolkata Customs. But no one appeared for the applicant on the said date. Later Shri Anirudh Singh, Partner of the applicant, appeared for the personal hearing in this case on 6.12.17 and he reiterated the above grounds of the revision during the personal hearing.

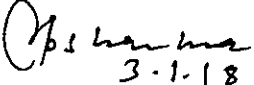
4. The Government has examined all the relevant records and it is found that the Commissioner (Appeals), in his OIA dated 19.2.13, has categorically observed that the OIO in this case was received by the applicant on 25.7.11, but an appeal was filed by the applicant on 3.7.12 which is after 11 months from the receipt of the OIO. Further he has expressed his helplessness that he is not empowered to condone the delay beyond a period of 30 days and accordingly the appeal filed by the applicant is time barred. The applicant has not disputed the late filing of the appeal before Commissioner (Appeals) and has merely stated that they had not received the OIO on 25.7.11. But at the same time they have not revealed the date of actual receipt of the said OIO and their above say is not even supported by other facts available in this file. For example they admittedly received the letter dated 17.1.12 from the Assistant Commissioner of Customs (DBK), Kolkata Customs, with a direction to pay the amount of drawback confirmed under OIO dated 25.7.11 and it

was clearly stated in the said letter that the applicant had not informed about filing of any appeal against the order dated 25.7.11. This letter of the AC (DBK) was replied by the applicant vide letter dated 27.3.12 i.e. after more than 2 months and only BRC against shipping bill No.5144594 dated 1.3.04 was submitted under this letter to the Assistant Commissioner. But the non-receipt of OIO dated 25.7.11 was not mentioned in this letter at all. And thereafter on receipt of detention notice only from the Deputy Commissioner of Customs, Special Tax Recovery Cell, Kolkata Customs under letter dated 10.5.12 they preferred an appeal before the Commissioner (Appeals) on 30.8.12. But in the said appeal also it was nowhere stated that the OIO dated 25.7.11 was not received by them and the reason for late filing of the appeal is given that most of the correspondences were either received by the guard or returned when the guard was not there as a result of which most of the correspondences from Custom House were either not received or if received was kept without any response from their end. From these facts it is evident that the receipt of the OIO by the applicant well in time is not categorically denied by the applicant and no other evidence has been produced to establish that they had not received the OIO on 25.7.11 as is stated by the Commissioner (Appeals) in his order. Therefore, filing of the appeal by the applicant before Commissioner (Appeals) was undoubtedly after the gap of more than 11 months and the Government fully with the Commissioner (Appeals)'s observation that he is not competent to condone the delay involved in this case. Thus the Commissioner (Appeals)'s order cannot be faulted for the reason mentioned by the applicant that they had not received the OIO.

5. Besides filing the appeal before the Commissioner (Appeals) after lapse of more than 11 months, the Government has also noticed that the applicant did not file the revision application against the Commissioner (Appeals)'s order dated 19.2.13 within 3 months as is stipulated in Section 129DD of the Customs Act and instead filed an appeal before the CESTAT, Kolkata, even when it did not have jurisdiction to deal with the Commissioner (Appeals)'s order involving the dispute regarding drawback of duty. Consequently, the CESTAT dismissed their appeal as non-maintainable vide its order dated 3.2.14. This decision was dictated and

pronounced in the open Court on 3.2.14 itself when the advocate of the applicant was also present in the Tribunal. Thus the applicant was fully aware about the CESTAT's decision on 3.2.14 itself. But still they did not file a revision application with the Government without losing any further time and they have filed the present revision application only on 15.7.14 which is more than 5 months from the pronouncement of the decision of the CESTAT. Above all, the applicant has not filed any application for condonation of delay and even the revision application filed on 15.7.14 is not accompanied by fee of Rs.1000/- and the same is paid on 1.1.15 only as per TR-6/GAR-7 available in the case file. As per sub-section 3 of Section 129DD a revision application has to be accompanied by a fee of Rs.1000/- mandatorily where the amount of duty and interest demanded etc. is more than Rs.1.00 lakh. Thus when the revision application is not accompanied by the required fee, it cannot be considered as a proper application and the same cannot be considered by the Government. Since in this case the fee of Rs.1000/- is paid only on 1.1.15, the complete and proper revision application is filed on 1.1.15 only which is after more than one year 9 months from the receipt of the order of the Commissioner (Appeals) and after 10 months from the order of the CESTAT dismissing their appeal for lack of its jurisdiction. Thus the revision application filed in this case is also time barred from the above angles.

6. In view of the above discussion, no merit is found in the revision applicant and the same is rejected.


3-1-18
(R.P.Sharma)

Additional Secretary to the Government of India

M/s Frontier Garments Company
40/3, Madan Biswas Lane, Salkia-Howrah,
West Bengal-711106

Order No. 03/17-Cus dated 3-1-2018

Copy to:

1. The Commissioner of Customs, 15/1, Strand Road, Customs House, Kolkata-700001
2. The Commissioner of Customs (Appeals), Kolkata, Customs House, 15/1, Strand Road, Kolkata-700001
3. The Assistant Commissioner of Customs (Drawback Department), Customs House, Kolkata
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED

3.1.2018
(Debjit Banerjee)
STO (RA)