

REGISTERED
SPEED POST



F.No. 372/33/DBK/2018-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 19/1/21

Order No. 07/2021-Cus dated 19-01-2021 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. KOL/Cus/CCP/AA/289/2018 dated 31.01.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s Himalaya Drug Company

Respondent : Commissioner of Customs, Preventive, Kolkata

ORDER

A Revision Application No.372/33/DBK/18-RA dated 01.05.2018 has been filed by M/s Himalaya Drug Company, (hereinafter referred to as the applicant) against the OrderNo.KOL/Cus(CCP)/AA/150/2018 dated 31.01.2018, issued by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal against the Order-in-Original No. 31/DC(DBK)/2017-18 dated 10.10.2017, as time barred observing that the applicant failed to produce sufficient cause which prevented them from filing the appeal beyond the stipulated period of sixty days as per Section 128 of the Customs Act, 1962 .

2. Brief facts of the case are that the applicant filed drawback claims in respect of one hundred & fifteen Shipping Bills with the jurisdictional Customs authorities. The said claims were sanctioned by the jurisdictional Dy. Commissioner of Customs, Drawback, Custom House, Kolkata. However, on scrutiny, it was observed by the department that the applicant had realized the export proceeds in Indian Rupess instead of foreign currency and, therefore, has violated the provisions as laid down under Para 2.4 of Foreign Trade Policy – 2009-14 issued under Notification No. 1(RE-2010)/2009-14 dated 23.08.2010 and para 2.52 of Foreign Trade Policy 2015-20 rendering the Drawback sanctioned as irregular. Accordingly, a demand notice was issued to the applicant, under rule 16 of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995, to repay the drawback amount already

sanctioned to them. Dy. Commissioner of Customs, Drawback, Kolkata, confirmed the demand of Rs. 30,90,516/- along with interest vide OIO dated 10.10.2017. Penalty of Rs. 3,00,000/- was also imposed on the applicant under Section 114(iii) of the Customs Act, 1962. Aggrieved, the applicant filed an appeal on 14.12.2017 before the Commissioner (Appeals) which was rejected as time barred, for delay of 01 days. The instant revision application has been filed mainly on the ground that the applicant was not given sufficient opportunity to explain the delay in filing the appeal. As regards the delayed filing of appeal before the Commissioner (Appeals), it has been stated that their office is located in Bangalore, and had difficulty in organizing filing of appeal at Kolkata.

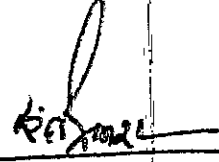
3. Personal hearing in virtual mode was held on 18.01.2021. Sh. Vinayak Hegde, CA, attended the hearing on behalf of the applicant. He stated that the delay is only of 01 day which happened due to a misunderstanding that the application was being filed on the last day; that they are a Bengaluru based company and appeal was filed by hand at Kolkata. Further, the Commissioner (Appeals) never raised the issue of delay during the Personal Hearing and no deficiency letter was issued. Hence they could not make any submissions on the issue. He further stated that the delay of 01 days is within the condonable period and such delay is unintentional which is causing them substantive loss and, therefore, should be condoned. Since, no one appeared for the respondent and no request for adjournment has been received, the

case is being taken up for final disposal.

4. Government has examined the matter. It is observed that the Commissioner (Appeals) has rejected the appeal as time barred as the appeal was not filed within the stipulated period of 60 days in terms of Section 128 of the Customs Act, 1962. Applicant has pleaded that the delay of 01 days in filing the appeal before the Commissioner (Appeals) was due to the fact that their office is located at Bengaluru and appeal was filed by hand at Kolkata. It is also contended that they were not given sufficient opportunity to explain the delay in filing the appeal. The explanation of the applicant appears acceptable as the delay is only of 01 days. Further, filing appeal beyond 60 days would not have served any purpose for the applicant as the substantial amount of drawback is at stake for the applicant. Therefore, the delay is unintentional. In the facts and circumstances of the case, the Government observes that Commissioner (Appeals) should have, in the interest of justice and fairness, condoned the delay under Proviso to sub-section (1) of Section 128 of the Customs Act, 1962 and decided the case on merits since the delay beyond 60 days is of 01 days only, which is well within the condonable period of 30 days. In the case of Commissioner of Customs & Central Excise, Allahabad vs. Sh. Ashok Kumar Tiwari {2014-TIOL-2254-HC-ALL-CX}, the Hon'ble Allahabad High Court has upheld the order of CESTAT wherein the Tribunal had condoned the delay when the appeal was filed on the last day of condonable period of three months (after excluding the public holiday on which the limitation period expired). Therefore, the Government condones the delay of one day in filing the appeal before the Commissioner

(Appeals) and remands the case to the Commissioner (Appeals) to be decided on merits.

5. The revision application is allowed by way of remand.

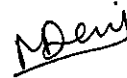


(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Himalayan Drug Company,
Makali, Bangalore,
Karnataka-562123

Attested



(Nirmala Devi)

Section Officer (REVISION APPLICATION)

Order No. 07/21-Cus dated 19-01-2021

Copy to:

1. The Commissioner of Customs (CCP), , Kolkata, 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 of Customs, Drawback Cell, CC(P), West Bengal, (Kolkata,), Kolkata, 15/1 Strand Road, Custom House, Kolkata- 700001.
4. PS to AS(RA)
5. Guard File.
6. Spare Copy