

REGISTERED  
SPEED POST



F.No.373/61/DBK/13-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue: 3 / .03.2015

**ORDER NO. 01/2015-CUS. DATED 30.03.2015** OF THE GOVERNMENT OF INDIA,  
PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF  
INDIA UNDER SECTION 129 DD OF THE CUSTOMS ACT, 1962.

Subject : Revision application filed under Section 129 DD of the Customs Act, 1962 against the Orders-in-Appeal No. CMB-CEX-000-APP-116-13 dated 27.03.2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore.

Applicant : M/s. Sakshi Fashions, Tirupur.

Respondent : Commissioner of Customs, Central Excise & Service Tax, Coimbatore.

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**ORDER**

This revision application is filed by M/s. Sakshi Fashions, Tirupur, against the Order-in-Appeal No. CMB-CEX-000-APP-116-13 dated 27.03.2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore with respect to Order-in-Original No. SL.No.101/2012-BRC dated 14.12.2012 passed by the Assistant Commissioner of Customs, ICD, Concor, Tirupur, Coimbatore.

2. Brief facts of the case are that the applicant were granted drawback for the exports made by them. The applicant failed to produce the evidence for realization of export proceeds in respect of the shipping bills, covered in impugned drawback claim. As the applicant failed to produce evidence for realization of export proceeds in respect of the said export goods within the period allowed under the Foreign Exchange Management Act, 1999 including any extension of such period granted by the Reserve Bank of India, a show cause notice was issued on 28.09.2010 for recovery of already sanctioned drawback. Subsequently, the lower authority vide impugned Order-in-Original ordered recovery of already sanctioned drawback alongwith interest under Rule 16 of Customs, Central Excise and Service Tax Drawback Rules 1995 read with Section 75 of the Customs Act, 1962.

3. Being aggrieved by the impugned Order-in-Original, the applicant filed appeal before Commissioner (Appeals), who rejected the same as time barred as the same was filed after 90 days [i.e. beyond stipulated period of 60 days plus 30 days condonable period.]

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 129 DD of the Customs Act, 1962 before Government on following grounds:

4.1 The Commissioner (Appeals) rejected the appeal filed by the applicant solely on the basis of limitation. However, the reason for delay in filing has not been considered which was also genuine and sensitive as the applicant was engaged in the care of her

aunt who has been hospitalized for three months in Mumbai and was still hospitalized at the time of filing the appeal. Therefore, there was genuine reason for delay in filing of appeal and the Commissioner (Appeals) was supposed to consider the same and the delay in filing the appeal should have been condoned. But this has not been done and the impugned order has been passed simply on the grounds of the limitation and despite having strong case on merits, their appeal has been held as time barred. This is not justified in view of the decision given by the Hon'ble Supreme Court in the case of *N. Balakrishnan Vs M. Krishnamurthy* [2008 (228) E.L. T. 162 (S.C.)] The applicant also placed reliance on the decision given by the Hon'ble Supreme Court in the case of *Collector, Land Acquisition Anantnag and Another Vs MST. Katiji and Others* [1987 (28) E.L. T. 185 (S.C.)]. Further, it has been stated that the Tribunal has also decided a similar case recently in favour of assesses in case of *Shakeel Hadier Engineers & Contractors v. Commissioner of Central Excise, Lucknow*[2013] 33 taxman.com 124 (New Delhi- CESTAT)] where the delay in filling of appeal beyond the statutory limit was condoned looking to the circumstances beyond their control.

4.2 The applicant also filed this revision application contesting merits of the case on the grounds that bank realization certificates have been received by them. They have given various submissions and also interalia relied upon decisions in case of *Euro RSCG Advertising Pvt. Ltd. v. CCST, Bangalore* reported in 2007 (7) S.T.R. 277 (Tribunal), *Uma Nath Pandey versus State of U.P.* [2009 (237) E.L.T.241 (S.C.)], *Andhra Agencies vs state of AP* [ 2008-TIOL-228-SC-CT];, *M/s. Measurement & Controls India Ltd. Vs. CCE, Pondicherry* [2008-TIOL-1538-CESTAT-MAD];, and *Balwant Singh versus Jagdish Singh* [2010(262) E.L.T.50 (S.C.)] in favour of their contention.

5. Personal hearing was scheduled in this case on 23.03.2014 & was rescheduled to 24.03.2015 on request of applicant's representative. Hearing held on 24.03.2015 was attended by Shri Pradeep Jain, C.A., on behalf of the applicant who mainly reiterated the grounds of revision application. He stressed that they had genuine reason for delay in filing of appeal and there was no malafide on their part as Bank Remittance

Certificates (BRCs) were available with them. Nobody attended hearing on behalf of department.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Orders-in-Appeal.

7. On perusal of case records, Government observes that the original authority confirmed the demand of already sanctioned drawback of the applicant on the grounds that the applicant failed to submit BRC evidencing realization of foreign proceeds with regard to impugned exports against which drawback was sanctioned initially. Commissioner (Appeals) rejected the appeal of the applicant as time barred as the same was filed after 90 days [stipulated initial 60 days period plus 30 days condonable period]. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government notes that appeal was filed before Commissioner (Appeals) much beyond 90 days period [stipulated initial 60 days period plus 30 days condonable period] from the receipt of impugned Order-in-Original and this fact has not been disputed by applicant. As per Section 128 of Customs Act, 1962, Commissioner (Appeals) is empowered to condone delay upto 30 days in filing appeal. There is no provision in Section 128 ibid to condone delay exceeding 30 days. The power of the Appellate Authority has been restricted to condone the delay only upto 30 days. Hon'ble Allahabad High Court in the case of M/s Doaba Rolling Mills (P) Ltd. Vs. CESTAT, New Delhi, reported in 2004 (169) ELT 258 (All.), has also held that the Commissioner (Appeals) under Section 128(1) ibid cannot condone delay in filing appeals beyond 30 days, as the statute itself provides for a period of limitation, and further maximum period for which delay can be condoned, the authority cannot extend the same. Government also notes that Hon'ble Supreme Court in the case of Singh Enterprises Vs. CCE Jamshedpur 2008 (221) ELT 163 (SC) has held that Commissioner(Appeals) is empowered to condone delay upto 30 days and has no power to allow appeal to be presented beyond the delay of 30 days. The proviso to

sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days after the expiry of 60 days which is the normal period for preferring appeal under Section 35 of the Central Excise Act, 1944. The provisions of section 128 of the Customs Act, 1962 and Section 35 of the Central Excise Act, 1944 are identical and the ratio of above said judgments is squarely applicable to this case. Further, the facts of the case laws relied upon by the applicant are different from the fact of this case and hence, ratio of the same is not applicable to this case.

9. In view of above circumstances, Government without going into merits of the case, finds that Commissioner(Appeals) has rightly rejected the appeal as time barred. There is no infirmity in the said Order-in-Appeal and therefore, the same is upheld.

10. The revision application is, therefore, rejected in view of the above.

11. So, ordered.

  
( RIMJHIM PRASAD )

Joint Secretary to the Govt. of India

To

M/s. Sakshi Fashions,  
6A, Kurinji Nagar, 3<sup>rd</sup> Street,  
Sheriff Colony,  
Tripur-641604.



(भागवत शर्मा/Bhagwat Sharma)  
सहायक आसुप्त/Assistant Commissioner  
C B E & S D (Revision Application)  
वित्त विभाग (राजस्व विभाग)  
Ministry of Finance (Deptt of Rev.)  
Govt. of India

ORDER NO. 01/2015-CUS. DATED 30.03.2015

Copy to:

1. The Commissioner of Customs, Coimbatore Customs, 6/7 A.T.D. Street, Race Course Road, Coimbatore-641018
2. The Commissioner of Customs, Central Excise & Service Tax (Appeals), 6/7 A.T.D. Street, Race Course Road, Coimbatore-641018
3. The Deputy Commissioner of Customs, Inland Container Depot, Concor, Veerapandi, Tirupur.
4. CA Pardeep Jain, 1008, 10<sup>th</sup> floor, Sukh Sagar Complex Near Fortune Landmark Hotel, Ashram Road, Usmanpura, Ahmedabad-380013.
- ✓ 5. Guard File.
6. PA to JS (RA)
7. Spare Copy

ATTESTED



(B.P.SHARMA)

OSD (REVISION APPLICATION)