

REGISTERED
SPEED POST



F.No. 372/16/DBK/13-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... 30/4/14

Order No. 101/14-cus dated 29.04.2014 of the Government of India, passed by Shri D. P. Singh, Joint 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. 52/CUS/DBK/KOL/2013-Air dated 30-08-2013 passed by the Commissioner of Customs (Appeals), Custom House, Kolkata.
- Applicant : M/s. Ekta International, 353, Sushil Sadan, Natagarh Main Road, Sodepur, Kolkata-700113.
- Respondent : Commissioner of Customs, Custom House, Kolkata.

ORDER

This revision application is filed by applicant M/s. Ekta International, 353, Sushil Sadan, Natagarh Main Road, Sodepur, Kolkata against the Order-in-Appeal No. 52/CUS/DBK/KOL/2013-Air dated 30-08-2013 passed by the Commissioner of Customs (Appeals), Kolkata with respect to detention notice No. 534M-283/11-DBK dated 25-10-2012 issued by AC (DBK) Customs House, Kolkata.

2. Brief facts of the case are that drawback claims in r/o exported goods under 9 shipping bills 5520157 dt. 10-12-2008, 5536085 dt. 03-03-2009, 5507365 dt. 13-11-2008, 5501154 dt. 15-09-2008, 5613271 dt. 23-03-2010, 5610851 dt. 12-03-2010, 5627664 dt. 27-05-2010, 5528881 dt. 27-01-2009 and 5593123 dt. 14-12-2009 were sanctioned and paid to the applicant. Thereafter, based on the export outstanding statement (XOS) received from the Reserve Bank of India, intimating non-realisation of export proceeds, in these cases, a demand notice under Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 was issued on 13-12-2011, asking the applicant to pay the already sanctioned drawback amount within 30 days of receipt of the notice. Personal hearing was also granted to the applicant. But the applicant neither submitted the required bank realisation certificates evidencing realisation of export sale proceeds in r/o above said shipping bills nor appeared for personal hearing. The demand of Rs. 212652/- was confirmed vide Order-in-Original No. KOL/CUS/AC/859 (DBK) 2012 dated 13-06-2012. Subsequently a Detention Notice No. S34M-283/11-DBK dated 25-10-2012 issued under section 142 (1) (a) (b) of the Customs Act, 1962 was served on the applicant by Assistant Commissioner of Customs, (Drawback) for recovery of said amount.

3. Being aggrieved by the said detention notice dated 25-10-2012 applicant filed appeal before Commissioner (Appeals), who rejected the same and upheld the detention notice as legal and proper.

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

4.1 M/s. Ekta International is a genuine exporter of Hessin Bags and never defaulted in getting the export proceeds. But there was delay on account of our overseas buyer in receipt of export proceeds in respect of the nine consignments against which drawback amounting to Rs. 2,12,652/- had been sanctioned.

4.2 Now, we have already received export proceeds for seven consignments and we are expecting to receive the export proceeds for the remaining two consignment. But our bank failed to bring these facts to the records of RBI Kolkata in time. As a result customs department has initiated action against us on the basis of RBI statement. Copies of BRCs issued by the Union Bank of India overseas branch Kolkata were submitted but Commissioner of Customs (Appeals) has not examined the case in proper perspective and rejected the appeals as time-barred, ignoring the facts that the order of confirmation of demand has been received on 04-02-2013 and appeal made in time.

4.3 M/s. Ekta International, applicant prays for setting aside the confirmation of demand amounting to Rs. 2,12,652/- and the order of the Commissioner of Customs (Appeals) and issue necessary order for acceptance of Bank realisation certificate by the Drawback department of Kolkata Custom House.

5. Personal hearing scheduled in this case 27-03-2014 at Kolkata, Customs House was attended by Shri Mridul Biswas and Shri P.D.Roy, Consultant on behalf of the applicant who reiterated the grounds of Revision Application.

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

7. On perusal of records, Government observes that in this case demand of already sanctioned drawback claim of Rs. 212652/- was confirmed vide Order-in-Original dated 13-06-2012 since applicant failed to realise export sale proceeds and submit BRCs. Since the said amount was not paid by applicant, department issued


detention notice dated 25-10-2012. The appeal filed by applicant against said detention notice was rejected by Commissioner (Appeals). Applicant has now contended in this revision application that they had received export sale proceeds in cases of seven shipping bills and could not receive the export sale proceeds in the remaining 2 shipping bills. They have requested to accept the same ignoring the time limitation clause in filing appeal before Commissioner (Appeals).

8. Government notes that applicant filed appeal against detention notice dated 25-10-2012 in Feb 13. The said detention notice was issued for recovery of an amount of Rs. 212652 alongwith interest which was confirmed vide Order-in-Original dated 13-06-2012. Applicant had not filed any appeal against said Order-in-Original dated 13-06-2012 and as such it has attained finality. The detention notice dated 25-10-2012 issued under the provisions of section 142 (1) (a) (b) of the Customs Act, 1962 is legal and proper and issued in accordance with law. There is no legal infirmity in it and therefore Commissioner (Appeals) has rightly upheld it. Government also observes that in this case appeal was filed after a lapse of 90 days. As per provision of section 128 of Customs Act Commissioner (Appeals) is empowered to condone delay upto 30 days in filing appeal. As such, appeal filed after 90 days of receipt of order cannot be entertained as delay beyond 30 days cannot be condoned by Commissioner (Appeals). The said appeal was also liable to be rejected as time barred.

9. Government do not find any infirmity in the said Order-in-Appeal and therefore upholds the same.

10. The revision application is thus rejected.

11. So, Ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Ekta International,
353, Sushil Sadan, Natagarh Main Road,
Sodepur, Kolkata-700113.

ATTESTED

(Official Seal/Stamp)
C.D.E.C.-O.S.C. (Kolkata)
Ministry of Finance (Kolkata)
भारत सरकार/Govt. of India
अर्थ विभाग/Ministry of Finance

Order No. _____/14-Cus Dated _____ 2014

Copy to:

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

ATTESTED

(B. P. Sharma)

OSD(REVISION APPLICATION)