

REGISTERED
SPEED POST



F.No. 380/38-39/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.. 8/8/18.

Order No. 103-104/18-Cus dated 6-8-2018 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. 137-138/Cus/(DBK)/Kol(P)/2013 dated 29.09.2013, passed by the Commissioner of Customs (Appeals), Kolkata

Applicant : Commissioner of Customs, Kolkata (Port)

Respondent : M/s JSW Natural Resources Bengal Ltd.

ORDER

A revision application number 380/38-39/DBK//2014-RA dated 10.02.2014 has been filed by the Commissioner of Customs, Kolkata (Port) (hereinafter referred to as the applicant) against the Commissioner (Appeals)'s Order No. 138-139/Cus/(DBK)/Kol(P)/2013 dated 20.09.2013 whereby the appeal of the respondent, M/s JSW Natural Resources Bengal Ltd., against Order-in-Original dated 11.04.2012, passed by Assistant Commissioner of Customs, Drawback Department (Port), Custom House, Kolkata, was allowed. The Assistant Commissioner had, vide his above mentioned order, rejected the drawback claim of the respondent on the ground that the drawback claim was not filed within three months from the date of export in terms of Re-export of Imported goods (Drawback of Customs Duties) Rules, 1995 and the request of the respondent for condonation of delay was rejected by the Assistant Commissioner of Customs. However, the Commissioner (Appeals), vide his above mentioned Order-in-Appeal, set aside the order of the lower authority by condoning the delay in filing the drawback claim under the Drawback Rules, 1995 as the delay was found to be bonafide.

2. The revision application has been filed mainly on the ground that Commissioner (Appeal)'s has no power to condone the delay in filing the drawback claim under the Drawback Rules, 1995 and consequently his order allowing drawback of duty is erroneous.

3. Hearing in this case was held on 22.05.2018 and it was availed by Sh. Subrato Mukherjee, Assistant Commissioner (Drawback), Kolkata Custom Houses, on behalf of the applicant and reiterated the grounds of revision already pleaded in their revision application. However, no one from the respondent appeared for personal hearing and also no request for any other date of hearing was received from which it is implicit that respondent is not interested in availing the personal hearing.

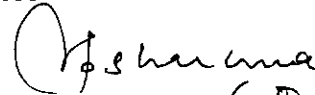
4. Government has examined the matter and it is observed at the outset that the revision application has been filed on 10.02.2014 against the Order-in-Appeal

dated 20.09.2013 which was received on 26.09.2013 by the applicant as per revision application itself. Thus the revision application has been filed after 4 months and 16 days from the receipts of the Order-in-Appeal. Whereas as per Section 129 DD(2) of the Customs Act, 1962 it should have been made within 3 months from the receipt of Order-in-Appeal. Accordingly, the revision application in this case has been submitted by the applicant after a delay of 47 days. A note sheet with the title of application for condonation of delay has been filed along with the revision application by Dy. Commissioner of Customs, Drawback department, Customs House, Kolkata, on the ground that the process of review of the Order-in-Appeal itself was completed after a delay of 35 days on account of procedural faults in the Commissionerate. Further this application is claimed to have been filed in Kolkata on 31st January, 2014, not elaborating in which office of Kolkata this note sheet was filed. Since the said note sheet with the title of condonation of delay is not addressed to any authority and it is claimed to have been filed in Kolkata on 31.01.2014, it can not be considered as a proper application for condonation of delay in first place. Secondly even if it is accepted as a condonation of delay application, exact delay is not specified therein for the condonation. Above all, this does not mention any sufficient reason for causing the said delay. The reason of delayed review of the Order-in-Appeal on account of procedural faults in the commissionerate is not elaborated in detail and it cannot be considered as a sufficient cause as is envisaged in proviso (2) of Sub section (2) of Section 129DD for which the Government is empowered to condone the delay of 3 months. Hence, the Government does not find this case deserving any such condonation and accordingly it is liable for rejection as time barred.

5. Besides above, the revision application is not found maintainable on merit also in as much as the Commissioner (Appeals) has all authorities of the original adjudicating authority while exercising the appellate powers and it is because of such power only the orders of the lower authority is modified or annulled by the Commissioner (Appeal)'s. The Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd vs Commissioner of Income tax, 1998(99)E.L.T. 200(S.C), has also clearly held that the appellate authority has all the powers which original

authority may have in deciding the question before it subject to statutory restrictions or limitations, if any. Accordingly, the Government does not find any fault in the Commissioner (Appeal)'s order in condoning the delay in filing the drawback claim on the request of the respondent after consideration of its merit.

6. Accordingly, the revision application filed by the revenue is rejected.


(R.P.Sharma) 6-8-18

Additional Secretary to the Government of India

Commissioner of Customs (Port)
15/1 strand Road, Customs House,
Kolkata - 700001

ATTESTED


6/8

(Ravi Prakash)

OSD (REVISION APPLICATION)

Order No. 103-104/18-Cus dated 6-8-2018

Copy to:

1. M/s JSW Natural Resources Bengal Ltd, Tower A, 3rd floor, DLF, IT park, block AF, 08, Major Arterial Road, New Town Kolkata - 700156
2. Commissioner of Customs (Appeals), 15/1 strand Road, Customs House, Kolkata - 700001
3. The Assistant Commissioner of Customs (Drawback)(Port), 15/1 strand Road, Customs House, Kolkata - 700001
4. PS to AS(RA)
5. Guard File.
6. Spare Copy