

**REGISTERED
SPEED POST**



**F.No. 372/17/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. 104/14-cus dated 30.04.2014 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.
40/Cus (DBK)/KOL/2013-Air dated 16-08-2013
passed by the Commissioner of Customs (Appeals),
Custom House, Kolkata.

Applicant : M/s. Narendra Tea Company Pvt. Ltd.,
2, Ganesh Chandra Avenue,
5th Floor, Kolkata-700013.

Respondent : Commissioner of Customs,
Custom House, Kolkata.

ORDER

This revision application is filed by applicant M/s. Narendra Tea Company Pvt. Ltd., 2, Ganesh Chandra Avenue, 5th Floor, Kolkata against the Order-in-Appeal No. 40/Cus (DBK)/KOL/2013-Air dated 16-08-2013 passed by the Commissioner of Customs (Appeals), Kolkata with respect to Order-in-Original No. 12/2004 dated 06/09/2004 and detention Notice dated 16-01-2012 passed by the Commissioner of Customs (DBK), Customs House, Kolkata.

2. Brief fact of the case are that applicant had filed appeal earlier 09-02-2012 against detention notice dated 16-01-2012 which was dismissed vide Order-in-Appeal No. 57/12 dt. 03-04-2012. Now again applicant filed appeal against Order-in-Original No. 12/04 dt. 06-09-2004 which was rejected vide impugned Order-in-Appeal dated 16-08-2013.

3. Being aggrieved by the impugned Order-in-Appeal dated 16-08-2013 the applicant has filed this revision application under Section 129 DD of Customs Act, 1962 before Central Government mainly on the following grounds:

3.1 The applicant submit that the impugned Order-in-Appeal dated 16-08-2013 is not maintainable in law and is liable to be set aside with consequential relief in favour of the applicants.

3.2 The Adjudicating Authority had completely erred in law in applying the principle of res judicata while deciding the appeal filed on 02-04-2012 by your applicants.

3.3 Applicant's earlier appeal filed on 07-02-2012 was against the Detention Notice dated 16-01-2012 before the Commissioner of Customs (Appeals), Kolkata and the said appeal has been dismissed on the ground of non-compliance of the order of pre-deposit vide Order-in-Appeal dated 03-04-2012 and their present appeal is against the Order-in-Original No. 12/2004 dated 16-09-2004 and copy of the said order had been handed over to your applicants on 21-02-2012 during hearing of the

earlier appeal before the Commissioner of Customs (Appeals), Kolkata and accordingly, against the said Order-in-Original dated 06-09-2004, the applicants filed the present appeal on 02-04-2012 i.e. within the time limit of 60 days from the date of receipt of the Order-in-Original. The appellate authority while passing the impugned order dated 16-08-2013 had erred in law by applying the principle of res judicata without considering the fact that the earlier appeal was against the detention notice and the present appeal was against the Order-in-Original.

3.4 Applicant's appeal filed on 07-02-2012 against Detention Notice dated 16-01-2012 had been dismissed vide Order-in-Appeal dated 03-04-2012 has got no nexus with their present appeal filed on 02-04-2012 against Order No. 12/2004 dated 06-09-2004 before the Commissioner (Appeals) Kolkata. In the appeal against Detention Notice dated 16-01-2012, the applicants prayed for withdrawal of the Detention Notice and service of the relevant documents upon them and in the present appeal against Order-in-Original dated 06-09-2004, the applicants prayed for setting aside of the impugned order dated 06-09-2004 so far as its relate to demand of drawback. As such, the said two appeals are not on the self same cause of action. Hence question of applying the principle of res judicata does not and cannot arise.

3.5 Accordingly, the applicants pray that the impugned Order-in-Appeal dated 16-08-2013 passed by the Commissioner of Customs (Appeals), Kolkata may kindly be set aside and their appeal before the Commissioner (Appeals) may kindly be directed to be heard on its merit.

4. Personal hearing held in this case on 28-03-2014 at Kolkata was attended by Shri Arijit Chakrabarti, Advocate on behalf of the applicant who reiterated the grounds of Revision Application. Shri Mohan Singh Dorai, AC, Customs (DBK), C.H Kolkata attended hearing on behalf of respondent department who pleaded to uphold the Order-in-Appeal.

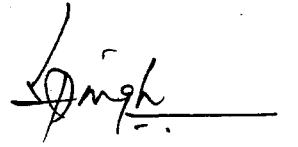
5. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

6. On perusal of records, Government observes that in the instant case applicant has filed appeal against the Order-in-Original No. 12/04 dated 06-09-2004 claimed to have been received on 21-02-2012 during hearing before Commissioner (Appeals). They have stated that their earlier appeal rejected vide Order-in-Appeal No. 57/12 dt. 03-04-2012 was against detention notice dated 16-01-2012 whereas second appeal was against Order-in-Original dated 06-09-2004, and therefore both appeals were are separate appeals. Government notes that Commissioner (Appeals) has not examined the appeal against Order-in-Original dated 06-09-2004 at all on merit as well as time limitation. Apart from the issue of introduction of drawback rate for bulk tea, the issue of admissibility of drawback to 100% EOU is also involved since applicant has claimed to be a 100% EOU. Secondly the contention of applicant that he received Order-in-Original dated 06-09-2004 only on 21-02-2012 is also required to be examined to determine whether appeal was time barred or not. So, case is required to be remanded back for fresh consideration.

7. In view of above position, Government set aside the impugned Order-in-Appeal and remands the case back to Commissioner (Appeals) for denovo consideration by taking into account the above observation. A reasonable opportunity of hearing will be afforded to the concerned partner.

8. The revision application is disposed off in above terms.

12. So, ordered.



(D.P. Singh)
Joint Secretary to the Govt. of India

M/s. Narendra Tea Company Pvt. Ltd.,
2, Ganesh Chandra Avenue,
5th Floor, Kolkata-700013.

ATTESTED

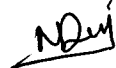
(निर्मला देवी / NIRMALA DEVI)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Order No. 104 /14-Cus Dated 30.04.2014

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 Deputy Commissioner of Customs, Drawback Department, Custom House, Kolkata.
4. ~~PS to JS(RA)~~
5. Guard File.
6. Spare Copy

ATTESTED



(Nirmala Devi)

Section Officer (REVISION APPLICATION)

(निर्मला देवी/NIRMALA DEVI)
अनुभाग अधिकारी/Section Officer
वित्त मंत्रालय (आयुक्त विभाग)
Ministry of Finance (Dept. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/NEW DELHI