

**REGISTERED
SPEED POST**



**F.No. 371/16/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..... 21/07/14

ORDER NO. 111/14-Cus DATED 01.05.2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D.P.SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129 DD OF THE CUSTOM ACT, 1962.

Subject : Revision application filed under Section 129 DD of the Custom Act, 1962 against the order-in-appeal No. 452 & 453/Mumbai-III/2012 dated 15.11.2012 passed by the Commissioner of Custom (Appeals), Mumbai-III.

Applicant : M/s M.R. Exports, Thane,

Respondent : Commissioner of Customs (Export), Mumbai

ORDER

This revision application is filed by the applicant M/s M.R. Exports, Thane against the order-in-appeal No. 452 - 453/Mumbai-III/2012 dated 15.11.2012 passed by the Commissioner of Custom (Appeals), Mumbai Zone-III with respect to orders-in-original passed by the Assistant Commissioner of Customs, ACC, Mumbai.

2. Brief facts of the case are that the applicant exported the goods under claim of drawback and availed drawback. Subsequently a demand cum Show Cause Notice was issued to the applicant for recovery of availed drawback on the ground that the applicant failed to realize sale proceeds in respect of exported goods. The original authority confirmed the demand of already availed drawback.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeal), who rejected the same.

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 on the following grounds:

4.1 In the Order-in-Original in para-6 it is clearly stated that "the envelope containing the Show Cause Notice sent on the address of the exporter and two more personal hearing". It means that the applicants did not receive the Show Cause Notice as well as P.H. letters. It is also stated in the Order-in-Original that the applicants did not appear for P.H. It is the fact that they did not know. The Order-in-Original is the exporter order. The Commissioner (Appeals) rejected the appeal of the applicants only on the sole ground that the applicant's did not submit reply to the Show Cause Notice against which S.B. the BRC not received and demand was issued. In this connection applicants state and submit that the Order-in-Original states that the applicants did not receive the Show Cause Notice and also the office of the Drawback Sanctioning Authority who has issued the Show Cause Notice and Commissioner (Appeals) situated in the same building and the applicants submitted all the three BRCs pertained to three

S.Bs. in respect of the exports along with S.Bs. The Commissioner (Appeals) instead of rejecting their appeal and genuine submission on petty reason of non submission of Show Cause Notice could have got verified the same from the Drawback sanctioning authority who has issued the Show Cause Notice or he could have very well asked the applicant's to submit the same.

4.2 The applicants further submits, which is identical to Customs that all the conditions except the time limit for filing the rebate claim as per section 11B of Central Excise Act, 1944 can be condoned by the Commissioner. This as per para 11.1 of CBEC Circular No. 81/81/94-CX, dated 25.11.1994. As per Government of India order in the case of G.T.C. Export Ltd.- 1994 (74) ELT 468(G.O.I.) – Export Rebate –Rule 12 of Central Excise Rules, 1944 – Power vested in Collector to grant a part or whole of the rebate claim by condoning non-observant of some condition(s) of notification issued under the Rule ex

4.3 The applicants further submits, which is identical to Customs that all the conditions except the time limit for filing the rebate claim as per section 11B of Central Excise Act, 1944 can be condoned by the Commissioner. This as per para 11.1 of CBEC Circular No. 81/81/94-CX, dated 25.11.1994. As per Government of India order in the case of G.T.C. Export Ltd.- 1994 (74) ELT 468(G.O.I.) – Export Rebate –Rule 12 of Central Excise Rules, 1944 – Power vested in Collector to grant a part or whole of the rebate claim by condoning non-observant of some condition(s) of notification issued under the Rule exercisable by Collector(Appeals) as well. In this case of applicants even there is mistake, same requires to be condoned in the interest of export as per Circular No. 81/81/94-CX dated 25.11.1994 and the GOI order of GTC Export Ltd. The conditions are identical in Central Excise & Customs.

5. Personal hearing schedule in this case on 10.04.2014 was attended by Shri R.V. Shetty, advocate on behalf of the applicant who reiterated the grounds of revision application.

6. Government has carefully gone through the relevant case records, oral and written submissions and perused the impugned order-in-original and order-in-appeal.

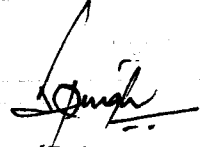
7. On perusal of records, Government observes that the original authority confirmed the demand of already availed drawback amount of Rs. 1,02,573/- on the ground that the applicant failed to realize the export sale proceeds. Commissioner (Appeals) up held impugned Order-in-Original. Now, the applicant has filed this Revision Application on ground mention in para (4) also.

8. Government notes that applicant has stated that they had received drawback claim of Rs.1,02,573/- in Shipping Bill No. 702359/03.11.08=Rs. 43,879/-, 7046680/20.11.08=Rs. 29,977 and 7067390/05.12.08=Rs. 28,722/- that they had received the foreign remittance in respect of export sale proceeds. Applicant has submitted the copies of BRCs evidencing receipt of sale proceeds within stipulated time period. Commissioner (Appeals) has not entertained said BRCs on the ground that new evidence can not be produced in appellate stage. Government notes that demand of Drawback can be confirmed only if the export sale proceeds are not received in time. In this ^{case} sale proceeds are claimed to be received in time and due to non receipt of Show Cause Notice, the said BRCs, could not be produced before original authority. Government finds force in the pleadings of the applicant. The demand is liable to be dropped if the said BRCs are found valid on verification.

9. Government therefore sets aside the impugned orders and remands the case back to original authority to consider afresh in the light of above observations. Applicant is directed submitted the BRCs and other requisite document before original authority with 2 weeks of receipt of this order. A reasonable opportunity of hearing will be afforded the parties.

10. The revision application is disposed off in terms of above.

11. So ordered.




(D.P.Singh)

Joint Secretary to the Government of India

M/s M.R. Exports,
3/36, Jai Hind Society,
Opp. Allahabad Bank,
Kalyan (W),
Thane - 421 301.

(Attested)



(भागीपत शर्मा/Attestation Commissioner)
सहायक आयोग/Attestation Commissioner
C.B.E.C.-O.S.D. (Revision Application)
वित्त मन्त्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
आर.ए.ए.ए./Dept. of India
एन.ए.ए./New Delhi

Order No. /14-Cus dated 2014

Copy to:-

1. The Commissioner of Customs (Export), Air Cargo Complex, Sahar, Andheri (East) Mumbai 400 099.
2. The Commissioner of Customs (Appeals) Mumbai-III, Awas Corporate Point (5th Floor), Makwana Lane, Behind S.M. Centre, Andheri –Kurla Road, Marol, Mumbai 400 059.
3. The Assistant Commissioner of Customs (Export), DBK (XOS), ACC, Sahar, Mumbai.
4. Shri R.V. Shetty, Advocate, 101, Sterling Court, 'E' Wing, Opp. Maheshwari Nagar, Orkay Mill Road, MIDC, Andheri(E), Mumbai – 400093.
5. PS to JS (Revision Application)
6. Guard File
7. Spare Copy.



(Bhagwat P. Sharma)
OSD (Revision Application)