

REGISTERED SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 371/98/DBK/13-RA/3446

Date of Issue: - ~~06.2021~~
07.07.2021

ORDER NO. 156 /2021-CUS(WZ)/ASRA/MUMBAI DATED 30.06.2021
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT,
1962.

Applicant : M/s Kay Jain Hosiery,
545/2A, New Shivpuri,
Ludhiana - 141 007.

Respondents : Commissioner of Customs, Mumbai.

Subject : Revision applications filed under Section 129DD of the
Customs Act, 1962, against the Order in Appeal No. 243 &
244/MUMBAI III/2013 dated 10.05.2013 passed by the
Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This Revision application is filed by M/s Kay Jain Hosiery, 545/2A, New Shivpuri, Ludhiana – 141 007 (hereinafter referred to as the 'applicant') against the Orders-In-Appeal 243 & 244/MUMBAI III/2013 dated 10.05.2013 dated 20.01.2020 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. The Brief facts of the case are that a duty drawback amounting to Rs. 75,574/- (Rupees Seventy Five Thousand Five Hundred Seventy Four Only) was sanctioned to the applicant under Section 75 of the Customs Act, for the exports made under various shipping bills having LEO date from 01.01.2004 to 31.12.2008. The applicant had not furnished the proof of realisation of foreign exchange for the goods exported under the said Shipping Bills in terms of CBEC Circular No. 5/2009-Cus dated 02.02.2009 & Public Notice No. 5/2009 dated 07.03.2009. Since the applicant had failed to realise the foreign exchange, the Asstt. Commissioner (Drawback), Customs, ACC, Mumbai issued Demand-cum-SCN F. No. S/3-Misc/DBK(XOS)2165/2010-11 ACC dated 16.11.2010 proposing recovery of drawback amount already disbursed to the applicant alongwith the interest as per Rule 16(A) Sub-Rule (1) & (2) of Customs, Central Excise Duties and Service Tax Drawback Rules 1995.

3. The adjudicating authority vide Order in Original issued under F. No. S/3-MISC/DBK(XOS)2165/2010-11 ACC dated 30.03.2012 (ACC/RNV/887/12/ADJ/ACC dated 02.04.2012) confirmed the demand along with interest at applicable rate under Rule 16(A) of the Drawback Rules, 1995.

4. Aggrieved by the Order in Original, the applicant filed an appeal before the Commissioner of Customs (Appeals), Mumbai Zone- III. The appellate authority, vide Order in Appeal No. 243 & 244/MUMBAI III/2013 dated 10.05.2013, dismissed the appeal filed by the applicant as they failed to submit the BRCs within stipulated time in spite of being given ample opportunities to present their case by the department.

5. Being aggrieved by the impugned Order in Appeal, the applicant has filed instant Revision Application on the following grounds.

5.1 They were asked to attend personal hearing despite having submitted BRC / negative statement.

5.2 The appellate authority erred in failing to appreciate the averments in the Order dated 08.10.2012 that the Commissioner of Customs (Export) directed that the appeal against the said Order in Original dated 30.03.2012 be filed and based on these directions, the said appeal was filed.

5.3 The appellate authority erred in failing to appreciate that the communication of the department dated 08.10.2010 read with letter dated 15.09.2012 evidenced that there was error apparent on record that the department had not considered the submission made in the letter dated 24.11.2010 / 02.12.2010 in response to the SCN dated 16.11.2010.

5.4 They had submitted reply to the SCN which was not considered by the Adjudicating Authority.

5.5 They did not receive the notice for hearing to be held on 28.03.2012.

5.6 They had realised the Export proceed through the Karnataka Bank Ltd., Ludhiana in respect of the four shipping bills and it was so certified in the Bank Realisation Certificate dated 04.05.2004 and 17.12.2005 issued by the Bank that the inward remittances had been received on or abtou 15.04.2005, 23.08.2005 and 20.09.2005.

5.7 The applicant have filed the application for condonation of delay for filing of Revision Application against the impugned Order in Appeal along with the instant Revision Application.

6. A Personal Hearing was held in matter on 27.032018, 09.01.2020, 15.01.2020, 02.02.2021, 16.02.2021, 18.032021 and 25.03.2021. No one attended the personal hearing on any of the dates. Since, sufficient opportunity

to present the case has been given to the applicant, the case is taken up for decision based on the documents available on record.

7. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

8. The Government notes that the impugned order in appeal was received by the applicant on 10.05.2013 and the instant Revision Application was filed 04.11.2013. The Government observes that the applicant has given sufficient cause for not filing the instant Revision Application within a period of three months from the date of receipt of the impugned Order in Appeal. Government first proceeds to discuss issue of delay in filing this revision application. The chronological history of events is as under:

(a)	Date of receipt of impugned Order-in-Appeal dated 10.05.2013 by the applicant	10.05.2013
(b)	Date of filing of revision application by the applicant	04.11.2013

From the above position, it is clear that applicant has filed this revision application after 5 months and 25 days when the time period spent in proceedings before CESTAT is excluded. As per provisions of Section 129DD of Customs Act,1962 the revision application can be filed within 3 months of the communication of Order-in-Appeal and the delay up to another 3 months can be condoned provided there are justified reasons for such delay. Government, in exercise of power under Section 129DD of Customs Act,1962 condones the said delay and takes up revision application for decision on merit.

8. On perusal of records, Government observes that the applicant was granted the duty drawback with regard to exports made by them and demand of drawback already sanctioned was confirmed on the ground that they failed to

submit Bank Realisation Certificate as evidence of remittance within stipulated period. The appeal filed by the applicant against the Order in Original was dismissed by the appellate for their failure to produce the BRCs within stipulated time.

9. The Government notes that the following submissions made by the applicant in their Revision Application.

9.1 The applicant had submitted the relevant BRCs vide their letter dated 24.10.2010 through speed post to the department. The photocopies of the BRCs show that the export proceeds were realised within stipulated period under law. However, these facts were not reflected in the Order in Original and as such the adjudicating authority confirmed the recovery of drawback amount sanctioned to the applicant.

9.2 The appellate authority dismissed the appeal (Stay) as not maintainable. While dismissing the appeal (Stay) filed by the applicant had drawn following observations: -

"4. I have carefully gone through the facts fo the case and considered the submissions, I proceed to decide the same in the light of facts and the submissions made by the applicant. I find that the impugned Order No. DC/RNV/887/12/ADJ/ACC was issued on 04.04.2012 as per letter dated 01.04.2013 received from Dy. Commissioner of Customs, DBK, (XOS) ACC and considering the date of filing the Appeal i.e. 30.11.2012, there is a delay of 180 days in filing the stay application. Under Section 128, the Commissioner (Appeals) can condone delay up to 30 days provided there was a sufficient cause that prevented the appellant from filing the appeal within 60 days. In this case the delay being of 180 days, it is beyond my statutory power to condone it. The appellant in his appeal has stated the Order F. No. S/3-Misc/DBK(XOS)/2165/2011-12 ACC dated 08.10.2012 which is a not an decision or order as emphasised in Section 128 of Customs Act, 1962 and therefore is not an appealable order. The O-in-O No. DC/RNV/887/12/ADJ/ACC dated 30.30.2012 has already attain finality".

10. Government from copy of the impugned Order in Original observes that preamble of the Order-in-Original clearly mentioned that ***'Any appeal against this order lies with the Commissioner of Customs (Appeals), Mumbai -III, Awash Corporate Point (5th Floor), Makwana Lane, Behind S.M. Centre, Andheri-Kurla Road, Marol, Mumbai - 400 059 within sixty (60) days from the date of communication of this order'***.

11. A fact which cannot be denied by the applicants is that Order in Original issued on 02.04.2012 was not challenged by them within the stipulated period of 60 days as per the provisions of Section 128(1) of the Customs Act, 1962 before the Appellate Authority. The legislative intent is abundantly clear in empowering quasi-judicial authorities to provide for an appellate mechanism in the Central Excise Act, 1944/Customs Act, 1962. When the Legislature has specifically provided an appellate structure, the intent not to avail of the normal appellate remedy by the assessee or by revenue when aggrieved, cannot be attempted to be reopened after lapse of appealable period including condonable period provided in the statute. The law does not come to the aid of the indolent, tardy litigant. Therefore, allowing appeal against Order in Original dated 02.04.2012 would be without authority of law as it would be contrary to the statutory period of limitation prescribed for filing an appeal under Section 128 of the Customs Act, 1962 against such Orders in Original, which is 60 days. If such a practice is allowed, then it would amount to a back door entry, to circumvent the provisions of Section 128 of the Customs Act, 1962 which is against the settled law. As such, the Government holds that the Appellate Authority has rightly dismissed the appeal filed by the applicant as the same was hit by limitation of time as stipulated under the law.

12. In view of the above discussion and findings, the Government does not find any reason to interfere with or modify the Order-in-Appeal No. 243 & 244/MUMBAI III/2013 dated 10.05.2013 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III and upholds the same.

13. The revision application is rejected being devoid of merits.


20/06/21

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER NO. 156 /2021-CUS(WZ)/ASRA/MUMBAI DATED 30.06.2021

To,

M/s Kay Jain Hosiery,
545/2A, New Shivpuri,
Ludhiana - 141 007.

Copy to :

1. The Commissioner of Customs (Export), Air Cargo Complex, Sahar, Andheri (East), Mumbai - 400 099.
2. The Commissioner of Customs (Appeals), Mumbai Zone - 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, DBK (XOS) Section, Air Cargo Complex Sahar, Andheri (East), Mumbai - 400 099.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare copy.
- 7.