

F.No. 375/17/DBK/2018-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 27/1/21

Order No. 17 /21-Cus dated 27-01-2021 of the Government of India passed by Sh. Sandeep Prakash, 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. CC(A)Cus/D-II/ICD/TKD/Exp/87/2017 dated 19.12.2017, passed by the Commissioner of Customs (Appeals), Delhi.

Applicant : M/s Shivswati Enterprises

Respondent : Commissioner of Customs(Exports), ICD, TKD, Delhi

ORDER

A Revision Application No.375/17/DBK/18-RA dated 07.03.2018 has been filed by M/s Shivswati enterprises, Delhi, (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC(A)Cus/D- II/ICD/TKD/Exp/87/2017 dated 07.03.2017, passed by the Commissioner of Customs (Appeals), New Delhi. Commissioner (Appeals) vide the above mentioned Order-in-Appeal, has rejected the appeal of the applicant.

2. Brief facts of the case are that the respondent filed drawback claims in respect of 16 Shipping Bills with the Dy. Commissioner of Customs, Drawback, ICD, TKD, Delhi. The said claims were sanctioned by the jurisdictional Dy. Commissioner of Drawback, ICD, TKD, Delhi. However, on scrutiny of the XOS statement, it was observed by the department that the applicant had failed to submit the proof to the effect that the export proceeds in respect of 16 Shipping Bills in dispute had been realized in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995. Accordingly, a show cause notice was issued to the respondent for the recovery of availed drawback amount of Rs.51,51,169/- along with interest. Demand of Rs. 51,51,1699/- was confirmed by the Dy. Commissioner of Customs, BRC-Cell,ICD, TKD, Delhi vide Order-in-Original No. 417/2014-CUS dated 30.09.2014. Aggrieved, the respondent filed an appeal before the Commissioner (Appeals) who vide the above mentioned OIA rejected the appeal on the ground that the applicant has only submitted the copy of certificate issued by the Manager, Punjab National Bank stating therein the details of impugned Shipping

Bills, invoice Number & date , GR clearance value & realization date and not the BRC's.

3. The instant revision application has been filed mainly on the ground that they had submitted the copies of certificate issued by the bank stating therein that the export proceeds in respect of impugned Shipping Bills had been realized within the stipulated time period of six months from the date of export. Apart from that the applicant has also requested for condonation of delay in filing the instant RA.

4. Personal hearing was granted on 09.12.2019, 08.01.2020, 23.01.2020, 06.01.2021 and 22.01.2021. None appeared on behalf of the applicant or respondent. Further, no request for adjournment has been received either from the applicant or respondent. Hence, the case is being taken up for final disposal based on records.

4. As per Section 129DD of the Customs Act, 1962, the application under subsection (1) i.e. Revision application can be made within 3 months from the date of communication to the applicant of the order against which the application is being made. However, proviso to sub section (2) provides discretion to the Government to allow applicant to present the application within a further period of 3 months if the Government is satisfied that the applicant was prevented by sufficient cause from presenting the application within the normal period of 3 months. In this case, the OIA was communicated to applicant on 23.03.2017 and revision application has been filed on 07.03.2018. Thus, there is a delay of more than 09 months. Applicant has stated that they lost time in pursuing the appeal before CESTAT for almost 09 months. It is observed that as per preamble of the Commissioner

(Appeals)'s order dated 08.03.2017 the applicant was advised to file a revision application before the Central Government. However, the applicant still proceeded to file the appeal before the CESTAT. The matter came up for hearing in CESTAT on 20.11.2017 when the CESTAT in an order (Final Order No. 58092/2017 dated 20.11.2017) dismissed the appeal as non-maintainable. The instant RA has been filed on 07.03.2018 and is claimed to have been filed within the period of 03 months as the Order dated 20.11.2017 of CESTAT was ostensibly received only on 19.12.2017. However, it is clear from the Order dated 20.11.2017 of the CESTAT that it was dictated and pronounced in the open court in the presence of the applicant's lawyer and, as such, stood communicated to the applicant on 20.11.2017 itself. Hence, the applicant should have filed the RA by 20.02.2018. The Government observes that the applicant not only proceeded to incorrectly file an appeal before the CESTAT, despite being advised to file RA before the Central Government, they did not file the instant RA within a period of 03 months from the date of rejection of their appeal by the CESTAT. In the circumstances, a case for condonation of delay is not made out.

5. Accordingly, the revision application is rejected as barred by limitation.



(Sandeep Prakash)

Additional Secretary to the Government of India

Shivswati Enterprises,
C-480, Yojna Vihar,
New Delhi 110092

Order No. /21-Cus dated 27-01-2021

Copy to:

1. Commissioner of Customs, Export, Export Commissionerate, ICD, Tughlakabad,
New Delhi-110020.

2. Commissioner of Customs (Appeals), Delhi, New Custom House, Near IGI Airport, New Delhi 110037.
3. Deputy Commissioner of Customs, (BRC-cell), Export Commissionerate, ICD, Tughlakabad, New Delhi-110020.
4. PS to AS(RA)
5. Guard File.
6. Spare Copy

Attested

(Nirmala Devi)
Section Officer (REVISION APPLICATION)