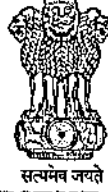


SPEED POST
REGISTERED POST



**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. 371/156/DBK/2021 / 1966

Date of Issue: 20.05.2022

ORDER NO. 179/2022-CUS (WZ) /ASRA/Mumbai DATED 17.05.2022 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 Mahindra Hinoday Industries Limited,
Bhosari Industrial Estate,
Pune, Maharashtra.

Respondent : Commissioner of Customs (Export),
Air Cargo Complex, Sahar,
Andheri (East), Mumbai - 400 099.

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM - CUSTM - AXP-APP-1819/ 2020-21 dated 18.03.2021 passed by the Commissioner of Customs (Appeals), Mumbai -III.

ORDER

The subject Revision Application has been filed by M/s Mahindra Hinoday Industries Limited (here-in-after referred to as 'the applicant') against the Order-in-Appeal No.MUM-CUSTM-AXP-APP-1819/2021 dated 18.03.2021 passed by the Commissioner of Customs (Appeals), Mumbai – III. The said Order-in-Appeal dated 18.03.2021 decided an appeal against the Order/letter dated 01.07.2019 of the Deputy/Assistant Commissioner of Customs, DBK (XOS), Air Cargo Complex, Mumbai.

2. Brief facts of the case are that the applicants were issued a Show Cause Notice dated 18.06.2016 by the Assistant Commissioner of Customs, DBK (XOS), ACC, Mumbai seeking to recover the drawback of Rs.13,69,754/- sanctioned to them as they apparently failed to produce evidence indicating receipt of sale proceeds in respect of the goods exported by them. The applicant failed to respond to the said Show Cause Notice and also failed to appear for the personal hearings granted to them in the matter. Thereafter, the Assistant Commissioner of Customs, ACC, Mumbai vide Order-in-Original dated 24.03.2017 confirmed the demand raised and also imposed a penalty of Rs.68,000/- on the applicant.

3. The applicant vide their letter dated 25.07.2018 and subsequent reminders approached the Assistant Commissioner of Customs, ACC, Mumbai seeking a certified copy of the Order-in-Original dated 24.03.2017 for the purpose of filing an appeal, on the grounds that the said Order-in-Original was not received by them. The request of the applicant was turned down by the Assistant Commissioner, ACC, Mumbai vide letter dated 01.07.2019.

4. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals) against the letter/Order dated 01.07.2019 which had denied them

a copy certified of the Order-in-Original dated 24.03.2017 for the purpose of filing an appeal. The same was decided vide the impugned Order-in-Appeal dated 18.03.2021 wherein the Commissioner (Appeals) rejected the appeal on the grounds of limitation.

5. Aggrieved, the applicant has filed the present Revision Application against the Order-in-Appeal dated 18.03.2021 on the following grounds:-

(a) The Commissioner (Appeals) vide Order-in-Appeal dated 18.03.2021 had not discharged justice to the applicant when compared to 121 other exporters covered by the previous/recent Order-in-Appeal No. MUM-CUSTOM-AXP-APP-341/2018-19 dated 08.08.2018 who had also filed their appeals before him under the similar circumstances; that appeals filed by the other exporters were dealt with leniently whereas their appeal had been dealt with unjustly and unfavourably despite facts of all the cases being similar;

(b) The Commissioner (Appeals) had not taken cognizance of the fact that they had produced proof of receipt of sale proceeds from the overseas buyers and had submitted the BRCs in reply to DBK's letter dated 30.10.2018;

(c) The Commissioner (Appeals) had erroneously held that they had remained silent for more than five years, as they had written several letters to the Drawback Section seeking copy of the Order-in-Original passed in their case, which was not received by them; that in similar cases the Commissioner (Appeals) had taken a lenient view;

(d) They had complied with the requirements stipulated by the Standing Instruction no.01/2018 dated 14.03.2018 for obtaining a certified copy of the Order-in-Original and provided a chart indicating the same; they submitted that the DBK Section had erred in not following the said Standing

Instruction, which the Commissioner (Appeals) had failed to take cognizance;

(e) That the rejection Order/Letter dated 01.07.2019 did not give details of the mode of dispatch nor did it mention that the same was received by the applicant; that there were several judgments wherein it has been ruled that an Order has to be served to the concerned person; they placed reliance on the judgment of the Hon'ble Bombay High Court in the case of New Drug & Chemical Co. V/s. Union of India [2015 (325) ELT 313 (Bom.)] wherein it was necessary for the Order to be served; that the Order in their case does not seem to have been dispatched by registered AD; that the said Order/Letter dated 01.07.2019 does not give any information as to how the Order-in-Original was dispatched to them; that the said Order/Letter dated 24.03.2017 was not served to them; that the Commissioner (Appeals) had observed and held that "the Revenue submitted the proof of dispatch of the Order-in-Original dated 24.03.17 vide letter F. No. S/3-Misc/DBK (XOS) 117 (240)/2015-16 ACC dt. 21.01.21. Therefore, the appeal is time barred."; that the ground of limitation on which their appeal was rejected was ill founded and baseless as they had never received the Order-in-Original dated 24.03.2017 said to have been passed by the Assistant Commissioner of Customs (DBK); that the said Order was never posted to the Notice Board as there was no mention of the same in the mailing list on page 2 of the said Order; that the Commissioner (Appeals) should have shared the copy of the said letter with them and sought their comments before deciding the case, which was not done and hence the principle of natural justice was violated in this case; that their request for the said letter has met with no response from the Department till date.

In light of the above submissions, they prayed that the impugned Order-in-Appeal and Order-in-Original No. AC/YK/4950/16-17/DBK (XOS)ACC dated 24.03.2017 be set aside directions be issued to the lower authority to

accept the proof of realization of sale proceeds (BRCs) already submitted by them to DBK Section.

6. Personal hearing in the matter was granted to the applicant on 05.04.2022. Dr. J. Arthur Prem, Consultant, appeared online on behalf of the applicant. He reiterated their earlier submissions and stated that the applicant had all the BRCs and had received the necessary remittances. He also submitted that neither the Show Cause Notice nor the Order-in-Original was received by them. He requested that their application may be allowed. He submitted a Deposition which reiterated their written submissions which has been detailed above.

7. Government has carefully gone through the relevant case records available, the written and oral submissions and also perused the impugned Order/Letter dated 01.07.2019 of the Assistant Commissioner and the impugned Order-in-Appeal dated 18.03.2021.

8. Government finds that it is the case of the applicant that they have neither received the Show Cause Notice dated 18.06.2016 which required them to produce the BRCs, nor did they receive the Order-in-Original dated 24.03.2017 which decided the said Show Cause Notice wherein the Drawback sanctioned to them was sought to be recovered. Government notes that the applicant has submitted that their requests for a certified copy of the Order-in-Original in question was turned down vide letter dated 01.07.2019. Government further notes that Commissioner (Appeals) vide the impugned Order-in-Appeal has rejected the appeal of the applicant against the said letter dated 01.07.2019, on grounds of limitation.

9. Government notes that the impugned Order-in-Appeal dated 18.03.2021 decided an appeal against the Order/Letter dated 01.07.2019 of the Assistant Commissioner of Customs, DBK (XOS), Air Cargo Complex, Mumbai. On examining the impugned Order-in-Appeal, even before delving

into the merits of the case, Government finds that the same suffers from a cardinal error inasmuch as it has rejected the appeal against the Order/Letter dated 01.07.2019 as being time barred without stating the date on which the appeal was filed and how the same was beyond the stipulated period for preferring such appeal. The Order-in-Appeal does not record the date of receipt of the said letter by the applicant, the last date for filing the appeal and the period of delay in filing the said appeal. On examining the findings of the Commissioner (Appeals) at para 7 of the impugned Order-in-Appeal, Government notes that after discussing the chronology of events the Commissioner (Appeals) has gone on to hold - "*On the contrary, the Revenue has submitted the proof of dispatch of the order in original dated 24.03.2017 vide letter F.No.S/3-Misc-DBK(XOS)-117(240)/2015-16 ACC dated 21.01.2021. Therefore the appeal is time barred.*" A plain reading of the above portion of the impugned Order-in-Appeal does give the impression that the Commissioner (Appeals) has treated the appeal as an appeal against the Order-in-Original dated 24.03.2017 and not the Order/Letter dated 01.07.2019. The pre-ambule to the impugned Order-in-Appeal clearly mentions that the appeal was against the Order/Letter dated 01.07.2019. In view of the above, the decision of the Commissioner (Appeals) to hold the appeal to be time barred is clearly erroneous and deserves to be set aside on this count alone.

10. Government observes that the applicant has been denied a certified copy of the Order-in-Original dated 24.03.2017 on the grounds that the same was dispatched by the Department on 11.04.2017 and as per the Departmental Standing Instruction No.01/2018 dated 14.03.2018, no certified copy of the same could be issued after the expiry of the appeal period of such Order. Government notes that the Commissioner (Appeals) has also based his decision on the '*proof of dispatch*' of the said Order-in-Original provided by the Department. Government finds that at no point of time has any evidence been produced by the Department to indicate that the

said Order-in-Original dated 24.03.2017 had been served on the applicant. Government finds that the case cited by the applicant is relevant here, as the Hon'ble High Court of Bombay in the said case of New Drug & Chemical Company vs UOI [2015 (325) ELT 313 (Bom)] had held that since there was no acknowledgment in token of the document being served, there was no valid service in law.

11. Government notes that the crux of the issue involved in the present case is non-submission of BRCs by the applicant in respect of the goods exported by them for which they claimed Drawback. The Show Cause Notice and the subsequent Order-in-Original confirming the demand raised, stems from the same. It is this Order-in-Original dated 24.03.2017 which is under challenge. The applicant has submitted that they have received the payments towards the goods exported and are in possession of the relevant BRCs. Government notes that in this case enforcing any action for recovery of the drawback sanctioned, without providing the applicant with an opportunity to furnish the BRCs to the Department, would be a travesty of justice.

12. Government finds that in this case the applicant has made several attempts to obtain a certified copy of the Order-in-Original dated 24.03.2017, starting with a letter dated 25.07.2018 requesting for the same. While denying them the same, the Department has not adduced any evidence of the same having been served on the applicant. Government finds that the instructions contained in the Standing Instruction no.01/2018 dated 14.03.2018 would come into play only after the Order-in-Original was legally served on the applicant. Given the above facts, Government finds that there is no evidence to contradict the claim of the applicant that they have not received the Order-in-Original dated

24.03.2017 or the Show Cause Notice dated 18.06.2016; in which case even the Order-in-Original dated 24.03.2017 has been passed in violation of the principles of natural justice. In light of the above, Government sets aside the impugned Order-in-Appeal dated 18.03.2021 and directs the Department to decide the Show Cause Notice dated 18.06.2016 afresh, after providing the applicant an opportunity to file their reply to the same.

13. The Revision Application stands disposed of in the above terms.


(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 79/2022-CUS (WZ) /ASRA/Mumbai dated 7.05.2022

To,

M/s Mahindra Hinoday Industries Limited,
Bhosari Industrial Estate,
Pune - 411 026.

Copy to:

1. The Commissioner of Customs (Export), Air Cargo Complex, Sahar, Andheri (East), Mumbai - 400 099.
2. The Commissioner (Appeals), Mumbai - III, Awas Corporate Point, 5th floor, Makwana Lane, Andheri - Kurla Road, Marol, Mumbai - 400059.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.