

REGISTERED  
SPEED POST



F.No. 372/34/DBK/2017-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 14/10/19

Order No. 24/19-Cus dated 14-10-2019 of the Government of India passed by Mrs. Mallika Arya, Principal Commissioner & 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. KOL/Cus(port)/AA/1106/2017 dated 26.09.2017, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s Tata Projects Limited

Respondent : Commissioner of Customs(Port), Kolkata

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**ORDER**

A Revision Application No.372/34/DBK/17-RA dated 26.09.2017 has been filed by M/s Tata projects ltd. (hereinafter referred to as the applicant) against the Order No.KOL/Cus(port)/AA/1106/2017 dated 26.09.2017, issued by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals) vide the above mentioned Order-in-Appeal has rejected the appeal as time bar on the ground that the applicant failed to produce sufficient cause which prevented them from filing the appeal beyond the stipulated period of sixty days as per Section 128 of the Customs Act, 1962 .

2. Brief facts of the case are that the applicant filed a drawback claim in respect of 10 Shipping Bills with the jurisdictional Customs authorities. The said claim was rejected by the jurisdictional Dy. Commissioner of Drawback, Custom House, Kolkata on the ground that the applicant had failed to submit the proof to the effect that the export proceeds in respect of 10 Shipping Bills in dispute have been realized in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals) which was rejected as time bar. The instant revision application has been filed mainly on the ground that the applicant had realized the export proceeds against the impugned Shipping Bills in stipulated time period. As regard the delayed filing of appeal before the Commissioner (Appeals), it has been stated by the applicant that the person dealing with the case was diagnosed with interior instability of left shoulder and was advised for physiotherapy and medical attention.

3. Personal hearing was attended by Sh. R. Muralidharan, Consultant, and Sh. Dheeraj Srivastava, Advocate, on behalf of the applicant. He reiterated the submissions already made in their Revision Application. The applicant has given written submissions dated 27.09.2019 along with copies of bank realisation certificate with dates regarding realisation of export proceeds from the Directorate General of Foreign Trade's website. Further, they have submitted a letter dated

27.09.2019 from the Axis Bank which mention the modified date of realisation of the export proceeds in respect of the 10 Shipping Bill. It has been stated by the bank that earlier BRC's were inadvertently dated incorrectly considering the date of issuance of E-BRCs as the actual date of realisation of export proceeds. Since, no one appeared for the respondent and no request for any other date of hearing has been received, the case is being taken up for final disposal.

4. Government has examined the matter. It is observed that the Commissioner (Appeals) has rejected the appeal as time bar as the appeal was notfiled within the stipulated period of 60 days in terms of Section 128 of the Customs Act, 1962. It is observed that there was a delay of 8 days in filing the appeal before Commissioner (Appeals). Commissioner (Appeals) should have appreciated the fact that the person dealing with the case was not well. The applicant has also submitted a copy of medical certificate in support of their contention.

5. Government is of the view that this delay warrants condonation and is, therefore, allowed. As regards the merits of the case, Government observes that department's entire case is based on the premise that the applicant did not receive the export proceeds against the 10 Shipping Bills within specified period of nine months. The applicant has claimed that they had exported the goods against 10 Shipping Bills only and they have received the export proceeds well within the stipulated period of nine months. The Axis bank vide their letter dated 27.09.2019 have mentioned the correct date of export proceeds realisation and the same is also reflected in the bank realisation statement of the applicant from DGFT website. Government holds that the matter needs to be re-examined in the light of the applicant's claim that they had realised the entire amount and no export sale proceeds are pending in their case. Accordingly the matter is remanded back to jurisdictional Assistant/Dy. Commissioner (DBK) to verify the genuineness of the BRC's and grant consequential relief as deemed fit.

5. Accordingly, the Order-in-Appeal is set aside and revision application is allowed by way of remand.

*Mallika Arya*  
(Mallika Arya)

Additional Secretary to the Government of India

M/s Tata Projects limited  
Mithona Towers-I, 1-7-80 to 87  
Opposite Wesley Co-ED, Jr college Prenderghart road,  
Nr, Paradise Circle, Secunderabad-500003

Order No. 24/19-Cus dated 14-10-2019

Copy to:

1. The Commissioner of Customs (Port), 15/1 Strand Road, Custom House, Kolkata - 700001.
2. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata-700001.
3. Deputy Commissioner, (Drawback, Port), 15/1 Strand Road, Custom House, Kolkata - 700001.
4. PS to AS(RA)
5. Guard File.
6. Spare Copy

Attested

*Nirma Devi*  
14/10/19

(Nirma Devi)

Section Officer (REVISION APPLICATION)