



REGISTERED
SPEED POST

F.No. 371/85/DBK/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue... 2/8/15

ORDER NO. 24/2015-CUS. DATED 28.08.2015 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, 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.MUM-CUSTM-AXP-APP-33/13-14 dated 06.06.2013 passed by the Commissioner of Customs (Appeals), Mumbai Zone-II.

Applicant : M/s Forzed Lifestyle Incorporated, Mumbai.

Respondent : Commissioner of Customs (Export), Sahar.

ORDER

This revision application is filed by M/s Forzed Lifestyle Incorporated, Mumbai (herein after referred to as the applicant) against the Order-in-Appeal No. CUSTM-AXP-APP-33-13-14 dated 06.06.2013 passed by the Commissioner of Customs (Appeals), Mumbai Zone-II with respect to Order-in-Original No.DC/SRB/182/2011/ADJ/ACC dated 28.2.2011 passed by the Deputy Commissioner of Customs, DBK(XOS), ACC, Mumbai.

2. Brief facts of the case are that the applicant was initially granted drawback for exports made by them. Subsequently, show cause notice was issued to the applicant for recovery of already sanctioned drawback on the ground that applicant failed to produce the evidence for realization of export proceeds in respect of impugned exported goods for which they were allowed drawback within the period allowed under Foreign Exchange Management Act, 1999 including any extensions of such period granted by the Reserve Bank of India. Later on, the original authority vide impugned Order-in-Original confirmed the demand of already sanctioned drawback.
3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), 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 the Customs Act, 1962 before Central Government on the following grounds:
 - 4.1 The Respondent passed the impugned order dated 06.06.2013 without considering the documents on record rejected the appeal on the ground that those documents are not on record and received by the department. The Respondent ought to have called for the report from the department regarding submission of the documents before confirming the demand under rule 16A of the said Rule.
 - 4.2 The respondent erred in dismissing the appeal as not maintainable on the ground that the Applicant himself admitted that they could not file reply to Show Cause Notice as he was out of station for the business purposes. The Respondent erred in dismissing the appeal on the ground that ample opportunity was given to the Applicant and since the Applicant failed to respond the same.
 - 4.3 The Respondent herself admitted in the impugned order dated 06.06.2013 that all the relevant documents including bank realization certificate was submitted in time and documents were also available and submitted with the appeal in para 3 of the impugned order but without rejecting those documents the appeal was rejected without any legal and valid reason. The Commissioner of Customs (Appeals) in the facts and circumstances of the case and in view of the submission all required documents with the appeal as well as during the course of the personal hearing ought to have allowed the appeal of the Applicant.

4.4 The Respondent failed to consider that there is absolute no violation on the part of the Applicant of any Drawback Rules or any provisions of Customs Act 1962 and erred in confirming the demand of duty drawback which the applicant was legitimately entitled to the same.

5. The Applicant also filed an application seeking condonation of delay of 7 days in filing the Revision Application on the following grounds:

5.1 The impugned order dated 06.06.2013 was received by them on 15.06.2013.

5.2 That the last date was 15.09.2003 but since the power of Attorney of the Applicant, who was handling the matter and not well and, therefore, he could not contact the Advocate in time.

5.3 That therefore the delay in filing is 7 days and they have a good case on merits and delay is not condoned great harm loss and prejudice will be caused to the applicant.

6. Personal hearing was scheduled in this case on 15.04.2015 was attended by Shri Faizal Ibrahim, Director on behalf of the applicant, who reiterated the grounds of revision application and stressed payments have already been received by them and documents were submitted before Commissioner (Appeals) as stated in para (3) of Order-in-Appeal. The respondent vide letter dated 26.3.2015, mainly reiterated contents of impugned orders.

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. Government first proceeds to examine whether the Revision Application has been filed in prescribed time as the applicant themselves admitted to have filed the Revision Application after initial stipulated 90 days and has sought condonation of the delay. The impugned order dated 6.6.2013 is claimed to have been received by the applicant on 15.6.2013 and the Revision Application has been filed on 25.9.2013. Therefore, in this case there is delay of 12 days beyond stipulated period of three months.

8.1 Government notes that the provision of time limit of filing Revision Application has been provided in Section 35EE(2) of the Central Excise Act 1944, which reads as under:

SECTION 35EE. Revision by Central Government. —

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months."

The above provision provides in unambiguous term that Revision Application shall be filed within three months from the date of receipt of Order-in-Appeal. It has been further provided that the three months period may be allowed by the Central Government, i.e. Revisionary Authority, if it is satisfied that the applicant is prevented by sufficient cause from filing the Revision Application in stipulated three months period. In this case, the applicant has filed the Revision Application with a delay of 12 days. An application for condonation of delay has also been filed. The reason stated by the applicant for the delay was that since the power of attorney of the applicant, who was handling the matter was not well and therefore, he could not contact the advocate in time.

8.2 Government notes that the applicant's mere statement cannot be accepted in absence of any substantial documentary evidence in support of such statement. The applicant failed to give any time-wise details of delay, duly supported by any documentary evidences. The reason for delay appear to be very vague, unclear and an after thought. Under such circumstances, Government is of considered opinion that the onus to show cause for not filing application is on the applicant who has clearly failed to show sufficient cause which prevented them from filing Revision Application within initial stipulated time limit of three months. As such, the applicant's application of condonation of delay is liable for rejection in view of aforesaid discussion.

9. In view of above discussion, Government rejects the Revision Application as time barred without going into merits of the case.


10. So, ordered.


(RIMJHIM PRASAD)

Joint Secretary to the Government of India

M/s. Forzed Lifestyle Incorporated
19 Nirman Industrial Estate
Chincholi, Malad(W)
Mumbai-400064

ATTESTED


(B.P. Sharma)
OSD (RA)

ORDER NO. 24/2015 - CUS. DATED 28.08.2015

Copy to:

1. Commissioner of Customs (Export), Air Cargo Complex, Sahar, Andheri(East), Mumbai-400099
2. Commissioner of Customs (Appeals), Mumbai-III, Avas Corporate Point, B-Wing (5th Floor), Makhwana Lane, Behind S.M.Centre, Andheri Kurla Road, Marol, Mumbai-400059
3. The Deputy Commissioner of Customs, DBK (XOS), Air Cargo Complex, Sahar, Andheri (East) Mumbai-400099.
4. PA to JS(RA)
5. Guard File
6. Spare Copy

ATTESTED



(B.P. Sharma)
OSD (Revision Application)



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