

REGISTERED
SPEED POST



F.No.375/8/DBK/2013-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.....16/11/15

ORDER NO. 29/2015-CUS DATED 12.11.2015 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision application filed, under Section 129 DD of the Customs Act, 1962 against the Order-in-Appeal No. 19-Cus/MRT-I/2012 dated 14.02.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Meerut-I.

Applicant : M/s Lifelong India Ltd, Haridwar.

Respondent : Commissioner of Central Excise , Meerut-I.

ORDER

This revision application is filed by M/s Lifelong India Ltd (herein after referred as Applicant) against the Order-in-Appeal No. 19-Cus/MRT-I/2012 dated 14.02.2012 passed by the Commissioner of Customs & Central Excise(Appeals), Meerut-I with respect to Order-in-Original No. 32/ADC(Cus)/M-I/2011 dated 28.10.2011, passed by the Additional Commissioner (Customs), Central Excise, Meerut-I.

2. Brief facts of the case are that the applicant are engaged in the manufacturing of parts and accessories of motor vehicles. The applicant has exported the parts and accessories of motor vehicles vide various Shipping Bills. On 17.08.2011 the applicant filed 25 applications for fixation of Brand Rate of Drawback under Rule 6(1) (a) of Customs & Central Excise Drawback Rules, 1995 i.e. after expiry of relevant period three months from the date of let export order. As per provisions of Rule 6 of Drawback Rules, 1995, the manufacturer or exporter may file the drawback claim for fixation of brand rate within three months from the relevant date (date of let export) with the Commissioner having jurisdiction over the unit. Board vide Circular No. 13/2010-Cus dated 24.06.2010 under F. No. 609/51/2010-DBK clarified that "The claim may be filed within three months from the date of Let Export Order. This time limit may be extended by 3 months by the AC/DC and by another 6 months by the Commissioner". But in the instant case the party have neither requested for condonation of delay nor given any justification/sufficient cause for delay in submission of Brand Rate application filed on 17.08.2011.

3. The Additional Commissioner(Customs) Central Excise, Meerut-I Drawback, vide impugned Order-in-Original rejected all 25 claims of Brand Rate Fixation as time barred. Being aggrieved by the impugned Order-in-Original, the applicant filed an appeal before the Commissioner (Appeals), who rejected the same vide Order-in-Appeal No. 19-Cus/MRT-I/2012 dated 14.02.2012.

4. Thus, the applicant filed this revision application under Section 129DD of Customs Act, 1962 before the Central Government on the following grounds:

4.1. That the impugned order of the appellate authority is violative of the principle of natural justice conferred by the Constitution of India.

4.2. That the delay in filing of the applications for Brand Rate Fixation of Duty Drawback is on account of reasonable cause of wrong legal advice.

4.3. That the requirement of filing the duty drawback application within stipulated period is a procedural condition of the notification.

4.4. That the applicant is prevented by a sufficient reasonable cause from filing of the application in time.

4.5. That the claim should be decided on the basis of merits of the case keeping in mind the prime importance of the principle of advancing substantial justice and basic intent of the Government in facilitating the exports by allowing incentives on exports.

4.6. That Section 5 of the Limitation Act, 1963 provide that an application other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 may be admitted after the prescribed period, if the applicant is prevented by a sufficient and reasonable cause for not preferring the application within such stipulated period.

4.7. That in the WPC No. 271/2012,273/2012, 378/2012, 3215/2011, 3242/2011 and 3696/2011 in the case of CCE, Delhi-I Vs Joint Secretary (Revisionary Authority) & Anr., Hon'ble High Court of Delhi observed that rebate/drawback etc. are export-oriented schemes and unduly restricted and technical interpretation of procedure etc. is to be avoided in order not to defeat the very purpose of such schemes which serve as export incentive to boost export and earn foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches.

4.8. That the adjudicating authority and the appellate authority are wrong in contending that no sufficient cause is shown by the applicant for the delay in filing of the applications as wrong opinion given by the consultant to the applicant is the sole reason for the delay in filing and thus the applicant is prevented by a sufficient and reasonable cause for non-filing of the applications within stipulated time.

4.9. That refusing to condone the delay will result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. That if delay is condoned, a cause would be decided on merits and principle of justice is upheld.

4.10. That it has always been Central Government's endeavor that all the measures for exports promotion shall be encouraged and genuine difficulties faced by the exporters in the settlement of their export incentive claims be considered.

5. The Applicant also filed an affidavit in support of the application for condonation of delay in filing the Revision Application on the following grounds:

5.1. That the impugned Order-in-Appeal No. 19-Cus/MRT-I/2012 dated 28.08.2012 passed by the Commissioner (Appeals), CCE. Meerut-I is served upon the applicant on 03.10.2012 and that the limitation for second appeal in CESTAT was 02.01.2013.

5.2. That the second appeal was filed on the advice of the counsel of the applicant before the Hon'ble CESTAT, New Delhi under Section 129A(1) of the Customs Act, 1962 on 01.01.2013 along with requisite fee. That the Hon'ble Tribunal returned the appeal through Registered Post which was received on 06.01.2013 and directed to file the revision before the Government under Section 129 DD of the Customs Act, 1962.

5.3. That the appeal set in original was received back by the applicant on 06.01.2013 and in pursuance of the directions of the Hon'ble Tribunal a petition for condonation of delay in filing of the application for fixation of duty drawback under Rule 6(1) (a) of the Customs, Central Excise and Service Tax Duty Drawback Rules, 1995 was filed before the Joint Secretary, Department of Revenue, Ministry of Finance, through registered post on 07.01.2013 and that the action of filing of revision on the part of applicant was felt completed. That to make sure the submission of revision application a copy of the said petition was also filed parallel through the Deputy/Assistant Commissioner, Customs, Central Excise and Service Tax, Division, Dehradun, on 01.01.2013 which was returned back to the applicant on 30.01.2013.

5.4. That cause of the delay in filing of the present revision application was on account of the unawareness of the fact that a revision application against the order passed by the Commissioner (Appeal) invoking provision of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 is to be presented before Joint Secretary Revision Application instead of CESTAT.

5.5. That it was on 28.02.2013 the consultant, while reading through the Act in some other matter suddenly come across about the procedure of filing a revision application on the prescribed form no. 8 under Section 129 DD of the Customs Act, 1962. That the applicant then immediately called upon for preparation of present revision application in the prescribed form on 02.03.2013 and 03.03.2013 being official holidays, the formal revision application was finalized on 04.03.2013 and hence filed on 05.03.2013.

5.6. That the delay in filing of the present revision application is only a procedural lapse because of unawareness/lack of knowledge of exact provision of the Act, which is a reasonable cause especially when the revision application had already been filed with Government on the non prescribed format.

6. Personal hearing was scheduled in this case on 03.08.2015 was attended by Shri C.M. Dang, Advocate, on behalf of the applicant who mainly reiterated the grounds of revision application. He also stated that subsequent to Commissioner(Appeals) order, they have made an application to Commissioner,

Meerut now Dehradun Commissionerate for extension of time in filing brand rate application which is yet pending. Nobody attended hearing on behalf of department.

7. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Orders-in-Appeal.

8. Government first takes up the application for condonation of delay in filing the Revision Application by the Applicant. Government notes that in the impugned case, the applicant claimed to have received copy of impugned Order-in-Appeal dated 28.08.2012 on 03.10.2012, while, the Revision Application was filed on 05.03.2013 i.e. after over five months from date of receipt of impugned Order-in-Appeal. Government finds that the applicant has filed for condonation of delay claiming that they initially filed appeal before CESTAT. Hence, Government first proceeds to discuss the issue of time bar.

The time calculation for filing revision application is as under:-

A.	Date of receipt of impugned OIA	03.10.2012
B.	Date of filing appeal before Tribunal	01.01.2013
C.	Total time taken for filing appeal before Tribunal	A-B= 90 days
D.	Date of communication of Tribunal's order	06.01.2013
E.	Date of receipt of Revision Application	05.03.2013
F.	Time taken to file Revision Application from receipt of Tribunal's order	D-E=59 days
G.	Total time taken from date of receipt of OIA in filing Revision Application excluding time claimed to have lapsed in CESTAT	C+F= 149 days.
H.	Total time taken in filing Revision Application from date of receipt of OIA	154 days

8.1. Government finds that applicant has stated that on the advice of their Counsel they filed an appeal before CESTAT against impugned Order-in-Appeal on 28.08.2012 under Section 129 A(1) of the Customs Act, 1962 but Hon'ble CESTAT returned the appeal through registered post directing to file the Revision before the Government under Section 129 DD of the Customs Act, 1962, which was received by them on 06.01.2013. However, the applicant failed to produce any documentary evidence supporting the same.

8.2 Government finds no merit in the contention of the applicant regarding filing of appeal before the wrong forum due to incorrect advise of their Counsel, as the notes of guidance of the impugned Order-in-Appeal clearly mentions where appeal would lie in such cases. Also the applicant has failed to place on record any evidence of having filed an appeal in CESTAT or copy of direction from CESTAT.

Government, therefore cannot consider exclusion of time spent before CESTAT for purpose of condonation of delay in filing Revision Application.


8.3. As such, even after excluding time, claimed by applicant to have elapsed before Tribunal the applicant filed this revision application after a further delay of 59 days subsequent to the initial 90 days period. The reason stated in the affidavit filed by the applicant, for the delay was that the consultant of their firm while reading through the Act in some other matter, suddenly came across about the procedure of filing a revision application in the prescribed form no. 8 under Section 129 DD of the Customs Act, 1962 and thereafter, they prepared the present revision application in the prescribed form.

9. Government notes that it is an undisputed fact that Commissioner (Appeals) order clearly mentions that appeal in cases falling under first proviso to sub-section (1) of Section 129A ibid shall be under Section 129DD with the Central Government and shall be presented in person to the Under Secretary, Revision Application Unit, Delhi. Despite that the applicant claims that they filed appeal before CESTAT and CESTAT ordered them to file appeal before Revisionary Authority. However, no order of CESTAT has been furnished in support. Thereafter, they have claimed that delay in filing Revision Application before Central Government was due to the fact that their consultant while reading through the Act in some other matter came across procedure for filing Revision Application under Section 129DD ibid. Government observes that despite specific directions, applicant failed to file Revision Application promptly and the above reason for delay appears to be very vague, unclear and an after thought. Under such circumstances, Government is of considered opinion that the applicant has clearly failed to show sufficient cause which prevented them from filing Revision Application within the prescribed time limit under Section 129DD. As such, the applicant's application of condonation of delay is liable for rejection in view of aforesaid discussion.

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

11. So, ordered.

M/s. Lifelong India Ltd.,
Plot No. 7, IP-2, Phase 1,
Village Salempur Mehdood,
Haridwar(Uttarakhand).


(**RIMJHIM PRASAD**)
Joint Secretary to the Govt. of India


Attested.



ORDER NO. 29/2015-CUS DATED 12.11.2015

Copy to:

1. The Commissioner of Central Excise, Meerut-I
2. The Commissioner of Customs, Central Excise & Service Tax (Appeals), Meerut-I
3. The Additional Commissioner(Customs), Central Excise , Meerut-I, Mangal Pandey Nagar, Meerut-I
4. ~~Guard File.~~
5. PA to JS (RA)
6. Spare Copy

ATTESTED


(SHAUKAT ALI)
Under Secretary(RA)

