



REGISTERED
SPEED POST

F.No.373/84/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...28/11/15

ORDER NO. 31/2015-CUS DATED 18.11.2015 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. CMB-CEX-APP-226/2013 dated 24.07.13 passed by the Commissioner of Custom,(Appeals), Coimbatore.

Applicant : M/s. BPS Cotton Concepts Pvt. Ltd.

Respondent : Commissioner of Customs, Coimbatore.

ORDER

This revision application is filed by the applicant M/s BPS Cotton Concepts Pvt Ltd. against the Order-In-Appeal No. CMB-CEX-APP-226/2013 dated 24.07.13 passed by the Commissioner of Customs (Appeals), Coimbatore with respect to Order-in-Original passed by the Deputy Commissioner of Customs, CFS, Tirupur.

2. Brief facts of the case are that the applicants were granted drawback amount of Rs. 12,35,899/- for the exports made by them. The applicants have not produced the evidence for realization of export proceeds in respect of the shipping bills. As the applicant failed to produce evidence for realization of export proceeds in respect of the said export goods within the period allowed under the Foreign Exchange Management Act, 1999 including any extension of such period granted by the Reserve Bank of India, a show cause notice was issued on 19.12.2011. After due process the original authority vide impugned Order-in-Original ordered for recovery of Rs. 12,35,899/- under Rule 16A(2) of Customs, Central Excise and Service Tax Drawback Rules 1995 read with Section 142 of the Customs Act, 1962 along with appropriate interest under Rule 16 of Customs, Central Excise & Service Tax Drawback Rules 1995 read with Sub-Section 2 of Section 75 A of the Customs Act, 1962 and imposed a penalty of Rs. 5,000/- under Section 117 of the Customs Act, 1962.
3. Being aggrieved by the said Order-In-Original, applicant filed appeal before Commissioner (Appeal), who rejected the same as time barred having been filed beyond stipulated period.
4. Being aggrieved by the impugned Order-In-Appeal, the applicant has filed this revision application, under section 129 DD of Customs Act, 1962 before Central Government mainly contesting merits of the case.
5. Personal hearing was scheduled in this case on 21.07.2015 & 11.08.2015 10.09.2015 Nobody attend hearing on behalf of applicant party as well as department. Hence, Government proceeds to decide the case on the basis of available records.
6. Government has carefully gone through the relevant case records available in case files, oral & written submission and perused the impugned Order-in-Original and Order-in-Appeal.
7. Government notes that demand of already sanctioned drawback was confirmed on the ground that the applicant failed to produce proof of export realization within stipulated time limit or extension, if any, by RBI in this regard

Commissioner (Appeals) dismissed the appeal as time barred having been filed beyond the condonable time limit for filing appeal. Now, the applicant has filed this Revision Application mainly contesting merits of the case.

8. Government notes that the time limit of filing appeal before Commissioner (Appeals) has been provided under Section 128 of Customs Act, 1962. The said Section 128 reads as under :

(1) Any person aggrieved by any decision or order passed under this Act by a Customs Officer, lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs], may appeal to the [Commissioner of Customs (Appeals)] [hereafter in this Chapter referred to as the Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order :

[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]

[(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]

(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

8.1 — From the perusal of above said provision, it is clear that the appeal in initial required to be filed within initial stipulated 60 days. A further period of 30 days beyond initial 60 days period has been provided subject to the condition that the sufficient cause has been shown to the satisfaction of the Commissioner (Appeals) that the applicant has been prevented from filing the appeal within aforesaid 60 period.

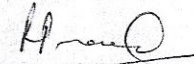
9. Government notes that in this case, Commissioner in para (05) and (06) of impugned Order-in-Appeal, has dealt in detail the aspect of delay in filing appeal before Commissioner (Appeals). Commissioner (Appeals) has observed that the applicant in their favour had stated they had to close down their unit for a brief period and only on re-opening of their office during the month of May, they located the Order-in-Original; that however the applicant was neither specific about period of closure nor produced any evidence of any closure and that there is no evidence showing that the applicant made any efforts to inform the department or adjudicator about their new communication address. Such detailed findings of the appellate authority have neither not been controverted in the grounds of revision application nor have been raised in the Application seeking revision of the impugned Order-in-

Appeal. As such, Government finds force in the observations of Commissioner (Appeals).

10. In view of the above discussion, Government holds that the Commissioner (Appeals) has rightly dismissed the appeal as time barred and finds no reason to interfere with the impugned Order-in-Appeal and upholds the same.

11. The Revision Application is disposed off in above terms, without going into merits of the case.

12. So, ordered.



(**Rimjhim Prasad**)

Joint Secretary to the Government of India

M/s. BPS Cotton Concepts Pvt. Ltd.
No.1, JVL Towers,
117 Nelson Manickam Road,
Aminjikaral,
Chennai-600029.

Attested.



(**Rhenwat Sharma**)
Commissioner
C. Finance (Appeals)
Ministry of Finance (Deptt of Rev)
भारत सरकार/Govt of India
नई दिल्ली / New Delhi

ORDER NO. 31/2015-CUS DATED 18.11.2015

Copy to:-

1. Commissioner of Customs, Central Excise & service Tax, 6/7, A.T.D. Street
race Course Road,Coimbatore-641018
2. Commissioner of Customs Central Excise & Customs(Appeals), Coimbatore
Customs, , 6/7, A.T.D. Street race Course Road,Coimbatore-641018
3. The Deputy Commissioner of Customs, CFS, Tirupur
4. RA Associates, No. 59 (First Floor), 30 Feet Road, Near Kamaraj Statue,
Krishnaswamy Nagar, Ramanathapuram, Coimbatore-641045
5. PA to JS (Revision Application)
6. Guard File
7. Spare Copy.

ATTESTED



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