

SPEED POST
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**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.371/124/DBK/2020-RA/6499

Date of Issue: 18.11.2022

ORDER NO. 317/2022-CUS (WZ) /ASRA/Mumbai DATED 14.11.2022 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 Hallmark Metallica,
11, Shakti Niwas Building, 2nd floor, Office No.18,
7th Khetwadi Lane, Mumbai 400004.
- Respondent : Commissioner of Customs (Export),
Air Cargo Complex, Mumbai.
- Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal no. MUM-CUSTOMS-APP-801/2019-20 dated 27.12.2019 passed by the Commissioner of Customs (Appeals), Mumbai, Zone - III.

ORDER

The subject Revision Application has been filed by M/s Hallmark Metallica (here-in-after referred to as 'the applicant') against the Order-in-Appeal dated 27.12.2019 passed by the Commissioner of Customs (Appeals), Mumbai, Zone - III, which decided an appeal filed by the applicant against the Order-in-Original dated 27.03.2018 passed by the Assistant Commissioner of Customs, DBK (XOS), ACC, Mumbai, which in turn had confirmed the demand seeking to recover Drawback sanctioned to the applicant.

2. Brief facts of the case are that the applicant was issued a Show Cause cum Demand Notice seeking to recover the Drawback amounting to Rs.5,97,325/- sanctioned to them, as it appeared that they had not realized the foreign exchange involved on the goods exported by them as required under Rule 16(A) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 (DBK Rules, 1995). The same was issued as the applicant had failed to respond to the Facility Notice No.05/2017 dated 07.06.2017 and Public Notice No.24/2017 dated 17.07.2017 vide which the applicant, along with several other exporters, were called upon to submit the BRC's/Negative statements in respect of the consignments on which Drawback was claimed. The applicant failed to respond to the Show Cause Notice and hence the original authority, vide Order-in-Original dated 27.03.2018, confirmed the demand raised. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals). The said appeal was dismissed by the Commissioner (Appeals) without going into the merits of the case, as it was found that the appeal was time barred and filed even beyond the condonable period of ninety days.

3. Aggrieved, the applicant has filed the subject Revision Application against the impugned Order-in-Appeal on the following grounds:-

- (a) They had submitted the relevant documents – ‘negative statements’ with respect to the export consignments well within the time limit; that the same was not taken into account by the Customs Authorities;
- (b) That a fresh alert had come up on 30.05.2019 with respect to the Shipping Bills pertaining to the years 2010, 2011 and 2012 and that they had not received any correspondence from the Department in this connection; that when they approached the Department it was informed that an ex-parte order confirming the demand raised. They submitted that the Department was not ready to part with the ex-parte Order and that they had to follow up with the Department for three months to get the original ex-parte Order and that the late receipt of the same was evidenced by the remarks of the Joint Commissioner on the 3rd page of the copy of the Order;
- (c) That the Commissioner (Appeals) had not gone through the grounds of appeal wherein they had mentioned that they had submitted the ‘Negative Statement’ letter dated 22.09.2016.

In view of the above the applicant requested for the impugned Order-in-Appeal to be set aside along with the demand raised; the NIL certificates submitted by them on 22.09.2016 be accepted and their name be removed from the alert list, if any.

4. Personal hearing in the matter was granted to the applicant on 11.10.2022 and Shri Rakesh Jain, Partner appeared online for the same. He submitted that they came to know about the confirmed demand only when their consignment was held up for clearance in 2019. He further submitted that they have realized complete foreign exchange and submitted eBRCs and it would be a travesty of justice if they are penalized for no fault. He further submitted that appeal has been filed within the time limit before the Commissioner (Appeals) from the date the Order-in-Original was received by them.


5. Government has carefully gone through the relevant case records available in case files, the written and oral submissions and also perused the impugned Order-in-Original and the Order-in-Appeal.

6. Government notes that the Commissioner (Appeals) vide the impugned Order-in-Appeal has found the appeal of the applicant to be time barred and has dismissed the same without going into the merits of the case. Government also notes that Commissioner (Appeals) has computed the time limit by taking into account the date on which the Order-in-Original dated 27.03.2018 was issued. The applicant on the other hand has submitted that they never received a copy of the said Order-in-Original and became aware of the same only when their export consignments were held up in the year 2019. They have also submitted that they pursued the issue with the Department and thereafter received a copy of the said Order-in-Original on 06.09.2019, subsequent to which they filed the appeal before the Commissioner (Appeals) on 14.10.2019. Government finds that a certified copy of the said Order-in-Original was given to the applicant on 06.09.2019, as evidenced by the signatures of the Superintendent and the AC/DBK, XOS appearing on the said copy of the Order-in-Original. Government notes that Section 128(1) of the Customs Act, 1962 provides that the sixty day period for filing of appeal before the Commissioner (Appeals) has to be computed from the date of communication of the Order-in-Original to the parties concerned. On examining the impugned Order-in-Appeal, Government finds that no evidence has been recorded by the Commissioner (Appeals) to indicate that the impugned Order-in-Original was served/communicated to the applicant. Government finds that no evidence has been adduced by the Department before the Commissioner (Appeals) or during the course of these proceedings to indicate that the said Order-in-Original dated 27.03.2018 was served on the applicant prior to the date on which they were given a certified copy of the same on 06.09.2019. Given these facts, Government finds that the applicant received a copy of the impugned Order-in-Original on 06.09.2019 and have filed an appeal against it on 14.10.2019, which is well within the prescribed time limit of sixty days. Thus, Government finds that the Commissioner

(Appeals) has erred in computing the time limit by taking the date of the issue of the Order-in-Original in account rather than the date of communication of the same to the applicant, as required by the law. In view of the above, Government finds the decision of the Commissioner (Appeals) to hold the appeal of the applicant to be time barred to be incorrect and hence sets aside the impugned Order-in-Appeal dated 27.12.2019.

7. Further, Government finds that the applicant has submitted that the BRCs required by the Department have been furnished by them vide letter dated 22.09.2016 and also that they have received the payments in foreign exchange with respect to all the export consignments in question. Government finds that the issue needs to be re-examined by the Original authority by taking into account the submissions of the applicant and hence remands the case back to the original authority for being decided afresh. The applicant should be provided sufficient opportunity to place on record their submission in the matter.

8. The Revision Application is allowed in the above terms.


(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 317/2022-CUS (WZ) /ASRA/Mumbai dated 14.11.2022

To,

M/s Hallmark Metallica, 11, Shakti Niwas Building,
2nd floor, Office No.18, 7th Khetwadi Lane,
Mumbai 400004.

Copy to:

1. Commissioner of Customs (Export), Air Cargo Complex, Mumbai.
2. Commissioner of Customs (Appeals) Mumbai, Zone - III,
5th floor, Awas Corporate Point, Makwana Lane, Behind S.M. Centre,
Andheri - Kurla Road, Marol, Mumbai - 400 059.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.