

REGISTERED  
SPEED POST



F.No. 372/05/DBK/2018-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.. 28/11/19

Order No. 32/19-Cus dated 25/10/2019 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/1759/2017 dated 08.11.2017, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s Tarway Export, Kolkata

Respondent : Commissioner of Customs(Port), Kolkata

\*\*\*\*\*

**ORDER**

A Revision Application No.372/05/DBK/2018-RA dated 11.01.2018 has been filed by M/s Tarway Export, Kolkata, (hereinafter referred to as the applicant) against the Order No.KOL/Cus(port)/AA/1759/2017 dated 08.11.2017, 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. Apart from above, the appeal has also been rejected on the ground that the applicant did not pay mandatory pre-deposit of 7.5% as per Section 129 (E) of the Customs Act, 1962.

2. Brief facts of the case are that a demand cum notice in respect of 47 Shipping Bill was issued to the applicant for the recovery of drawback amount as the applicant had failed to submit the proof of realisation of export proceeds in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995. Vide the Order-in-Original dated 03.09.2015 a demand of Rs. 3,57,226/- was confirmed along with interest. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals) who rejected the appeal as time bar and non-maintainable on the ground mentioned above. The instant revision application has been filed mainly on the ground that the rejection of appeal on the premise of pre-deposit is not maintainable as the defect of pre-deposit is curable. Further no deficiency memo was issued to them under Rule 11 of Customs, Excise and Service Tax Appellate Tribunal Rules, 1982. As regard the delay of 7 days in filing the appeal before Commissioner (Appeals), it has been stated that they had received the Order-in-Original on 15.09.2015 and the appeal was filed on 09.11.2015 which is well within the stipulated period of 60 days. A postal receipt has been produced by the applicant in support of their contention regarding receipt of the Order-in-Original.

3. Personal hearing in the matter was fixed on 24.10.2019. Dr. Prabhat Kumar, Advocate, attended the hearing on behalf of the applicant. He reiterated the submissions already made in their Revision Application. The applicant has given written submissions dated 24.10.2019 along with copies of TR-6 Challan dated 29.12.2017 evidencing pre-deposit of Rs. 26,800/-. Further, they also submitted a copy of RTI reply dated 21.02.2018, from Superintendent of post offices, Kolkata, which states that the said letter containing Order-in-Original was delivered to the applicant on 15.09.2015. No one from respondent's side appeared for Personal hearing. Therefore, case is being taken up for final decision on the evidence available on record.

4. Government has examined the matter. It is observed that the Commissioner (Appeals) has rejected the appeal as time bar as the appeal was not filed within the stipulated period of 60 days in terms of Section 128 of the Customs Act, 1962. On perusal of the RTI reply dated 21.02.2018 from Sr. Superintendent of Post Offices, Kolkata, it is evident that the Order-in-Original was delivered to applicant on 15.09.2015 and whereas the appeal was filed on 09.11.2015 which is well within the stipulated period of 60 days from the date of receipt of Order-in-Original and is in time in terms of Section 128(1) of the Customs Act, 1962. As regard the non deposit of mandatory amount of 7.5%, Government is of the view that a deficiency memo as per rules was required to be issued to the applicant mentioning the defect but was not done so in this case. The applicant has now submitted a copy of TR-6 Challan dated 29.12.2017 evidencing the payment of pre-deposit. Since, the mandatory condition of pre-deposit and filing of the appeal have been complied with, Government holds that the matter needs to be re-examined in the light of the applicant's claim. Accordingly the matter is remanded back to Commissioner (Appeals) with the direction to decide the case on merit.

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

*Mallika Arya*  
(Mallika Arya)

Additional Secretary to the Government of India

M/s Tarway Export  
33, Dr. Rajendra Road,  
Unit-1A  
Kolkata 700020

Order No. 32/19-Cus dated 25-10-2019

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*  
25/10/19

(Nirma Devi)

Section Officer (REVISION APPLICATION)