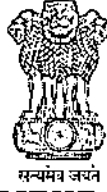


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**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005**

F. No.371/34/DBK/16-RA/6520

Date of Issue: 12.11.2022

ORDER NO. 323/2022-CUS (WZ) /ASRA/Mumbai DATED 5.11.2022  
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 Nature Efficient Electronics Pvt. Limited,  
Parinee Crescenzo, 1<sup>st</sup> floor, C 38 & 39, "G" Block,  
Behind MCA, Bandra-Kurla Complex,  
Mumbai - 400 051.

Respondent : Commissioner of Customs (Exports), NCH,  
Nhava Sheva.

Subject : Revision Application filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.50  
(Drawback)/2016 (JNCH)-Appeal-I dated 21.04.2016 passed  
by Commissioner of Customs (Appeals -I), Mumbai - II.

## ORDER

The subject Revision Application has been filed by M/s Nature Efficient Electronics Pvt. Limited (here-in-after referred to as 'the applicant') against the subject Order-in-Appeal dated 21.04.2016 which decided the appeal by the applicant against the Order-in-Original dated 14.10.2014 passed by the Assistant Commissioner of Customs, D Node (Export), JNCH, NS-II.

2. Brief facts of the case are that the applicants imported goods which they declared as 'Tri Color Posphorous 6500K' under two Bills of Entry dated 17.08.2011 and 30.08.2011 from the same supplier; however they classified these products differently in both the said Bills of Entry and the duty paid was also at different rates. Thereafter, the applicant filed three Shipping Bills dated 19/15.02.2013 under Section 74 of the Customs Act, 1962 for re-export of the goods which they declared to be 'Tri Color Posphorous 6005' claiming that these were the goods earlier imported by them vide the above mentioned Bills of Entry dated 17.08.2011 and 30.08.2011. The original authority vide Order-in-Original dated 14.10.2014 found that the Shipping Bills filed by the applicant failed to fulfill the condition of the Section 74 of the Customs Act, 1962 inasmuch as the Test Reports of the goods exported could not establish the identity of the goods vis-à-vis the imported goods; in light of the same the original authority ordered the three Shipping Bills to be finalized as free Shipping Bills.

3. Aggrieved, the applicant filed appeal before the Commissioner (Appeals) against the said Order-in-Original dated 14.10.2014. The Commissioner (Appeals) found that there was a delay of two days in filing of the said appeal as the applicant had received the said Order-in-Original on 21.10.2014 and had filed the appeal against the same on 22.12.2014. The

Commissioner (Appeals) found that the applicant had not provided any reasons for the delay in filing the appeal nor had sought condonation of the same and hence rejected the appeal as time barred.

4. Aggrieved by the impugned said Order-in-Appeal dated 21.04.2016, the applicant has filed the subject Revision Application on the following grounds:-

(a) The Order-in-Appeal was bad in law as it had ignored the provisions of Section 10 of the General Clauses Act, 1897; they submitted that the last day for filing of the appeal fell on 20.12.2014 which was a Saturday and that they had filed the appeal on the next working day i.e. 22.10.2014. They submitted that in terms of the Section 10 of the General Clauses Act, 1897 the last date for filing the appeal was 22.10.2014 and hence there was no delay in filing of the appeal before the Commissioner (Appeals); thus the order of the Commissioner (Appeals) rejecting their appeal for being time barred was erroneous<sup>1</sup> and contrary to the prevailing laws.

(b) That since there was no delay, there was no need for filing an application for condonation of delay;

(c) The applicant also made detailed submissions on merit in support of their case;

In view of the above, the applicant prayed that the impugned Order-in-Appeal be set aside and their Drawback claim allowed.

5. Personal hearing in the matter was granted to the applicant on 21.10.2021, 28.10.2021, 23.03.2022 and 30.03.2022, however no one appeared for the same. Sufficient opportunity having been accorded to the

applicant, the case is now taken up for decision on the basis of records available.

6. Government has carefully gone through the relevant case records, the written submission and also perused the said Order-in-Original and the impugned Order-in-Appeal.

7. Government finds that the Commissioner (Appeals) has not gone into the merits of the case and has rejected the appeal filed by the applicant as being time barred as he found that there was delay of two days in filing the appeal and that the applicant had not provided any reasons for such delay. Government notes that the Commissioner (Appeals) has recorded that the applicant had received the Order-in-Original on 21.10.2014 and filed the appeal on 22.12.2014 and hence there was delay of two days in filing the appeal. In this connection, Government finds force in the submission of the applicant that the last day for filing the appeal in terms of Section 28 of the Customs Act, 1962 fell on 20.12.2014 which being a Saturday, the last date for filing the appeal would fall on the next working day i.e. 22.12.2014 in terms of Section 10 of the General Clauses Act, 1897. Government finds that Section 10 of the General Clauses Act, 1897 provides that in situations such as these, where a certain act is required to be done within a prescribed period and the Court or office is closed on that day, then the act or proceeding shall be considered as done or taken in due time, if the same is done on the next day afterwards, on which the Court or office is open. In this case, as found above, the last day for filing fell on 20.12.2014, a Saturday and hence filing of appeal on the next working day i.e. 22.12.2014, should be considered as done on 20.12.2014. Thus, Government finds that there is no delay in filing of the appeal by applicant before the Commissioner (Appeals) as they filed the appeal on 22.12.2014. Government finds the

decision of the Commissioner (Appeals) to hold the appeal filed by the applicant to be time barred, to be incorrect and accordingly holds so.

8. In view of the above, Government sets aside the impugned Order-in-Appeal and remands the case back to the Commissioner (Appeals) for being decided on merits. The subject Revision Application is disposed in the above terms.

*Shrawan Kumar*  
15/11/22  
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No ~~323~~ /2022-CU~~s~~(WZ) /ASRA/Mumbai dated 15.11.2022

To,

M/s Nature Efficient Electronics Pvt. Limited,  
Parinee Crescenzo, 1<sup>st</sup> floor, C 38 & 39, "G" Block,  
Behind MCA, Bandra-Kurla Complex,  
Mumbai - 400 051.

Copy to:

1. Commissioner of Customs (Exports), JNCH, Nhava Sheva, Taluka Uran, District Raigad, Maharashtra - 400 707.
2. Commissioner of Customs (Appeals), Zone - II, JNCH, Nhava Sheva, Taluka Uran, District Raigad, Maharashtra - 400 707.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.