

SPEED POST



F.No. 380/07/DBK/2017-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 6/11/19.....

Order No. 41/19-Cx dated 6-11-2019 of the Government of India passed by Smt. Mallika Arya, Principal Commissioner & Additional Secretary to the Government of India, under under Section 129DD of the Customs Act, 1962.

Subject. : Revision Application filed under section 129DD of the Customs Act, 1962 against the Order-in-Appeal No.Kol/ Cus (Port)/ AA/ 361/ 2016 dated 29.12.2016 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : The Commissioner of Customs (Port), Kolkata.

Respondent : M/s Alpha Overseas International Private Limited.

ORDER

A Revision Application No. 380/07/DBK/2017-RA dated 05.04.2017 has been filed by the Commissioner of Customs (Port), Kolkata, (hereinafter referred to as the applicant) against the Order-in-Appeal No.Kol/ Cus (Port)/ AA/ 361/ 2016 dated 29.12.2016 passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals) allowed the appeal of M/s Alpha Overseas International Private Limited (hereinafter called the respondent) against the Rejection order dated 01.06.2016 issued in the form of a letter from F. No. S34M- 192/ 2005 DBK by the Deputy Commissioner of Customs, Drawback Department, Customs , Kolkata who has rejected the supplementary drawback against Shipping Bill No. 5229206 dated 27.04.2005 on the ground that the claim was filed on 29.09.2005 for Shipping Bill dated 27.04.2005, which was beyond three months and could not be condoned as per CBIC notification no. 49/ 2010-Cus (N.T.) dated 17.06.2010.

2. The brief facts of the case are that respondent filed a shipping bill no. 5229206 dated 27.04.2005 under claim for drawback which was rejected by the Deputy Commissioner of Customs, Drawback Department, Customs , Kolkata on the grounds of delay in filing the claim. Being aggrieved the respondent appealed against this order before the Commissioner of Customs (Appeal), Kolkata who set aside the impugned Rejection Order dated 01.06.2016 and allowed the appeal by way of remand on 29.12.2016.

3. The revision application has been filed on the grounds that Section 35 (A) of the Central Excise Act, 1944 and Section 128A (3) of the Customs Act, 1962 were amended with effect from 11.05.2001 which withdrew the power of remand from Commissioner (Appeals).

4. Personal hearing was fixed on 19.09.2019 in this case. No one appeared on behalf of the applicant or the respondent on this date. However the respondent vide their letter dated 14.09.2019 requested for another date of hearing. Accordingly another date of hearing was fixed on 05.11.2019. Sh. Susanta Datta appeared on behalf of the respondent. He contended that the Commissioner (Appeals) has condoned the delay and remanded the matter back to the Deputy Commissioner to decide the supplementary drawback claim. The respondents also gave written submissions which have been taken on record. Since no one appeared on behalf of the applicant on this date also and no request for adjournment was received the case is being taken up for final disposal.

5. On examination of the relevant case records, the Commissioner (Appeals)'s order and the Revision application, it is observed that remand powers of Commissioner (Appeals) stands withdrawn with effect from 11.05.2001 vide Finance Act of 2001. Hon'ble Supreme

Court in its judgment dated .01.07.2007 in Civil Appeal no. 6988/ 2005 in the case of M/s MIL India Limited [2007 (210) ELT 188 (S.C.)] has noted the provisions of amended law, which is reproduced below:

"In fact, the power of remand by the Commissioner (A) has been taken away by amending Section 35A with effect from 11-5-2001 under the Finance Bill, 2001. Under the Notes to clause 122 of the said Bill it is stated that clause 122 seeks to amend Section 35A so as to withdraw the powers of the Commissioner (A) to remand matters back to the adjudicating authority for fresh consideration. Therefore, the Commissioner (A) continues to exercise the powers of the adjudicating authority in the matters of assessment."

Hence Commissioner (Appeals) has been authorized to act as an Adjudicating Authority and is obliged to pass necessary orders if it is found that the original Adjudicating Authority has passed an order which is not legal and proper.

6. In view of the above discussions, the Revision Application is allowed by way of remand to the Commissioner (Appeals) to decide the case on merits as deemed fit.

Mallika Arya
(Mallika Arya)

Additional Secretary to the Government of India

1. The Commissioner of Customs (Port), 15/1, Strand Road, Customs House, Kolkata-700001.
2. M/s Alpha Overseas International Private Limited, 16, Camac Street, L&T Chambers, Kolkata-700017.

Order No. 41/19-Cus dated 6-11-2019

Copy to:

1. Commissioner of Customs (Appeals), 3rd Floor, Customs House, 15/1, Strand Road, Customs House, Kolkata- 700001.
2. PA to AS(RA)
3. Guard File.
4. Spare Copy

ATTESTED

Nirma
6-11-19

(Nirmala Devi)
S.O (Revision Application)