

REGISTERED  
SPEED POST



F.Nos. 380/76-77/DBK/13-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. 4/4/14

ORDER NO. 43-44/14-Cus DATED 26.03.2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

SUBJECT : REVISION APPLICATION FILED,  
UNDER SECTION 129 DD OF THE CUSTOMS ACT  
1962 AGAINST THE ORDER-IN-APPEAL appeal No.  
No.249/13 & 250/13 both dated 25.04.3013 passed  
by Commissioner of Customs (Appeals) Bangalore

APPLICANT : Commissioner of Customs, Bangalore

RESPONDENT : M/s M.S. Sorters Pvt. Ltd., Bangalore

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**ORDER**

These revision applications are filed by Commissioner of Customs, Bangalore against orders-in-appeal passed by Commissioner of Customs (Appeals) Bangalore as detailed below :-

S.No.	RA No.	Against O-I-A No./Date	Name of Respondent
1.	380/76/DBK/13	249/13 dt. 25.04.13	M/s M.S. Sorters Pvt. Ltd., Bangalore
2.	380/77/DBK/13	250/13 dt. 25.04.13	- Do -

2. Brief facts of the cases are as under :-

**2.1 RA No. 380/76/DBK/13 (O-I-A No. 249/13)**

2.1.1 M/s M.S. Sorters Pvt. Ltd., Bangalore imported "parts of colour sorting machine" vide bills of entry Nos. 2499337 dated 30.12.2010 and 2353253 dated 23.11.2010 and had paid a duty of Rs.1,36,556/-. The said goods were re-exported vide shipping bill No. 2118 dated 12.07.2011. The Let Export Order (LEO) was given on 16.07.2011. The claimant had filed a claim for drawback on 15.01.12 under Section 74 of Customs Act 1962 for an amount of Rs.1,02,417/- being 75% of Customs duties of Rs.1,36,556/- paid by them at the time of import. The claimant has given a self-declaration for non availment of cenvat credit. The claimant requested for condonation of delay vide their letter dated 09.03.2012 and paid Rs.1000/- vide TR 6 challan No. 105154 dated 12.03.2012, towards fee for delay in terms of proviso (iii) to Rule 5(1) of Re-export of Imported Goods (Drawback of Customs Duties), Rules 1995.

**2.2 RA No. 380/77/DBK/13 (O-I-A No. 250/13)**

2.2.1 M/s M.S. Sorters Pvt. Ltd., Bangalore imported "Neon Boards and other items" vide bills of entry No. 2499337 dated 30.12.2010 and No.2353253/- dated 23.11.2010 and had paid a duty of Rs.92,176/-. The said goods were re-exported vide shipping bill No.10352 dated 15.03.2011. The Let export order was given on 16.03.2011. The claimant had filed a claim for drawback on 26.08.2011, under Section 74 of Customs Act 1962, for an amount of Rs.90,332/-, being 98% of Customs Duties of Rs.92,176/-

paid by them at the time of import. The claimant has given a self declaration for non avilment of Cenvat credit. The claimant requested for condonation of delay vide their letter dated 22.09.2011 and paid Rs.1000/- vide TR 6 challan No. 102602/- dated 22.09.2011, towards fee for delay, in terms of proviso (iii) to Rule 5(1) of Re-export of Imported Goods (Drawback of Customs Duties) Rules 1995.

2.2.2 The Deputy Commissioner (DBK) Bangalore condoned the delay and sanctioned the said claims. Commissioner of Customs reviewed the said orders on the following grounds :-

(i) The claim of drawback were filed after the prescribed time limit of three months from the date of let export order but before the expiry of extended period of 3 months condonable by Assistant /Deputy Commissioner.

(ii)The request for condonation of delay and the prescribed fee as per proviso (iii) of Rule 5(1) was received after the expiry of six months from the date of let export order. Hence, the request for condonation of delay which makes the claim complete in all respects as covered under Rule 5(4)(b) ibid has been filed by the claimant after six months from the date of let export order.

(iii) The complete claim alongwith the prescribed fee filed by the exporter has been filed beyond the period condonable by the Deputy Commissioner of Customs. As such the Deputy Commissioner was not competent to condone the delay. However, in this case the Deputy Commissioner (Drawback) condoned the delay and sanctioned the drawback beyond the powers vested under Re-export of Imported Goods (Drawback of Customs Duties) Rules 1995.

3. The department filed appeal before Commissioner (Appeals) who rejected the same.

4. Being aggrieved by the impugned order-in-appeal, the applicant department has filed these revision applications under Section 129 DD of Customs Act, 1962 before Central Government on the following grounds :

4.1 Commissioner (Appeals) himself observed that the application for condonation of delay along with the prescribed fee has been filed after the expiry of six months from the date of Let Export Order. Hence, in terms of the Rule 5(1), proviso clause (i) the competent authority to condone the delay is Commissioner of Customs and not the Deputy Commissioner of Customs.

4.2 In terms of proviso clause (iii) of Rule 5(1), an application fee of 2% of FOB value or Rs.2,000/- whichever is less, is payable for grant of extension by the Commissioner of Customs, whereas in the present case a fee of only Rs.1,000/- has been paid.

4.3 In the present case, the claim as filed beyond the normal limitation of 3 months from the date of LEO prescribed under Rule 5(1). Since the claim was not accompanied by the application for condonation of delay and no extension of time had been obtained earlier, the same could not have been processed and should have been rejected, in-limine.

4.4 The exporter filed the application for condonation of delay beyond the period of 6 months from the date of LEO. Therefore, the claim could have been processed on merits only after the delay had been condoned by the officer competent to do so, i.e. the Commissioner of Customs on payment of appropriate fee, which was not done. As such, the claim was liable for rejection on limitation in terms of Rule 5(1).

5. A show cause notice was issued to the respondent under Section 129 DD of Customs Act, 1962 to file their counter reply. The respondent vide their reply dated 31.12.2013 has mainly reiterated the finding in impugned order-in-appeal.

6. Personal hearing scheduled in this case on 21.03.2014 at Chennai was attended by Shri Robert, Sr. Officer Finance of Company on behalf of the respondents who pleaded to uphold the impugned orders-in-appeal. Nobody appeared for hearing on behalf of department.

7. Government has carefully gone through the relevant case records and perused the impugned orders-in-original and orders-in-appeal.

8. On perusal of records, Government notes that the delay in filing these claims is as under :-

RA No.	O-I-A No./Date	Date of LEO	Date of filing claim	Period delay after 3 months
380/76/DBK/13	249/13 dt. 25.04.13	16.07.11	05.01.12	2 months 21 days
380/77/DBK/13	250/13 dt. 25.04.13	16.03.11	26.08.11	2 months 11 days

The delay in filing drawback claim in both the cases was less than 3 months as is evident from above details. As per provision of Rule 5 of Re-export of Imported Goods (Drawback of Customs Duties) Rules 1995 as amended, the AC/DC of Customs is empowered to extend the initial period of 3 months by a period the three months.

9. In these revision applications the department has not challenged the genuinity of drawback claim but questioned the competency of AC/DC to condone the delay on the ground that condonation application was filed after six months. In this regard, Government observes that the delay involved in filing drawback claim is calculated from the date of Let Export Order to the date of filing drawback claim. In this case, as discussed above, the delay is less than 3 months and AC/DC of Customs has rightly condoned the delay. As such there is no merit in the contention of department that in these case competency for condonation of delay lies with Commissioner.

10. In view of above position, Government do not find any infirmity in the impugned orders-in-appeal and therefore upholds the same.

11. The revision applications are thus rejected in terms of above.

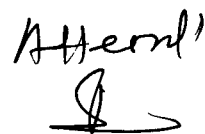
12. So ordered.



(D.P. Singh)

Joint Secretary(Revision Applicatoin)

Commissioner of Customs,  
Bangalore Commissionerate,  
C.R. Building, No.1, Queen's Road,  
Bangalore – 560 001



(भगवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C B E C - O S D (Revision Application)  
वित्त. मंत्रालय (राज. वित्त. विभाग)  
Ministry of Finance (Dept. of Rev.)  
भारत सरकार (Govt. of India)  
नई दिल्ली (New Delhi)

Order No. 43-44 /14-Cus Dated 26-03-2014

Copy to:

1. The Commissioner of Customs (Appeals), Bangalore, C.R. Building, No.1, Queen's Road, Bangalore – 560 001
2. Additional Commissioner of Customs, Aircargo Complex, Devanahalli, Bangalore -560 300
3. M/s M.S. Sorters Pvt. Ltd, No. 235-R, 3<sup>rd</sup> Phase, KIABD Indl. Area, Bommasandra, Bangalore – 560 099.
- ~~4. PA to JS(RA)~~
5. Guard File.
6. Spare Copy

ATTESTED



(B.P. Sharma)

OSD(REVISION APPLICATION)