

REGISTERED
SPEED POST



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.371/31/DBK/2018-RA

2191

Date of Issue:

18.04.2023

ORDER NO. **H39**/2023-CUS (WZ)/ASRA/MUMBAI DATED 17.04.2023
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. Geetom Exports

Respondent : Commissioner of Customs(Export), ACC, Mumbai

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-AXP-APP-29-17-18 dated 25.04.2017 passed by the
Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This Revision Application is filed by M/s. Geetom Exports, (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. MUM-CUSTM-AXP-APP-29-17-18 dated 25.04.2017 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Brief facts of the case are that the Applicant had obtained a drawback amounting to Rs.10,82,915/- in respect of exports done by them. As the applicant failed to produce evidence for realization of export proceeds in respect of the concerned export, a show cause notice was issued on 08.02.2010 and after due process of law the adjudicating authority, ordered recovery of demand amount of Rs. 10,82,915/- alongwith appropriate interest under the Customs Act,1962 vide Order-in-Original (OIO) No. DC/RBP/633/2009-10/ADJ/ACC dated 19.04.2010. Aggrieved, the Applicant filed an appeal which was rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal as it was filed beyond 90 days from the date of communication, stipulated under Section 128A of the Customs Act,1962.

3. Hence the Applicant has filed the impugned Revision Application mainly on the following grounds:

- i. In spite of the receipt of export proceeds against all the Shipping Bills and without considering the facts that the Applicant was out of India for the period of issuance of Show Cause Notice and filing of appeal, the Appellate Authority has dismissed the appeal.
- ii. The respondent failed to consider that there is absolutely no violation on the part of the Applicant, of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 or any provisions of Customs Act, 1962 and erred in confirming the demand of duty drawback which the Applicant was legitimately entitled.
- iii. The Applicant relies on the judgement of the Hon'ble Calcutta High Court in the matter of Commissioner of Customs, Mumbai Vs. Terai Overseas Ltd. reported vide 2003 (156) ELT 841 (Cal.). In the said

- judgment, the Hon'ble Court has ruled that liberal approach is to be adopted and drawback cannot be denied on mere technicality or by adopting a narrow and pedantic approach, especially since drawback is an incentive scheme for augmenting export.
- iv. As per Sub-rule 4 of Rule 16 A of the Customs, Central Excise Duties and Service Tax Drawback Rules 1995, "*Where the sale proceeds are realized by the exporter after the amount of Drawback has been recovered from him under Sub-rule (2) or sub-rule (3) and the exporter produces evidence about such realization within one year from the date of such recovery of the amount of drawback, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs or Deputy Commissioner of Customs to the Claimant*". In the instant matter, the Applicant has realized the sale proceeds of the exports made against the subject Shipping Bills therefore even if the Applicant deposits the Drawback amount with applicable interest, the applicant is eligible for the refund of such drawback amount returned by the Applicant. Therefore, the demand of Drawback amount with applicable interest, even after realization of export proceeds against all the subject shipping bills, is bad in law.
 - v. The Applicant says that the issue of return of duty drawback along with interest amount does not arise in the first place, as it has fully realized the export proceeds and Applicant is producing all the evidences of export realization with this application before your goodself for consideration and allowing appeal in this case in the form of Negative Statement for the period from 01.01.2004 to 30.06.2011 from "The Federal Bank Ltd i.e. AD Bank in terms of CBEC Circular No. 05/2009-Customs dated 02.02.2009.
 - vi. The Applicant without prejudice to the aforesaid contentions submits that the non-submission of proof of realization of export proceeds is a technical breach and demand of drawback amount of Rs.10,82,915/- deserves to be set aside and the Applicant may be given one more opportunity to submit the requisite documents in support of realization of export proceeds against all the subject Shipping Bills.

In the light of the above submissions, the applicant prayed to set aside the impugned order with consequential relief.

4. Several personal hearing opportunities were given to the applicant and the respondent viz. on 15.11.2022, 29.11.2022, 04.01.2022 and 18.01.2023. However, both of them did not attend on any date nor have they sent any written communication. Since sufficient opportunities have been given, the matter is therefore taken up for decision based on available records.

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

6. Government observes that the impugned Order-in-Appeal was passed on 25.04.2017, while the instant Revision Application was filed on 27.02.2018, viz. after more than 10 months. In this regard Government observes that the applicant has claimed that the date of communication of impugned OIA to them is 28.12.2017 as they had obtained the photocopy of OIA after corresponding with the office of Appellate authority. However, from the covering letter enclosing the photocopy of impugned OIA to the applicant, Government observes that the Appellate authority has not agreed with this contention of the applicant. The relevant extract of the said letter dated 28.12.2017 is reproduced hereunder:

The appellant has submitted that they have not received Order-in-Appeal MUM-CUSTOMS-APP-29/17-18 dt. 25.04.17. The records available in the Office reveal that Order-in-Appeal issued vide speed post no. EM729481020IN dated 01.05.17 in compliance of Section 153 of Customs Act 1962.

This copy is being issued for the appellant in response to their request letter vide Ref: 278/06/12-GE/2017 dtd. 28.12.17 despite the fact that the department has already complied with the provisions of Section 153 of Customs Act 1962.

7. Government observes that with regard to serving of an Order, the relevant Section 153 of the Customs Act, 1962, which as it stood during relevant period, read as follows:

"153. Service of order, decision, etc. - Any order or decision passed or any summons or notice issued under this Act, shall be served -

(a) by tendering the order, decision, summons or notice or sending it by registered post or by such courier as may be approved by the Principal Commissioner of Customs or Commissioner of Customs

(b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house."

Government observes that sending the Order by speed post is a valid mode of service of an Order. Thus, in the instant case as the Appellate authority has mentioned about the speed post number whereby the impugned OIA was issued, it can be said that the Order had been served to the applicant. Hence, Government does not accept the contention of the applicant that the date of communication of impugned OIA to them is 28.12.2017.

8.1 Government relies upon the case law of Technicom Systems (I) Pvt. Ltd. [2019 (367) E.L.T. 597 (Bom.)] wherein the Hon'ble Bombay High Court held that:

13. As noted earlier Section 153 of the said Act provides that any order of decision passed or any summons or notice issued under the Customs Act, 1962 shall be served *inter alia*.... "sending it by registered post....". There is material on record which indicates that the notice as well as the order-in-original was indeed sent to the Petitioners by registered post. To such situation, the presumption available under Section 27 of the General Clauses Act, 1897 will apply. The Petitioners have placed no material on record to rebut such presumption.

14. In *Harihar Banerji and Ors. v. Ramshashi Roy and Ors.* - AIR 1918 Privy Council 102 it is held if a letter properly directed, is proved to have been

put into the post office, it is presumed that the letter reached destination at the appropriate time according to the regular course of business of the post office and received by the person to whom it was addressed.

15. In the precise context of the provision of Section 153 of the said Act, the Division Bench of the Madras High Court in *P. Bhoormal Tirupati v. The Additional Collector of Customs* - AIR 1974 Madras 224 = 2000 (126) E.L.T. 65 (Mad.) has held that Section 153 of the said Act only requires that the notice shall be served by sending it by registered post to the person for whom it is intended, it does not require that effective service should be effected upon the person receiving it. Read with Section 27 of the General Clauses Act, it becomes clear that when a document to be served is sent by registered post to the proper address with prepaid postage its service is deemed to be effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved. Based upon all these, we are unable to accept the Petitioners' contention that there has been no proper service as contemplated under Section 153 of the said Act.

8.2 Government also relies upon the case law of *Shyam Ferro Alloys Ltd.* [2016 (340) E.L.T. 488 (A.P.)] wherein Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh while taking decision on the question "Whether the service of a copy of the order by Speed Post, would constitute valid service under Section 153(a) of the Customs Act, 1962, or not?" held as follows:

20. As a matter of fact, the Orissa High Court alone appears to have gone into the question as to what the words "Registered Post" appearing in Section 153(a) of the Customs Act, 1962 would connote. The Orissa High Court had referred to Section 28 of the Indian Post Office Act, 1898, which provides for registration of postal articles. The Orissa High Court further pointed out that Speed Post service was introduced, by way of an amendment to the Indian Post Office Rules, 1933, by a Gazette Notification issued by the Ministry of Communications (Department of Posts), Government of India, dated 24-7-1986. After taking into account Section 28 of the Indian Post Office Act, 1898 and Rule 66B of the Indian Post Office Rules, 1933, the Orissa High Court came to the conclusion that the Speed

Post is nothing but another method of registering an article through the Postal Department under Section 28 of the Indian Post Office Act, 1898. Therefore, the only decision out of all the decisions which we have referred to above, which can be said to have laid down a *ratio decidendi* is that of Orissa High Court. With respect, we agree with the views expressed by the Orissa High Court.

21. As rightly pointed out by the Orissa High Court, a person who seeks to send an article by Speed Post, does the same thing as a person who seeks to register an article does. But the transmission of the article is to be on a fast track in speed post services. There is also a tracking system provided by speed post. In other words, a registered post can be compared to an economy travel while a service through speed post can be compared to business class. Other than that, there is no distinction between two. In our considered view, the expression "registered post" appearing in Section 153(a) of the Customs Act, 1962, have to be construed as including within its purview, the method of registering an article, to be taken by speed post. Therefore, the question of law is answered against the appellant and the appeal is dismissed. The miscellaneous petitions, if any, pending in this appeal shall stand closed. No costs.

9. Government observes the relevant Section 129 DD *ibid*, where under the instant Revision Application is filed, reads as follows:

(1) The Central Government may, on the application of any person aggrieved by any order passed under section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129A, annul or modify such order.

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

Thus, Government observes that as per the Statute a maximum period of six months, including condonable period, from the date of communication of an OIA can be allowed for filing an application. In the instant case, as discussed at aforementioned para 6, the date of filing the Revision Application exceeds the statutory limitation of six months from the date of communication OIA.

10. In view of the above discussion and findings, the Government rejects the instant Revision Application, being filed beyond stipulated period including condonable period specified under Section 129DD of the Customs Act, 1962.


(SHRAWAN KUMAR)

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

ORDER No. H39 /2023-CUS (WZ)/ASRA/Mumbai dated 17.04.23

To,
M/s. Geetom Exports,
Flat No.701, C-Wing, 7th Floor,
Swami Vivekanand Hsg. Society,
Raoli Camp, GTB Nagar,
Mumbai - 400 022.

Copy to:

1. Commissioner of Customs,
Air Cargo Complex, Sahar,
Andheri (East), Mumbai - 400 099.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.