



REGISTERED  
SPEED POST

F.Nos. 373/73/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. 45/14-Cus DATED 31.03.2014 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 No. CMB-CEX-209/13 dated 18.06.13 passed by Commissioner of Central Excise & Customs (Appeals), Coimbatore

APPLICANT : M/s Harrow Exports, TN 344, A-14, Kaoser Complex, Kannur- 670002

RESPONDENT : Commissioner of Customs, Coimbatore

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**ORDER**

This revision application is filed by M/s Harrow Exports, TN 344, A-14, Kaoser Complex, Kannur- 670002 against the order-in-appeal No. CMB-CEX-209/13 dated 18.06.13 passed by Commissioner of Central Excise & Customs (Appeals), Coimbatore with respect to order-in-original No. 107/12-BRC dated 21.02.12 passed by Deputy Commissioner of Customs, ICD Concor, Tirupur.

2. Brief facts of the case are that the applicants were granted drawback amount of Rs.6,37,620/- for the exports made by them. The applicants have not produced the evidence for realization of export proceeds in respect of the shipping bills. As the applicant failed to produce evidence for realization of export proceeds in respect of the said export goods within the period allowed under the Foreign Exchange Management Act, 1999, including any extension of such period granted by the Reserve Bank of India. A show cause notice was issued on 28.09.2010. On process the lower authority vide in its impugned order ordered recovery of Rs.6,37,620/- along with appropriate interest under Rule 16A of Customs, Central Excise and Service Tax Drawback Rules 1995 read with Section 75 of the Customs Act, 1962.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the same as time barred.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 129 DD of Customs Act, 1962 before Central Government on various grounds, on merits of the case and claimed that they had submitted all the BRCs in time. Applicant did not made any submission with regard to rejection of their appeal on the time limitation ground.

5. Personal hearing scheduled in this case on 21.03.14 at Chennai was attended by Shri R. Arumham, Consultant on behalf of the applicant who reiterated the grounds of revision application.

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

7. Government notes that in this case, Commissioner (Appeals) has rejected the appeal of applicant on the ground of time limitation. So, it has to be first examined whether appeal was rightly rejected as time barred and whether Government has any power to accept revision application in this case.

7.1 In this regard, Government notes that impugned order-in-original was received by applicant on 28.10.12 and appeal was filed on 30.04.13. In fact 2 month period of filing appeal expired on 27.12.13. As such appeal was filed after a delay of more than 4 months. The said factual detail is not disputed by the applicant. As such appeal filed after a delay of 4 months is clearly time barred in term of section 128 of Customs Act 1962.

7.2 The relevant statutory provisions of filing appeal as contained in sub-section (1) of section 128 of Customs Act are reproduced below :-

“(1) Any person aggrieved by any decision or order passed under this Act by a Customs Officer, lower in rank than a Commissioner of Customs, may appeal to the Commissioner of Customs (Appeals) hereafter in this Chapter referred to as the [Commissioner (Appeals)] within sixty days from the date of communication to him of such decision or order :

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.”

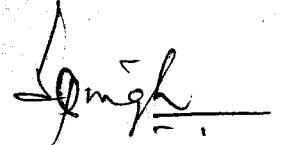
From above provision, it is quite clear that Commissioner (Appeals) has the power to condone delay upto 30 days, whereas delay involved in this case is more than 4 months. Government notes that Hon'ble Allahabad High Court in the case of M/s India Rolling Mills (P) Ltd. 2004 (169) ELT 258 (AL) has held that Commissioner (Appeals) cannot condone delay in filing appeal beyond 30 days. Similar view is taken by Hon'ble Delhi High Court in the case of M.R. Tobacco vs. UOI 2004 (178) ELT 137(Del HC-DB) and in the case of M/s Delta Impex vs. CC 2004 (173) ELT 285

(Del.HC). Now Supreme Court has finally held in the case of Singh Enterprises vs. CCE Jamshedpur 2008 (221) ELT 163(SC) that Commissioner (Appeals) is empowered to condone delay upto 30 days and has no power to allow appeal to be presented beyond the delay of 30 days. In view of above position, Government holds that Commissioner (Appeals) has rightly rejected the said appeal as time barred.

8. Government notes that revision application cannot be accepted in a case where appeal was rejected by Commissioner (Appeals) as time barred since Government has no power to condone such delay exceeding 30 days. As such this revision application being not maintainable is rejected with going into merits of the case.

9. The revision application thus stands rejected in terms of above.


10. So ordered.



(D.P. Singh)

Joint Secretary(Revision Application)

M/s Harrow Exports,  
TN 344, A-14, Kaoser Complex,  
Kannur- 670002



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

Order No. 45/14-Cus Dated 31.03.2014

Copy to:

1. The Commissioner of Customs, Coimbatore Customs, 6/7, A.T.D. Street, Race Course, Coimbatore - 641018
2. The Commissioner of Customs (Appeals), Coimbatore Customs, 6/7, A.T.D. Street, Race Course, Coimbatore - 641018
3. Deputy Commissioner of Customs, ICD Depot, Concor, Veerapandi, Tirupur
4. PA to JS(RA)
5. Guard File.
6. Spare Copy

ATTESTED



(B.P. Sharma)  
OSD(REVISION APPLICATION)

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