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F.Nos. 373/59/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. 46/14-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-000-APP-022-13 dated 28.01.13 passed by Commissioner of Customs & Central Excise (Appeals), Coimbatore

APPLICANT : M/s Augustan Knitwear Pvt. Ltd., 3/127-A, Manickampalayam, Kunnathurpadur P.O., Kovilpalayam, Coimbatore – 641107

RESPONDENT : Commissioner of Customs, Coimbatore

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**ORDER**

This revision application is filed by M/s Augustan Knitwear Pvt. Ltd., 3/127-A, Manickampalayam, Kunnathurpadur P.O., Kovilpalayam, Coimbatore – 641107 against the order-in-appeal No.CMB-CEX-000-APP-022-13 dated 28.01.13 passed by Commissioner of Customs & Central Excise (Appeals), Coimbatore with respect to order-in-original No. 61/12-BRC dated 2.06.12 passed by Assistant Commissioner of Customs, ICD Irugur.

2. Brief facts of the case are that the applicants was granted drawback amount of Rs.31,92,882/- for 18 shipping bills for the exports made during 2001 to 2003. Out of 18 shipping bills the applicant had not produced the evidence for realization of export proceeds in respect of the two shipping bills amounting to Rs.3,70,667/- for shipping bill No. 361 dated 29.06.2002 and 229 dated 14.01.2003. As the applicant failed to produce evidence for realization of export proceeds in respect of the 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 16.09.2006. On process the lower authority vide its impugned order ordered recovery of Rs.3,70,667/- under Rule 16A(2) of the Drawback Rules 1995 read with Section 142 of the Customs Act, 1962, demanded interest under Section 75A(2) of the Customs Act, 1962 and imposed a penalty of Rs.3,000/- under Section 117 of the Customs Act, 1962 and dropped further proceedings initiated in the show cause notice for the 16 shipping bills.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the same as time barred since it was filed after a delay of more than 30 days.

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, claiming that they had submitted BRC in time. They

also contended that the said order-in-original No.6/12 dated 27.06.12 was received by them on 02.02.13 and due to illness of authorized person.

5. Personal hearing scheduled in this case on 21.03.14 at Chennai was attended by Shri R. Arumugam, 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. In the instant case appeal was rejected by Appellate Authority as time barred. So, before considering the merits of the case, it has to be first examined whether appeal was rightly rejected as time barred and whether Government can admit the application in such a situation. In this case impugned order-in-original was received on 27.06.12 by the applicant and appeal was filed before Commissioner (Appeals) on 11.12.12. The initial period of 60 days for filing appeal expired on 26.08.12. As such appeal was filed after a delay of 3 months 16 days. The said factual details as discussed in impugned order-in-appeal were not disputed by applicant. As such appeal filed after a delay of 3 months 16 days was clearly time barred in terms of section 128 of Customs Act.

7.1 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 :

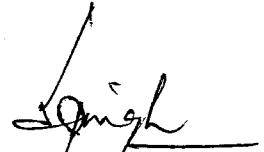
Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.”

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 without 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 Augustan Knitwear Pvt. Ltd.,  
3/127-A, Manickampalayam,  
Kunnathurpadur P.O.,  
Kovilpalayam, Coimbatore – 641107



(भागवत 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. 46 /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. Assistant Commissioner of Customs, ICD Depot, Bye Pass Road, Irugur, Coimbatore - 641103
4. ~~PA to JS(RA)~~
5. Guard File.
6. Spare Copy

ATTESTED



(B.P. Sharma)

OSD(REVISION APPLICATION)