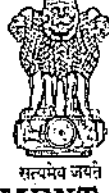


SPEED POST  
REGISTERED POST



**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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

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F. No.371/338-339/DBK/2018-RA / 4008 Date of Issue: 08 .06.2023

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472-  
ORDER NO. 473/2023-CUS (WZ) /ASRA/Mumbai DATED 06 .06.2023 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 Sonu International,  
Vyapar Bhavan, Ground floor,  
370, Katha Bazar, Opp. Corporation Bank,  
Mumbai – 400 009.

Respondent : Commissioner of Customs (Export),  
Air Cargo Complex, Mumbai.

Subject : Revision Application filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal no.  
MUM – CUSTM – AXP – APP - 65 & 66 -13-14 dated  
18.06.2013 passed by the Commissioner of Customs  
(Appeals), Mumbai, Zone – III.

**ORDER**

The subject Revision Application has been filed by M/s Sonu International, Mumbai (here-in-after referred to as 'the applicant') against the Order-in-Appeal dated 18.06.2013 passed by the Commissioner of Customs (Appeals), Mumbai, Zone - III, which decided an application for condonation of delay and an appeal filed by the applicant against the Order-in-Original dated 17.04.2010 passed by the Assistant Commissioner of Customs, DBK (XOS), ACC, Mumbai, which in turn had confirmed a demand seeking to recover Drawback sanctioned to the applicant.

2. Brief facts of the case are that the applicant was issued a Show Cause cum Demand Notice seeking to recover the Drawback amounting to Rs.5,14,985/- sanctioned to them, as it appeared that they had not realized the foreign exchange involved on the goods exported by them as required under Rule 16(A) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 (DBK Rules, 1995). The applicant failed to respond to the Show Cause Notice and hence the original authority, vide Order-in-Original dated 17.04.2010, confirmed the demand raised. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals). The said appeal was dismissed by the Commissioner (Appeals) without going into the merits of the case, as it was found that the appeal was time barred and filed even beyond the condonable period of ninety days.

3. Aggrieved, the applicant has filed the subject Revision Application against the impugned Order-in-Appeal on the following grounds:-

(a) That the original authority had erred in passing an ex-parte order without considering the factual position;

(b) That the Show Cause Notice demanding drawback claimed by them was issued as it was alleged that sale proceeds in foreign currency was not received by them, however, they had received the same and submitted copies of BRCs pertaining to the relevant Shipping Bills; they submitted that they

had not violated any provisions of the Drawback Rules, 1995 or the Customs Act, 1962 and hence the Order-in-Original confirming the demand was unsustainable and bad in law and deserved to be set aside;

(c) That the Order-in-Original was passed on 17.04.2010 but the same was not received by them till 24.09.2012 and hence the time limit of 60 days for filing appeal should have been counted from the date of actual service i.e. 24.09.2012; that the Commissioner (Appeals) took a very rigid stand and rejected their appeal as time barred;

(d) That as per clause (4) of Rule 16 of the Drawback Rules, 1995 if an exporter produces evidence about realization of sale proceeds even after recovery is made, the amount of drawback so recovered shall be repaid;

(e) That they were shocked and surprised when they were informed that their bank accounts have frozen; that it was then they came to know that the Commissioner (Appeals) had rejected their appeal as time barred; that they requested for a copy of the impugned Order-in-Appeal vide their letter dated 26.11.2018 and they finally received the Order-in-Appeal dated 18.06.2013 on 28.11.2018; that it was trite in law that the limitation has to be reckoned only from the date when the actual service has been affected along with proof of delivery; that hence the demand and interest was erroneous and not sustainable.

In view of the above the applicant requested for the impugned Order-in-Appeal to be set aside along with consequential relief.

4. Personal hearing in the matter was granted on 15.10.2022, 29.11.2022, 04.01.2023 and 16.01.2023, however no one appeared for the same. The case is being taken up for decision on the basis of records available.

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

6. Government notes that the primary issue involved in this stems from the demand raised on the applicant by the Department seeking to recover the Drawback claimed by them in the past as they had failed to submit the relevant BRCs indicating receipt of proceeds in foreign exchange towards the goods exported by them. Government further notes that the applicant had produced copies of the relevant BRCs before the Commissioner (Appeals) and has also submitted the same during the course of these proceedings.

7. Government notes that the present Revision Application has been filed on 06.12.2018 against Order-in-Appeal dated 18.06.2013. The applicant has submitted that they became aware that the said Order-in-Appeal had been issued only when their bank accounts were frozen by the Customs Authorities. They have submitted that they subsequently vide letter dated 26.11.2018 requested for a copy of the Order-in-Appeal dated 18.06.2013 and received a copy of the same from the Department vide letter dated 28.11.2018 after which they filed the subject Revision Application. Government notes that the Department has not produced any evidence during the course of these proceedings to indicate that the impugned Order-in-Appeal was served on the applicant prior to the date on which the applicant has claimed to have received it. Given these facts, Government accepts the contention of the applicant that they received the impugned Order-in-Appeal on 28.11.2018 and hence finds that the present Revision Application has been filed within the stipulated period and proceeds to examine the same on merits.

8. Government notes that the Commissioner (Appeals) vide the impugned Order-in-Appeal has found the appeal of the applicant to be time barred and has dismissed the same without going into the merits of the case. Government also notes that Commissioner (Appeals) has computed the time limit by considering the date on which the Order-in-Original dated 17.04.2010 was dispatched. The applicant on the other hand has submitted that they did not receive the Show Cause Notice or the PH notice and that they received a copy of the Order-in-Original dated 17.04.2010 on 24.09.2012 against which they filed appeal before the Commissioner (Appeals) on 06.12.2012

along with an application for condonation of delay for four days. Government finds that the Commissioner (Appeals) has held the date of dispatch of the Order-in-Original as the relevant date to hold that the appeal filed by the applicant was time barred. Government notes that Section 128(1) of the Customs Act, 1962 provides that the sixty day period for filing of appeal before the Commissioner (Appeals) has to be computed from the date of communication of the Order-in-Original to the parties concerned. On examining the impugned Order-in-Appeal, Government finds that no evidence has been recorded by the Commissioner (Appeals) to indicate that the impugned Order-in-Original was served/communicated to the applicant. Government finds that no evidence has been adduced by the Department before the Commissioner (Appeals) or during the course of these proceedings to indicate that the said Order-in-Original dated 17.04.2010 was served on the applicant prior to 24.09.2012, i.e. the day on which they were given a copy of the same. Given these facts, Government finds that the applicant received a copy of the impugned Order-in-Original on 24.09.2012 and filed an appeal against it on 06.12.2012, which though is beyond the prescribed time limit of sixty days, is well within a period of further 30 days, which is condonable by the Commissioner (Appeals). Given the facts of the case, Government finds that the Commissioner (Appeals) erred in computing the time limit by taking the date of dispatch of the Order-in-Original into account rather than the date of communication of the same to the applicant, as required by the law. Further, given the nature of the issue involved, Government finds that the delay of a few days in filing the appeal before the Commissioner (Appeals), which as stated above was well within the quantum of delay condonable by the Commissioner (Appeals), requires to be condoned and accordingly holds so. In view of the above, Government finds the decision of the Commissioner (Appeals) to dismiss the appeal of the applicant as time barred to be incorrect and hence sets aside the impugned Order-in-Appeal dated 18.06.2013.

9. Further, Government finds that the applicant has submitted that they are in possession of the relevant BRCs and have also furnished copies of the same during these proceedings. Government finds that the issue needs to be

re-examined by the original authority by taking into account the submissions of the applicant and hence remands the case back to the original authority for being decided afresh. The applicant should be provided sufficient opportunity to place on record their submission in the matter.

10. The Revision Application is allowed in the above terms.

  
(SHRAWAN KUMAR)

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

ORDER No. <sup>472-</sup> ~~473~~/2023-CUS (WZ) /ASRA/Mumbai dated 06.06.2023

To;

M/s Sonu International,  
Vyapar Bhavan, Ground floor,  
370, Katha Bazar, Opp. Corporation Bank,  
Mumbai - 400 009.

Copy to:

1. Commissioner of Customs (Export), Air Cargo Complex, Sahar, Mumbai - 400099.
2. Commissioner of Customs (Appeals) Mumbai, Zone - III, 5<sup>th</sup> floor, Awas Corporate Point, Makwana Lane, Behind S.M. Centre, Andheri - Kurla Road, Marol, Mumbai - 400 059.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.