

REGISTERED
SPEED POST



F.No.373/103/DBK/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue...22-5-15

~~ORDER NO. 05 / 2015 - Cus DATED 21.05.2015 OF THE GOVERNMENT OF INDIA,
PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF
INDIA UNDER SECTION 129 DD OF THE CUSTOMS ACT, 1962.~~

Subject : Revision application filed under Section 129 DD of the Customs Act, 1962 against the Orders-in-Appeal No. CMB-CEX-000-APP-234-13 dated 25.07.2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore, Tamilnadu.

Applicant : M/s. Samys International.

Respondent : Commissioner of Customs, Coimbatore. Tamilnadu.

ORDER

This revision application is filed by M/s. Samys International, Tirupur, (here in after referred to as the applicant) against the Order-in-Appeal No. CMB-CEX-000-APP-234-13 dated 25.07.2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore with respect to Order-in-Original No. SL.No.88/2012-BRC dated 21.07.2012 passed by the Deputy Commissioner of Customs, ICD Concor, Tirupur.

2. Brief facts of the case are that the applicants were granted drawback amount Rs. 41,927/- 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. After due process of law the adjudicating authority vide the impugned order has held recovery of Rs 41,927/- 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 impugned Order-in-Original, the applicant filed appeal before Commissioner (Appeals), who rejected the same as time barred as the same was filed after 90 days [stipulated within 60 days period plus 30 days condonable period.]
4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 129 DD of the Customs Act, 1962 before Government on following grounds:
 - 4.1 The Commissioner (Appeals) ought to have appreciated the simple fact that the applicants were not kept informed of the further course of action, especially in the absence of any preamble attached to the Order-in-Original passed by the adjudicating authority, and also the fact that the said Order does not contain the term Order-in-

Original but an acronym "O-I-O", which was not understood by the applicants at that point of time.

4.2 The Commissioner (Appeals) ought to have appreciated the fact that the absence of preamble to the Order passed by the Deputy Commissioner of Customs, ICD, Concor, Tirupur lead to the understanding that the same is not an appealable order but an administrative order and hence the applicants have written letter to the adjudicating authority to modify/cancel the same, inasmuch as they have produced the BRC in time, in respect of the impugned shipping bill.

4.3 The Commissioner (Appeals) ought to have appreciated the fact that the applicants have indeed received the export proceeds covered in the subject shipping bill well within the time limit prescribed, and the copy of the BRC was furnished to the adjudicating authority vide their letter dated 09/10/2010 in response to the Show Cause Notice. The Commissioner (Appeals) ought to have appreciated that the fact of production of BRC in response to the Show Cause Notice was not at all recorded in the Order-in-Original thereby vitiating the Order of the adjudicating authority.

4.4 The Commissioner (Appeals) ought to have appreciated the fact that the applicants have swiftly responded to the Order-in-Original dated 25.07.2012, received by them on 08/11/2012 by their correspondence addressed to the Deputy Commissioner of Customs, ICD-Concor, Tirupur with a copy marked to the Commissioner of Central Excise, (Review Cell), Coimbatore. The Commissioner (Appeals) ought to have appreciated the inaction on the part of the Department - had the Department issued a simple letter that the applicants that the appellate jurisdiction vests with Commissioner (Appeals) in response to their letter dated 09/11/2012, the applicants would have filed their Appeals within the time limit of 60 days from the date of receipt of the order-in-original.

4.5 Be it as it may, the learned Commissioner (Appeals) ought to have appreciated the peculiar facts and circumstances of the case, in which the applicants were denied of the information they needed the most- notwithstanding the fact that it is the responsibility of the Department to keep the applicants informed of the appellate jurisdiction together with any speaking order passed by any officer of the

Department- ought to have set aside the order of the adjudicating authority by condoning the delay in filing proper appeals.

4.6 The applicant has relied upon following case laws:-

I. Tribunal judgment in the case of M/s. Sunil Steels Vs. CCE, Raipur [2003 (159) ELT 368 (Del)]

II. Tribunal judgment in the case of M/s. Angadpat Industries (P.) Ltd. Vs. CCE Mumbai- III [2001 (131) ELT 427 (Tri.) Mumbai.]

5. Personal hearing was scheduled in this case on 25.03.15 refixed on 15.04.2015 Nobody attended the hearing. The applicant vide their letter dated 16.03.2015 & 07.04.15 stated that they do not wish to be heard in person & to consider the documentary evidence submitted by them as proof of having repatriated export proceeds. None appeared on behalf of respondent department either.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Orders-in-Appeal.

7. On perusal of case records, Government observes that the original authority confirmed the demand of already sanctioned drawback of the applicant on the grounds that the applicant failed to submit the Bank Remittance Certificate evidencing realization of foreign proceeds with regard to impugned exports against which drawback was sanctioned initially. Commissioner (Appeals) rejected the appeal of the applicant filed against the impugned Order-in-Original as time barred as the same was filed after 90 days [stipulated initial 60 days period plus 30 days condonable period]. as provided under section 129 DD of the Customs Act, 1962. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government notes that appeal was filed before Commissioner (Appeals) after a delay of more than 90 days and the said fact is not disputed by the applicant. As per Section 128 of Customs Act, 1962, Commissioner (Appeals) is empowered to condone delay upto 30 days in filing appeal. There is no provision in Section 128 ibid to

condone delay exceeding 30 days. The power of the Appellate Authority has been restricted to condone the delay only upto 30 days.

8.1 Hon'ble Allahabad High Court in the case of M/s Doaba Rolling Mills (P) Ltd. Vs. CESTAT, New Delhi, reported in 2004 (169) ELT 258 (All.), has also held that the Commissioner (Appeals) cannot condone delay in filing appeals beyond 30 days, as the statute itself provides for a period of limitation, and further maximum period for which delay can be condoned, the authority cannot extend the same. Government also notes that Hon'ble Supreme Court in the case of Singh Enterprises Vs. CCE Jamshedpur 2008 (221) ELT 163 (SC) has held 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. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days after the expiry of 60 days which is the normal period for preferring appeal under Section 35 of the Central Excise Act, 1944.


8.2 Government also notes that the Apex Court has from time to time as in the case of Collector of Central Excise, Chandigarh vs. Doaba Co-op Sugar Mills Ltd. as reported in 1988 (37) E.L.T.478 (S.C.) & in the case of UOI vs. Kirloskar Pneumatics Company reported in 1996 (84) ELT 401 (SC) held that where proceedings are undertaken under the Act by the Department, the provisions of limitation as prescribed in the Act will prevail.

8.3 The provisions of section 128 of the Customs Act, 1962 and Section 35 of the Central Excise Act, 1944 are in pari materia and the ratio of above said judgments are squarely applicable to this case. Further, the facts of the case laws relied upon by the applicant are different from the facts of this case and hence, ratio of the same is not applicable to this case.

9. In view of above circumstances, Government without going into merits of the case, finds that Commissioner(Appeals) has rightly rejected the appeal as time barred. There is no infirmity in the said Order-in-Appeal and therefore, the same is upheld.

10. The revision application is, therefore, rejected in view of the above.


11. So, ordered.


(RIMJHIM PRASAD)

Joint Secretary to the Government of India

M/s. Samys International
87, Saibaba Nagar,
Valayankadu,
Tirupur-641603
Tamilnadu

ATTESTED


(Shaukat Ali)

Under Secretary(Revision Application)

ORDER NO. 05 /2015 - Cus DATED 21.05.2015

Copy to:

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

ATTESTED



(Shaukat Ali)

Under Secretary (Revision Application)

(शौकत अली)
(SHAUKAT ALI)
अधर सचिव (पुआ)
Under Secretary (RA)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
संघ सरकार / Govt. of India
नई दिल्ली / New Delhi

