

REGISTERED
SPEED POST



F.No. 372/38/DBK/2018-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue. 5/3/21.

Order No. 50/2021-Cus dated 04-03-2021 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/CUS(CCP)/AA/494/2018 dated 21.02.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s Syngenta India Limited,

Respondent : Commissioner of Customs (Preventive), Kolkata

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ORDER

A Revision Application No.372/38/DBK/18-RA dated 23.05.2018 has been filed by M/s Syngenta India Limited, (hereinafter referred to as the applicant) against the OrderNo. KOL/Cus(CCP)/AA/494/2018 dated 21.02.2018, passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals), vide the impugned Order-in-Appeal, has rejected the appeal, filed by the applicant herein, as time barred observing that the applicant failed to produce sufficient cause which prevented them from filing the appeal beyond the stipulated period of sixty days as per Section 128 of the Customs Act, 1962 .

2. Brief facts of the case are that the applicant filed drawback claims in respect of 11 Bills of Export with the jurisdictional Customs authorities. The said claims were sanctioned by the jurisdictional Dy. Commissioner of Customs, Drawback Cell, CC(P), W.B. Kolkata. Later on the basis of XOS statement, it was observed by the jurisdictional Customs authorities that the applicant had failed to submit the proof to the effect that the export proceeds in respect of 11 Bills of Export had been realized in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995. Accordingly, a Show Cause Notice dated 19.01.2017 was issued to the applicant with the direction to repay the amount of duty drawback of Rs. 4,90,212/- alongwith interest in terms of Section 75A(2) read with Section 28AA of the Customs Act, 1962. Dy. Commissioner of Customs, Drawback Cell, CCP, Kolkata confirmed the demand of Rs. 4,90,212/- vide Order-in-Original No. 28/DC(DBK)/2017-18 dated 02.06.2017. Besides, a penalty of Rs. 10,000/- was also imposed on the applicant under Section 114(iii) of the Customs Act, 1962.

Aggrieved, the applicant filed an appeal before the Commissioner (Appeals) which was rejected as time bared. The instant revision application has been filed mainly on the ground that the applicant had received the Order-in-Original only on 09.06.2017, and the appeal before the Commissioner (Appeals) was filed on 07.08.2017 which is well within the permissible time limit of 60 days from the date of receipt of Order-in-Original. Several submissions have been made on merits as well.

3. Personal hearing in virtual mode was held on 04.03.2021, which was attended by Sh. Vikas Dalvi, Officer (Import-Export), on behalf of the applicant. He reiterated the contents of revision application as well as submissions filed by e-mail dated 04.03.2021. None appeared for the department nor any adjournment has been sought.

4. Government has examined the matter. It is observed that the Commissioner (Appeals) has rejected the appeal as time barred as the appeal was ostensibly not filed within the stipulated period of 60 days in terms of Section 128 of the Customs Act, 1962. It is, however, observed that Form C.A.-1 filed at the time of filing of appeal before the Commissioner (Appeals) mentions the date of communication of the decision or order appealed against to the applicant as 09.06.2017. The Commissioner (Appeals) in the impugned Order-in-Appeal has stated that the Appeal was filed on 07.08.2017 against the O-I-O dated 05.06.2017, "i.e. after expiry of sixty days from the date of communication of the impugned order. In this case, the appeal was filed after 63 days". Thus, the Commissioner (Appeals) appears to have considered the date of issuance of O-I-O i.e. 05.06.2017 as the date of receipt of the Order in Original by the applicant. The impugned Order-in-Appeal does

not indicate/adduce any reason whatsoever for rejection of the claim of the applicant that the said O-I-O was received by them on 09.06.2017. Thus, the impugned O-I-A appears to have been passed without considering the facts available on records. Government observes that the applicant is located at Pune, Maharashtra. Therefore, the claim of receipt of Order by them on 09.06.2017 i.e. 04 days after it's issue at Kolkata can not be faulted, specifically in absence of any evidence to the contrary. Government is, as such of the considered view that the appeal was incorrectly rejected as barred by limitation. The matter is, thus, remanded back to Commissioner (Appeals) with the directions to decide the case on merits.

5. Accordingly, the impugned Order-in-Appeal is set aside and the revision application is allowed by way of remand with directions, as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

04-03-2021

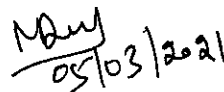
M/s Syngenta India Ltd., Amar Paradigm, S.No. 110/11/3,
Baner Road, Baner, Pune-411045, Maharashtra.

Order No. 50 /21-Cus dated 04-03-2021

Copy to:

1. The Commissioner of Customs (CCP), 15/1 Strand Road, Custom House, Kolkata - 700001.
2. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata- 700001.
3. PS to AS(RA)
4. Guard File.
5. Spare Copy

Attested



(Nirmla Devi)

Section Officer (REVISION APPLICATION)