

REGISTERED

SPEED POST



F. No. 372/17/SL/2018-R.A.
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.. 28/11/19

ORDER NO. 52/19 - Cus dated 26-11-2019 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. MALLIKA ARYA, ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

SUBJECT : Revision Application filed under section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. KOL/CUS(Port/AA/1380/2046 dated 07.12.2017, passed by the Commissioner (Appeals), Kolkata.

APPLICANT : **M/s PIL(India) Ltd.**

RESPONDENT : Commissioner of Customs, Kolkata.

ORDER

A Revision Application No. 372/17/SL/2018-R.A. dated 13.02.2018 has been filed by M/s PIL(India) P. Ltd. (hereinafter referred to as the applicant) against order-in-appeal No. KOL/CUS(Port/AA/1380/2046 dated 07.12.2017, passed by the Commissioner (Appeals), Kolkata. The Commissioner(Appeals) has rejected the applicant's appeal for non-compliance with the statutory requirement of pre-deposit.

2. Brief facts of the case are that the applicant is a steamer agent and carried the impugned goods which were short landed. On the basis of the Joint Survey Report dated 21.01.2017, it was found that 3350 pkgs of A4 size white copy paper made of wood pulp of "Smartist" make valued at Rs. 13,96,708 involving duty of Rs. 3,06,287/- was short landed. The case was adjudicated by the Assistant Commissioner of Customs, Kolkata wherein a penalty of Rs. 6,12,574/- was imposed on the said steamer agent under Section 116 of the Customs Act,1962. Being aggrieved by the said order, the applicant preferred an appeal before the Commissioner(Appeals) who vide the impugned order-in-appeal dated 07.12.2017 rejected the appeal for non-compliance with the statutory condition of pre-deposit as per Section 129E of Customs Act,1962.

3. A personal hearing in this case was granted to the applicant on 21.11.2019. Shri Mukunda Ghosh, Manager Accounts, appeared for the Personal Hearing and contended that there is no fault on their part since the goods were received in a sealed condition. No one appeared for the respondent and no request for adjournment has been received. Therefore, the matter is being taken up on the basis of evidence available on record.

4. Government has examined the matter. It is observed that the Commissioner (Appeals) rejected the applicant's appeal for non-compliance with the statutory requirement of pre-deposit without going into the merits of the case.

5. ***Section 129(E) (i) of Customs Act, 1962 prescribes pre-deposit of 7.5% for the cases similar to the present one. It reads as follows:-***

"Section 129(E) Deposit of certain percentage of duty demanded or penalty imposed before filing appeal.—

The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,—

(i) under sub-section(1) of Section 128,, unless the appellant has deposited seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Customs lower in rank than the Principal Commissioner of Customs or Commissioner of Customs;

Provided that the amount required to be deposited under this section shall not exceed rupees ten crores:

Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014."

6. The applicant has submitted a Challan No. 8475 dated 30.01.2018 evidencing deposit of an amount of Rs. 61,258/- .

7. Since the applicant has now made deposit of Rs. 61,258/-, the same can be treated as fulfilment of condition under Section 129E of Customs Act, 1962. The Government, therefore, sets aside the impugned order dated 18.10.2017 and remands the matter to the Commissioner (Appeals) for a fresh consideration of the case on merits after giving an opportunity of hearing to the applicant.

8. The revision application is allowed by way of remand.


(MALLIKA ARYA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

M/s. PIL (India) Pvt. Ltd.
"Diamond Heritage" 10th Floor,
Unit No. 1004 and 1005, 16 Strand Road,
Kolkata-700001.

ORDER NO. 52/19 - Cus dated 26/11-2019

Copy to:-

1. The Commissioner of Customs, N.S.C.B. International Airport, Kolkata-700052.
2. The Commissioner (Appeals), Customs, Kolkata
3. P.S. to A.S.
4. Guard File.
5. Spare Copy.

ATTESTED

(Ashish Tiwari)
ASSISTANT COMMISSIONER