

REGISTERED
SPEED POST



F.No. 372/41/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.. 8/3/21

Order No. 53/2021-Cus dated 05-03-2021 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/Airport)/AA/1029/2017 dated 19.09.2017, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s Sarla Devi Derasaria, Prop. Asha Kutir Shilpa

Respondent : Commissioner of Customs, Port, Kolkata

ORDER

A Revision Application No.372/25/DBK/18-RA dated 04.06.2018 has been filed by M/s Sarla Devi Derasaria, Proprietor Asha Kutir Shilpa, Kolkata, (hereinafter referred to as the applicant), against the Order-in-Appeal No. KOL/Cus/(Airport)/AA/1029/2017 dated 29.09.2017, passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal as time barred.

2. Brief facts of the case are that the applicant filed a drawback claim in respect of one Shipping Bill with the jurisdictional Customs authorities. The said claim was sanctioned by the jurisdictional Dy. Commissioner of Customs, Drawback, Custom House, 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 one Shipping had been realized in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995. Accordingly, a demand notice was issued to the applicant to either submit the proof to the effect that the export proceeds had been realized or refund the drawback amount already sanctioned to them. Dy. Commissioner of Customs, Drawback, Kolkata, vide Order-in-Original No. 39/2010 dated 10.05.2010, confirmed the demand of Rs. 1,48,896/- along with interest as the applicant failed to submit the requisite proof. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals), which was rejected as time barred, for delay of 6 years and 335 days. The instant revision application has been filed on the ground that they had

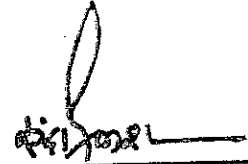
received the Order-in-Original only on 03.04.2017 and, hence, there was no delay in filing the appeal before the Commissioner (Appeals).

3. Personal hearing in virtual mode was held on 04.03.2021. Sh. Dau Lal Derasaria, attended the hearing on behalf of the applicant. He reiterated the contents of the revision application. None appeared on behalf of the respondent nor any request for further adjournment was made. Therefore, the case is taken up for decision.

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 or further condonable period of 30 days in terms of Section 128 of the Customs Act, 1962. Applicant has pleaded that there is no delay in filing the appeal before the Commissioner (Appeals) as they had received the Order-in-Original only on 13.04.2017. Government observes that the applicant had attended the personal hearing before the Assistant Commissioner on 23.04.2010, which culminated in the OIO dated 10.05.2010. Applicant has also stated in the revision application that they had submitted the BRCs, issued in February, 2009, in the office of the Assistant Commissioner of Customs Drawback in the year 2012. There is no explanation as to why the BRCs issued in February, 2009 could not be produced before the Assistant Commissioner in the personal hearing held on 23.04.2010. There is also no proof that the BRCs were actually submitted to the department in 2012. Further, admittedly the applicant had appeared before the Assistant Commissioner for hearing on 23.04.2010 and also claims to have visited the office of Assistant Commissioner in 2012 for submitting the copies of BRC's.

Therefore, the contention that the OIO dated 10.05.2010 was received by the applicant only on 03.04.2017 appears to be incorrect. Further, no documentary evidence has been produced to substantiate this claim as well. Thus, the government finds that the entire set of facts and circumstances urged by the applicant to support their case are incredible and totally unsubstantiated. As such the Government holds that there is no infirmity in the Order of Commissioner (Appeals).

5. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Sarla Devi Derasaria,
Prop. Of Aasha Kutir Shilpa,
Canal South Road, Plot No. 62,
Sector A, Metropolitan Co-operative Society,
P.O. Dhapa, Kolkata 700105

Attested



(Nirmala Devi)

Section Officer (REVISION APPLICATION)

Order No. 53/21-Cus dated 05-03-2021

Copy to:

1. The Commissioner of Customs (Port),, Customs House,
15/1 Strand Road, 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