

SPEED POST



F.No. 375/41-A/DBK/2016-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.. 10.12.19....

Order No. 5719-Cus dated 9-12-2019 of the Government of India passed by Mrs. Mallika Arya, Principal Commissioner & 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.CC(A)/Cus/D-1/Exp/145/2016 dated 15.03.2016, passed by the Commissioner of Customs (Appeals), New Delhi

Applicant : Bright Point India Pvt. Ltd

Respondent : Commissioner of Customs (Exports), Air Cargo, NCH, Delhi

ORDER

A revision application number 375/41-A/DBK/2016-RA dated 14.06.2016 has been filed by the M/s Bright Point India Pvt. Ltd., New Delhi (hereinafter referred to as the applicant) against the Commissioner (Appeals)'s Order No.CC(A)/Cus/D-1/Exp/145/2016 dated 15.03.2016 wherein the appeal of the applicant, against the Order in Original dated 19.05.2015, has been rejected. The instant revision application was decided by the Government vide Order No. 106/18-Cus dated 06.08.2018 which was rejected on the ground that the applicant did not pay the required fee of Rs. 1,000/- as per sub-section 3 of Section 129 DD of the Customs Act, 1962. Aggrieved, the applicant approached the Hon'ble Delhi High Court. Hon'ble high Court vide order dated 30.10.2019 in Writ petition Number 9159/2019 has remanded the case back to Revisionary authority as the applicant had already deposited the mandatory fees of Rs. 1,000/-. Delhi High Court has observed *"Revision Application is revived at its original number and the same will be decided by the Revisional Authority on its own merits in accordance with law and on the basis of evidence on record as well as after giving adequate opportunity of being heard to the petitioner as early as possible and practicable, preferably within a period of eight weeks from the date of receipt of the order of this court."*

2. Brief fact of the case are that the applicant had filed five drawback claims under Rule 5 of Re-Export of Imported Goods(Drawback of Customs Duties)Rules, 1995 read with Section 74 of the Customs Act, 1962 in respect of five Shipping Bills which were rejected by the jurisdictional Assistant Commissioner on the ground that the applicant had failed to deposit the condonation fees of Rs. 1,0000/- for late filing of drawback claim as per the provisions of above Rules. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals) which was also rejected by him. The applicant in his revision application dated 14.06.2016 prayed for setting aside the order passed by Commissioner (Appeals) on the ground that substantial benefit of drawback/refund cannot be withheld due to technical lapse. Further an amount

of Rs. 10,000/- (Rupees Ten Thousand) on account of condonation of delay for late filing of drawback claim has also been paid by them.

3. Hearing in this case was held on 03.12.2019. Sh. Pradeep Sharma, Advocate, appeared on behalf of the applicant who reiterated the grounds of revision already pleaded in their revision application dated 14.06.2016. On behalf of the respondent, Sh. S.K. Gupta, Assistant Commissioner of customs (Drawback), Air cargo Export, New Customs House, New Delhi, appeared for personal hearing on 06.12.2019 and stated that the applicant did not apply for the extension and did not deposited the required fees within the prescribed time limit as per the drawback rules. Therefore the drawback claim was rejected.

4. Government has examined the matter. It is observed that the Commissioner (Appeals) has rejected the appeal on the ground that the delay in filing the drawback claim was more than six months and this delay could have been condoned only by the Commissioner. Since Commissioner is a parallel authority, any appeal/grievance against the Commissioner's decision will lie with the Tribunal for redressal. This finding of Commissioner (Appeals) is erroneous and merits no consideration.

5. It is on record that the mandatory fees of Rs. 10,000/- for considering the application for condonation of delay was deposited by the applicant on 10.07.2013 before the rejection of the drawback claim by the adjudicating authority on 19.05.2015. This fact is also stated in the Order-in-Original. The Government is of the view that the mandatory condition of payment of late fees for condonation of delay in filing drawback claim has been complied with. Therefore the delay is condoned.

6. Further, Government directs that the drawback claims of the applicant be examined on merits. Accordingly the matter is remanded back to Assistant/Deputy Commissioner of Customs (Drawback), Air Cargo Export, New Customs House, New Delhi to decide the drawback claims on merits within 8 weeks from the date of receipt of this order.

7. Accordingly, the revision application filed by the applicant is allowed and disposed off.

Mallika Arya
(Mallika Arya)

Additional Secretary to the Government of India

M/s Brightpoint india Pvt. Ltd, Empire Plaza, Building A, Fifth floor, Lal Bahadur Shastri Road, Chandan Nagar, Vikhroli West, Mumbai-400083

Order No. 57/19-Cus dated 9-12-2019

Copy to:

1. Commissioner of Customs, Air Cargo Export, New Custom House, Near IGI Airport, New Delhi 110037
2. Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi 110037
3. The Deputy/Assistant Commissioner of Customs (Drawback), Air Cargo Export, New Custom House, New Delhi 110037.
4. Sh. Pradeep Sharma, Advocate, A-200, Ground Floor, Road No. 4, Street No. 10, Mahipalpur Extension, new Delhi -110037
5. PS to AS(RA)
6. Guard File.

ATTESTED

Nirma
09/12/19
(Nirmala Devi)

Section Officer (Revision Application)