

REGISTERED
SPEED POST



F.No. 372/15/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. 13/12/19...

Order No. 62/19-Cus dated 12-12-2019 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. KOL/Cus(port)/AA/1608/2017 dated 31.10.2017, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s SSK Exports Limited

Respondent : Commissioner of Customs(Port), Kolkata

ORDER

A Revision Application No.372/15/DBK/18-RA dated 09.02.2018 has been filed by M/s SSK Exports Limited (hereinafter referred to as the applicant) against the OrderNo.KOL/Cus(port)/AA/1608/2017 dated 31.10.2017, issued by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals) vide the above mentioned Order-in-Appeal has rejected the appeal as time bar on the ground 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 respondent vide their Show Cause Notice dated 29.05.2015 had initiated the recovery proceedings of drawback amount of Rs.20,100/- as the applicant had failed to submit the proof to the effect that the export proceeds in respect of Shipping Bill in dispute has not been realized in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995. The demand was confirmed by the Dy. Commissioner of Customs, Drawback, Customs House, Kolkata vide Order-in-Original dated 22.12.2016. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals) which was rejected as time bar. The instant revision application has been filed mainly on the ground that they had received the Order-in-Original dated 22.12.2016 on 05.01.2017 and thereafter filed appeal on 01.03.2017 which was well within prescribed time limited of 60 days.

3. Personal hearing was fixed on 21.11.2019 and 10.12.2019. However, neither the applicant nor the respondent appeared on the above mentioned dates. Applicant vide their letter dated 05.02.2019 informed that they do want to avail the personal hearing and the case may be decided on the merits. Respondent vide their letter dated S34M-36/2015-DBK dated 20.11.2019 submitted the receipt No. EW349111169In in respect of Speed post of the Order-in-Original to applicant.

4. Government has examined the matter. It is observed that the Commissioner (Appeals) has rejected the appeal as time bar as the appeal was not filed within the stipulated period of 60 days in terms of Section 128 of the Customs Act, 1962. Government observes that the Order-in-Original was dispatched on 23.12.2016 which is clearly evident from the Department of post, Registration branch, speed post track number and the fact that the said letter was never returned as undelivered. Although the applicant has not produced any evidence that the impugned Order-in-Original was received by them on 05.01.2017. Government observes that Commissioner (Appeals) should have allowed the delay under Proviso to sub-section (1) of Section 128 of the Customs Act, 1962 and decided the case on merits since the delay beyond 60 days is of 8 days only even if the contention of the respondent is accepted. Therefore the Government condones the delay in filing the appeal before the Commissioner (Appeals) and allows the Revision Application.

5. Revision Application filed by the applicant is allowed by way of remand to Commissioner (Appeals).


(Mallika Arya)

Additional Secretary to the Government of India

M/s SSK Exports Limited
37, Shakespeare Sarani,
1st floor, Kolkata-700017

Order No. 62/19-Cus dated 12-12-2019

Copy to:

1. The Commissioner of Customs (Port), 15/1 Strand Road, Custom House, Kolkata - 700001.
2. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata- 700001.
3. Deputy Commissioner, (Drawback, Port), 15/1 Strand Road, Custom House, Kolkata - 700001.
4. PS to AS(RA)