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**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India**  
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Mumbai- 400 005

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F.No.373/98/DBK/2012-RA / 11

Date of Issue: 14.02.2022

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ORDER NO. 62 /2022-CUS (SZ) /ASRA/MUMBAI DATED 10 .02.2022  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS  
ACT, 1962.

Applicant: M/s Kalikkavalasu Primary Cum Industrial Weavers Co-op  
Production & Sales Society Ltd,  
E.H. 131, Murungatholuvu (PO),  
Chennimalai 638051,  
Erode District

Respondent: Commissioner of Customs, Tiruchirappali

Subject : Revision Applications filed, under Section 129DD of the Customs  
Act, 1962 against the Order-in-Appeal No. 30/2012 dated  
27.08.2012 passed by the Commissioner of Customs & Central  
Excise (Appeals), Tiruchirapalli

**ORDER**

This Revision Applications has been filed by M/s Kalikkavalasu Primary Cum Industrial Weavers Co-op Production & Sales Society Ltd, E.H. 131, Murungatholuvu (PO), Chennimalai 638051, Erode District (hereinafter referred to as the 'applicant') against the Order-in-Appeal No. 30/2012 dated 27.08.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli

2. Brief facts of the case are that applicant was sanctioned and paid drawback amount of Rs.1,06,162/-, in respect of the draw back claims for the Shipping Bill No.1895 dated 08.08.2008. But as the export proceeds were not been realized within the stipulated period as specified under Rule 16A of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with regulation 9 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000 as amended and Reserve Bank A.P. (DTR Series) Circular No.50 dated 03.06.2009. Show Cause Notice was issued to the applicant to produce the documentary evidence of the repatriation of the export proceeds or to repay the amount of Rs. 1,06,162/-. They were directed to repay the drawback amount along with the interest and penalty was also proposed under Section 117 of the Customs Act, 1962. After due process of law, the lower authority ordered for the recovery of duty drawback of Rs.1,06,162/- with interest and imposed penalty of Rs.1000/- for non-realization and non submissions of BRC as a proof of realization of export proceeds

4. Aggrieved by the order in original, the applicant preferred an appeal with the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli. The Appellate authority vide Order-in-Appeal No. 30/2012 dated 27.08.2012 rejected the appeal as being time barred by holding that the impugned order-in-original was received by the applicant on 29.11.2010 whereas the appeal

was filed before the Appellate Authority on 02.03.2012 i.e after a lapse of 15 months from the date of receipt of the order.

5. Aggrieved by the Order in Appeal, the applicant filed a Revision Application with the Central Government against the impugned order under Section 129DD of the Customs Act, 1962, on the following grounds:

- i) That there was no malafide or wilful intention in submitting the bank realization certificates. The clerk in charge of the applicant's firm had misplaced the bank realization certificates and so, the applicants were unable to produce the same when demanded by the department.
- ii) That the payment was received before the order was passed by the original lower authority and hence the finding made by him is not legally maintainable.
- iii) That the drawback scheme to the exporters is an incentive to inculcate foreign exchange and mere procedural lapse of non-submission of bank realization certificates within the stipulated time should not be taken into account.
- iv) That now the applicants are submitting the bank realization certificates belatedly and thus, procedural aspect of non-submission should not be taken into account and a lenient view should be taken in this matter.

6. Pursuant to following the principles of natural justice, the Revisionary Authority vide order No 292/13-Cus dated 16.12.2013 held that the Appellate Authority had rightly rejected the revision application filed by the applicant as being time barred. The Revisionary Authority relied upon the following judgements

- i) Guidelines by the Hon'ble Supreme Court [198(28) ELT.185(SC)]
- ii) Hon'ble Allahabad High Court judgement in the case of India Rolling Mills (P) Ltd [2004 (169) ELT 258(All)]
- iii) M/s Singh Enterprises vs CCE, Jamshedpur [2008 (221) ELT 163(SC)]
- iv) M/s Khanpur Taluka Co-op Spinning Mills Ltd vs CCE, Pune II [2013 (292) ELT 16(Bom)]

7. Being aggrieved with the order of the Revisionary Authority, the applicant filed a Writ Petition bearing No 12846 of 2014 in the High Court of Judicature at Madras on the following grounds

- i) That the RA failed to consider that export proceeds were realised by the applicant as early as 09.10.2008 itself and they are absolutely eligible to claim Drawback under the provisions of the Customs Act
- ii) The RA failed to exercise the power vested under section 129DD (1) of the Customs Act to "Annul or modify 'any order'"
- iii) The RA failed to consider that the revision application was filed within the statutory period of limitation and therefore the RA need not consider the issue only on the point of limitation and address the issue on the merits of the case.
- iv) The RA erred in not invoking section 154 of the Customs Act and correcting the mistake of demanding repayment or Drawback amount.
- v) The RA erred in dismissing the Revision Application only on the point of limitation without looking into the merits of the case

8. The Hon'ble High Court of Judicature at Madras vide interim order dated 02.06.2014 in MA 1 of 2014 in WP 12846/2014 held as under

*"Order: This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S. T.R.SENTHIL KUMAR, Advocate for the petitioner the court made the following order :*

*There shall be an interim order restraining the respondents from recovering the drawback amounts on condition that the petitioner deposits a sum of Rs. 50,000/- (Rupees Fifty Thousand only) to the first respondent within a period of four weeks from today, failing which the interim order granted shall stand automatically vacated any further reference to the Court."*

8.1 Pursuant to the order of the Hon'ble High Court of Judicature at Madras, the applicant deposited an amount of Rs. 50,000/-vide TR 6 Challan No 34/2014-15 ICD, Karur dated 01.07.2014.

9. The Hon'ble High Court of Judicature at Madras, at Para 3 and 4 of the final order dated 04.08.2021 in WP No. 12846/2014 and M.P No 1 of 2014 has stated as under

*"3. The learned counsel for the petitioner has brought to notice of this Court that the impugned order has been passed by the Joint Secretary (Revision Application), Government of India, who was also in the same rank of Commissioner of Central Excise and Customs, who had passed the Order-In-Appeal which had been challenged before him in that revision application, which is impermissible in law. He has also placed reliance on the decision of this Court in S.Moinuddin -vs- Joint Secretary, Government of India, Ministry of Finance, New Delhi (dated 24.01.2017 in W.P.No. 16682 of 2016), where this Court has interfered with the order that had been impugned therein in respect of similarly placed persons on that sole ground and had directed the matter to be heard by an authority after taking corrective measures in that regard.*

*The learned Senior Panel Counsel appearing for respondents, on instructions, states that subsequently, Revisional Authority has been re-constituted, taking note of the anomaly pointed out by this Court.*

*4. Having regard to the aforesaid submissions made, the impugned order is quashed and the matter is remitted to the present Revisional Authority under Section 129 DD of the Act for fresh consideration of the matter. It shall be incumbent upon the Revisional Authority, after affording full opportunity of hearing to the petitioner, deal with each of the contentions raised and pass reasoned orders. on merits and in accordance with law, inhibited and uninfluenced by the impugned order which has been set aside and communicate the decision taken to the petitioner."*

10. Pursuant to the directions of the Hon'ble High court of Judicature at Madras in order dated 04.08.2021, personal hearing was scheduled in this case for 10.11.2021 and 17.11.2021. Shri K.S Ramaswamy, Advocate for the applicant appeared online on 17.11.2021 before the Revision Authority and

stated that the only issue is the non submission of BRC. He submitted that the export proceeds were realised much before initiation of proceeding against them and mere non submission should not result in taking away export benefits, He further submitted that the BRC has now been submitted and requested to allow the benefit.

11. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original, Order-in-Appeal and the directions of the Hon'ble High Court of Judicature at Madras in WP No. 12846/2014 and M.P No 1 of 2014.

11.1 Government notes that the issue in question relates to the recovery of drawback due to non submission of BRC by the applicant and delay by the applicant in filing an appeal before the Appellate Authority.

11.2 The show cause notice was issued for recovery of the drawback amount sanctioned and paid to the applicant, due to non submission of the BRC in respect of the same. The applicant has claimed that the export proceeds have been realized before the order was issued by the original authority but the same could not be submitted because the same were misplaced. The BRC's have been submitted before the Appellate Authority.

11.3 Government further notes that sub rule 4 of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 states that

*"Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or sub-rule (3) and the exporter produces evidence about such realisation within one year from the date of such recovery of the amount of drawback, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs or Deputy Commissioner of Customs to the claimant".*

11.4 Be that as it may, in the instant case, the applicant has not submitted the evidence of realisation of export proceeds before the original authority stating that the same was misplaced. Also the applicant has admittedly filed

the application before the Appellate Authority after the statutory time limit for filing appeals as laid down in Section 128 of the Customs Act, 1962.

11.5 The provisions of Section 128 of the Customs Act, 1962 reads as under

**“SECTION 128. Appeals to Commissioner (Appeals).** - (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order :

*Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.*

*(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:*

*Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal’.*

11.6 In the instant case, the order-in-original was issued on 29.11.2010 and the appeal was filed by the applicant on 03.03.2012 i.e after 15 months of the issue of the order-in-original. As per Section 128 of the Customs Act, 1962, an appeal is to be filed within 60 days from the date of communication of the order-in-original. Besides, the Appellate Authority is empowered to condone a delay of further 30 days if he is satisfied that the applicant was prevented by sufficient cause from presenting the appeal within 60 days. Government notes that the applicant had filed the appeal way beyond the statutory time limit prescribed under Section 128 of the Customs Act, 1962.

The applicant has not disputed the factual position that the appeal was filed on 03.03.2012 against the impugned order-in-original which was received by him on 29.11.2010 after a delay of 15 months of receipt of Impugned order-in-original.

11.7 Government notes that there are a catena of judgements and also guidelines issued by the Courts regarding dealing with delay in filing appeals. When the delay is within the condonable limit laid down by the statute, the

discretion vested in the authority to condone such delay is to be exercised following the guidelines laid down by the Hon'ble Supreme Court [(1987(28)ELT.185(SC)], but, when the appeal is filed beyond the time period prescribed by the statute, then there is no discretion with any authority to extend the said time limit. Hon'ble Allahabad High Court has held in the case of India Rolling Mills (P) Ltd [2004 (169) ELT 258 (All)], that Commissioner (appeals) cannot condone the delay exceeding 30 days in filing appeal.

11.8 Government notes that the issue is no more *res-integra* and has been set to rest by the Hon'ble Supreme Court in the case of Singh Enterprises vs Commissioner of Central Excise, Jamshedpur [2008 (221)ELT 163 (S.C.)]. Relevant portion of the order is reproduced below :-

*“The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the ‘Limitation Act’) can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period.”*



11.9. Hon'ble High Court of Bombay; in the case of Khanpur Taluka Coop Spinning Mills Ltd. Vs CCE Pune II [2013 (292) ELT 16 (Bom)], has held in para 4 of order dated 04.07.2012 as under:

*"4. This Court in the case of Raj Chemicals Vs Union of India (Writ Petition No.1252 of 2011 decided on 15.3.2012) [2013 (287) ELT 145 (Bom.)] has held that where the appeal filed against the order-In-original is dismissed as time-barred, this court in exercise of writ jurisdiction can neither direct the Appellate Authority to condone the delay nor interfere with the order passed by the Adjudication Authority."*

12. The above judgments leaves no doubt that in the present case, the Appellate Authority did not have the power to condone the quantum of delay on the part of the applicant in filing the appeals.

13. Government notes that the non submission of the BRC's claimed by the applicant to be procedural error and that Section 154 of Customs Act, 1962 should have been invoked is flawed as the provisions of Section 154 of Customs Act, 1962 are for corrections of clerical and arithmetic mistakes in any decision or order passed by the Central Government whereas in the instant case the orders of the lower authorities confirming the recovery of the drawback is on account of the violation of the Drawback Rules, 1995 and also Section 128 of the Customs Act, 1962.

14. In the instant case though the applicant has received the export proceeds, the same were not submitted to the original authority and the same were submitted to the Appellate Authority at the time of filing an appeal which was barred by limitation of time and hence interference with the orders of the lower authority would not be appropriate and legal.

15. In view of the above position, Government notes that the Appellate Authority has rightly rejected the appeal as time barred and no revision application can be entertained against said order. Government finds no

infirmity in the Order-in-Appeal No. 30/2012 dated 27.08.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli and finds no reason to annul or modify the Order-in-Appeal and therefore upholds the same.

16. The Revision Application is dismissed as being devoid of merit.

*Shrawan*  
10/2/22  
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER NO. 62 /2022-CUS (SZ) /ASRA/MUMBAI DATED 10.02.2022

To,

M/s Kalikkavalasu Primary Cum Industrial Weavers Co-op Production & Sales Society Ltd,  
E.H. 131, Murungatholuvu (PO),  
Chennimalai 638051,  
Erode District

Copy to :

1. The Commissioner of CGST, Salem, No.1 Faulks Compound, Anai Medu, Salem 636001
2. The Commissioner of CGST, (Coimbatore Appeals), No 6/7, A.T.D. Street, Race Course Road, Coimbatore 641 018
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare copy.