

REGISTERED
SPEED POST



F.No. 372/16/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. 63/19-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/1705/2017 dated 08.11.2017, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s Portman Enterprises

Respondent : Commissioner of Customs(Port), Kolkata

ORDER


A Revision Application No.372/16/DBK/18-RA dated 15.02.2018 has been filed by M/s Portman Enterprises (hereinafter referred to as the applicant) against the OrderNo.KOL/Cus(port)/AA/1705/2017 dated 08.11.2017, issued by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals) 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 applicant filed a drawback claim in respect of Shipping Bill No. 8688635 dated 30.03.2015 with the jurisdictional Dy. Commissioner of Customs. The said claim was rejected by the jurisdictional Dy. Commissioner of Drawback, Custom House, Kolkata on the ground that the applicant had failed to submit the proof of export proceeds in respect of impugned Shipping Bill in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995. 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 06.12.2016 on 02.02.2017 and thereafter they filed an appeal on 23.02.2017 which was well within prescribed time period of 60 days.

3. Personal hearing was attended by Sh. Ganesh Kaliaanan, Proprietor, on behalf of the applicant. He reiterated the submissions already made in the Revision Application. The applicant also submitted a copy of envelope wherein the said Order-in-Original was dispatched by the respondent. Respondent vide letter No. S34M-197/2016 DBK(SPCD-1008) dated 20.11.2019 has stated that the receipt copy of Speed Post sent to applicant is not traceable. Since, no one appeared for the respondent and no request for any other date of hearing has been received, the case is being taken up for final disposal.

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 envelope bearing F.No. S-34M-197/16 DBK written on top was delivered to the applicant on 31.01.2017 by the post office staff but the same could not be delivered on 30.01.2017 as the door was found locked. Since the respondent has not produced cogent evidence regarding delivery of impugned Order-in-Original the contention of applicant regarding delivery on 31.01.17 is acceptable. It is observed that the delay is of 18 days only even if the contention of the respondent is accepted. 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. 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 Portman's Enterprises,
37 B Pon Complex, CHB Colony,
Tiruchengode,
TamilNadu
Pin -637211

Order No. 63 /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)
5. Guard File.
6. Spare Copy

Attested

NDW
12/12/19

(Nirmala Devi)

Section Officer (REVISION APPLICATION)