

REGISTERED

SPEED POST



F. No. 372/1-2/B/2018-R.A.
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.....

ORDER NO 63-4/18 Cus dated 11-4-2018 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI R. P. SHARMA, ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

SUBJECT : Revision Application filed under section 129DD of the Customs Act, 1962, against the Orders-in-Original No. KOL/CUS/AC/AC(MCD)/41 and KOL/CUS/AC/AC(MCD)/42, both dated 16/10/2017, passed by Commissioner of Customs (Port), NCH, Kolkata.

APPLICANT : M/s MSC Agency (India) Pvt. Ltd., Kolkata

RESPONDENT: Commissioner of Customs (Port), Kolkata

ORDER

Revision Applications nos. 372/1/B/18-RA and 372/2/B/18-RA, both dated 15/01/2018, have been filed by M/s MSC Agency (India) Pvt. Ltd., Kolkāta, (hereinafter referred to as the applicant) against Orders-in-Original no. KOL/CUS/AC/AC(MCD)/41 and KOL/CUS/AC/AC(MCD)/42, both dated 16/10/2017, passed by the Commissioner of Customs(Port), Kolkata, whereby a penalty of Rs. 10 lakhs has been imposed on the applicant for short landing of goods.

2. As per the request of the applicant vide letter dated 13/03/2018, an early hearing on 10/04/2018 was held which was availed by Sh. Retobrota Mitra, Sh. Rohit Mukherji, and Ms. Surbhi Anand, Advocates on behalf of the applicant who mainly reiterated the grounds of revision already pleaded in their application. However, no one appeared for the respondent and instead submitted written submissions dated 04/04/2018 to contest the revision applications.

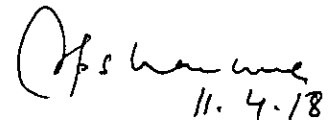
3. The government has examined the matter and it is observed at the outset that the revision applications have been filed by the applicant without payment of fee of Rs. 1000/- and the same should have been accompanied with each revision application as per Section 129DD (3) of the Customs Act, 1962. The payment of fee is mandatory as per the above section and in absence of it the revision

● application cannot be considered as properly filed as envisaged in Section 129DD. Hence it is liable to be rejected on this ground alone.

4. Besides above, it is also noticed that two revision applications involving common issue regarding imposition of penalty for short landing of goods have been filed against the orders-in-original dated 16/10/2017 passed by the Commissioner of Customs. Whereas under Section 129 DD read with first proviso to Section 129 A of the Customs Act, 1962, a revision application can be filed before the Central Government against the Order issued by the Commissioner of Customs (Appeals) only and that too when it involves the issue regarding baggage or short landing or drawback of duty. Since the present applications do not involve any order of the Commissioner (Appeals), it is manifest that the government does not have jurisdiction to deal with the present applications even when these involve the issue of short landing of goods. The applicant has claimed that they have filed the revision applications as per directions given in the above referred corrigenda to the orders-in-original. On examination of the copy of the corrigenda provided by the applicant along with the letter dated 13/03/2018, it is found that the corrigenda are not signed by the Commissioner (Customs) who has issued the orders-in-original in this case and unsigned copy of the aforesaid corrigenda are merely forwarded by the Assistant Commissioner (Customs), MCD(Port), Kolkata. Further on

examination of the preamble to the orders-in-original, it is noticed that the original advice to the applicant was that an appeal against these orders lies to the Commissioner of Customs (Appeals), Kolkata under Section 128 of the Customs Act, 1962, which is out rightly wrong. But this error has not been corrected even subsequently by issuing proper corrigenda by the adjudicating authority by directing the applicant to file an appeal before the CESTAT, Kolkata, in the light of Section 129 A of the Customs Act, 1962. In fact, instead of correcting the mistake, another error has been committed by issuing non-signed corrigenda by the Assistant Commissioner and by directing the applicant to file a revision application before the Government without appreciating Section 129A. Thus, while it is true that the applicant was misguided to file the present revision application by the Assistant Commissioner of Customs before Government, this fact cannot negate the vital legal reality that the government does not have jurisdiction in this matter in the light of the above cited statutory limitation.

5. In view of the above discussion, the revision applications are rejected.


11. 4. 18

(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

M/s MSC Agency (India) Pvt. Ltd.,
Diamond Heritage Building, Unit 1202-1205,
12th Floor 16, Strand Road, Kolkata 700 001

ORDER NO. Cus dated 2018

Copy to:-

1. Commissioner of Customs(Port), 15/1 Strand Road, Customs House, Kolkata.
2. PS to AS.
- ✓ 3. Guard File

ATTESTED

ND
11/4/18

(Nirmala Devi)
Section officer

Revision Application unit
