

REGISTERED SPEED POST



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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 373/299/DBK/14-RA/5917

Date of Issue:-

ORDER NO. 64/2019-CUS(SZ)/ASRA/MUMBAI DATED 12.12.2019
OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS
ACT, 1962.

Sl. No.	Revision Application No.	Applicant	Respondent
1	373/299/DBK/14-RA	M/s Sri Gautam Tex, Tirupur.	Commissioner (Appeals), Customs, Coimbatore.

Subject: Revision applications filed under Section-129DD of the Customs Act, 1962 against the Order in Appeal No. CMB-CEX-000-APP-111-14 dated 05.08.2014 passed by the Commissioner of Customs (Appeals), Coimbatore.

ORDER

This Revision application is filed by M/s Sri Gautam Tex, Tirupur (hereinafter referred to as the 'applicant') against the Orders-In-Appeal No. CMB-CEX-000-APP-111-14 dated 05.08.2014 passed by the Commissioner of Customs (Appeals), Coimbatore.

2. The Brief facts of the case are that the applicants were granted drawback amount of Rs. 30,63,863/- for the exports made by them. However, the applicant could not produce the relevant Bank Realisation Certificates (BRCs) to the drawback sanctioning authority within the period allowed under the Foreign Exchange Management Act, 1999 including any extension of such period granted by the Reserve Bank of India. As such the drawback recovery of Rs. 30,63,863/- was proposed by issuance of the Show Cause Notice to the applicant. The Adjudicating Authority vide Order in Original No. 78/2012-BRC dated 21.07.2012 ordered the recovery of the said drawback amount from the applicant.

3. The applicant being aggrieved by the said order in original filed appeal before Commissioner (Appeals) of Customs, Coimbatore. The Appellate Authority vide impugned order in appeal dismissed the case as time barred. The Appellate Authority had observed that :-

3.1 The statutory time frame to file an appeal against the order of an officer below the rank of Commissioner before Commissioner (Appeals) is 60 days from the date of receipt of the decision or order.

3.2 It is provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within 60 days, allow a further period of 30 days.

3.3 The applicant had received the order in original on 21.07.2012. Thus the normal statutory time of 60 days for filing appeal is on or before 24.09.2012. For consideration of further period of 30 days (condonable period) by the Appellate Authority, the appeal ought to have been filed on or before 24.12.2012. However, the applicant filed the same on 09.06.2014.

4. Being aggrieved, applicant has filed the instant revision application before Central Government under Section 129DD of Customs Act, 1962, on the grounds that:-

4.1 The manufacturing unit met with a severe fire accident on 12.07.2010 resulting in huge loss and also burning of all important documents. Hence on receipt of the SCN the appellant requested their CHA to inform the department regarding the fact of submission of all pending BRCs for which the CHA informed that the BRCs were already filed. However, the CHA informed that the department wanted a letter to the above effect. Accordingly, the applicant requested vide letter dated 24.11.2010 addressed to the department to allow time to produce the same.

4.2 The applicant received a letter dated 28.02.2013 from the department directing them to make the payment of drawback amount as per the Order in Original No. 78/2012 dated 21.07.2012. However, the applicant had not received the order in original and a copy of the same was received on 18.05.2014 alongwith the letter dated 17.05.2014 from the department.

4.3 The Order in Original was dispatched to the applicant and the postal AD was signed by Shri Chinnathambi on 21.07.2012, a Security Personnel. Hence the communication has been served on a wrong person, who in no way connected to the applicant. Hence, it is submitted that the Order in Original was not served on the applicant at all.

4.4 The appellate authority rejected the appeal without taking into consideration of the fact that they had actually received the order in original only on 18.05.2014 and the appeal was filed within time limit from the date of actual receipt of the order.

4.5 The Adjudicating Authority had passed the Order in Original without observing the principles of natural justice of granting the personal hearing.

5. A Personal Hearing was held in matter on 15.10.2017. Shri R. Easwara Murthy, Partner of the applicant attended the same.

6. The Government finds that Section 153 of the Customs Act, 1962 deals with the service of order, decision etc. The Section 153 of the Customs Act, 1962 reads as under :-

SECTION[153. Modes for service of notice, order, etc.-(1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely:—

(a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;

(b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;

(c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;

(d) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or

(e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.

6.1 In the instant case, Government observes that the departmental officers have dispatched the order in original by Registered AD and have received the acknowledgement of the delivery of it at the address of the

applicant. The Government, therefore, finds that the department had taken obligatory steps to serve the order to the applicant.

6.2 The Government also observes that the department had dispatched the order in original by following legal procedure laid down under Section 153 of the Customs Act, 1962. The receipt of the said order in original was acknowledged by person at the address on 21.07.2012. The Government, however, notes that the said order in original is stated to have been received by a security guard who in turn did not communicate the receipt of it to the applicant. In view of the same, taking a lenient view and in view of the circumstances of fire accident and the fact that BRCs have been produced, the Government finds that the contention of the applicant that the order was not served to the authorised person appears to be coherent. The Government, therefore, holds that the assumption of date of receipt of order on 21.07.2012 by the applicant would be inappropriate. The Government observes that the applicant had received the impugned order on 18.5.2014 in reply to their application to the Customs Department and the appeal has been filed against it on 09.06.2014 i.e. within the stipulated period.

6.4 The Government opines that essence of justice requires that a person who is to decide the case must give the respondent a fair hearing before him enabling them to state their case and view. Fairness is flexible, pragmatic and relative concept and not a rigid, ritualistic or sophisticated abstraction. In the instant case, the Government finds that the applicant was not given proper opportunity of hearing to defend the case.

7. In view of above discussion, Government remands the case back to the Appellate Authority with directions to pass fresh order based on merit of the case based on the written reply and the export documents submitted by the applicant. The applicant is directed to furnish all relevant export documents within a period of six weeks for verification to the Appellate Authority. The

Appellate Authority will complete the requisite verification expeditiously and pass a speaking order within six weeks of receipt of said documents from the respondent after following the principles of natural justice.

8. The appeal is disposed of in the above terms.

9. So, ordered.



(SEEMA ARORA)

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

To

M/s Sri Gautam Tex,
4-B, Gopal Nagar,
Near K.V.R. Layout,
Karuvampalayam,
Tirupur- 641 604.

Copy to:

1. The Principal Commissioner of Customs, Central Goods & Service Tax, 6/7, A.T.D. Street, Race Course Road, Coimbatore- 641 018.
2. The Commissioner of Customs & CGST (Appeals), 6/7, A.T.D. Street, Race Course Road, Coimbatore- 641 018.
3. The Deputy / Assistant Commissioner of Customs, ICD, CONCOR, Tirupur.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file
6. Spare Copy.