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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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. No. 371/78/DBK/2020-RA

6679

Date of Issue:

12.09.2023

ORDER NO. 642/2023-CUS (WZ) /ASRA/Mumbai 08.9.23 DATED  
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. Dharia Switchgears & Controls P. Ltd.,  
Dharia House, Plot No. D-3,  
MIDC Phase-II, Manpada Road,  
Dombivli(East), Thane,  
Maharashtra - 421 204.

Respondent : Pr. Commissioner of Customs (Export),  
Air Cargo Complex, Mumbai.

Subject : Revision Application filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTOMS-APP-1138/2019-20 dated 17.01.2020  
passed by the Commissioner of Customs (Appeals),  
Mumbai, Zone - III.

**ORDER**

The subject Revision Application has been filed by M/s. Dharia Switchgears & Controls P. Ltd., Dharia House, Plot No. D-3, MIDC Phase-II, Manpada Road, Dombivli(East), Thane, Maharashtra - 421 204 (here-in-after referred to as 'the applicant') against the Order-in-Appeal No. MUM-CUSTOM-AXP-APP-1138/2019-20 dated 17.01.2020 passed by the Commissioner of Customs (Appeals), Mumbai, Zone - III which decided an appeal filed by the applicant against the Order-in-Original No. AC/JD/2422/2017-18/DBK(XOS)/ ACC dated 27.03.2018 passed by the Assistant Commissioner of Customs, DBK (XOS), ACC, Mumbai, which in turn had confirmed the demand seeking to recover Drawback sanctioned to the applicant.

2. Brief facts of the case are that the applicant was issued a Show Cause cum Demand Notice seeking to recover the Drawback amounting to Rs. 1,55,596/- sanctioned to them, as it appeared that they had not realized the foreign exchange involved on the goods exported by them as required under Rule 16(A) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 (DBK Rules, 1995). The same was issued as the applicant had failed to respond to the Facility Notice No. 05/2017 dated 07.06.2017 and Public Notice No. 24/2017 dated 17.07.2017 vide which the applicant, along with several other exporters, were called upon to submit the BRC's/Negative statements in respect of the consignments on which Drawback was claimed. The applicant failed to respond to the Show Cause Notice and hence the original authority, vide Order-in-Original dated 27.03.2018, confirmed the demand raised and imposed a penalty of Rs. 10,000/- under Section 117 of the Customs Act, 1962. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals). The said appeal was dismissed by the Commissioner (Appeals) without going into the merits of the case, as it was found that the appeal was time barred and filed even beyond the condonable period of ninety days.

3. Aggrieved, the applicant has filed the subject Revision Application against the impugned Order-in-Appeal on the following grounds:-

3.1. We would like to clarify that the Commissioner of Customs did not take cognizance of the fact that Certified Copy of O-I-0 No.AC/JD/2422/2017- 18/DBK (XOS)/ACC dated 27.03.2018, was issued with the approval of Commissioner of Customs(X), ACC Mumbai dt. 06/11/2019 as per standing Instructions No.01/2018 dt 14.03.2018, the same being endorsed on the certified copy of Order in Original.

3.2. We would also like to clarify that the Commissioner of Customs, disposed off the order without issuing any notice for personal hearing & without providing us an opportunity of being heard for giving clarifications.

3.3. By denying personal hearing and not providing opportunity for clarification we have been denied of Natural Justice which is an important part of the Administrative Law.

3.4. Also Commissioner Of Customs (Appeals) has not taken into consideration, the case law where it has been upheld by Government of India in Revision of Application Filed by M/s. Karl Hogan Clothing Pvt. Ltd. Mumbai against the Order -In- Appeal No.527/Mumbai-III/2012 passed by Commissioner of Customs (Appeals), Mumbai Zone -III with respect to Order-In-Original passed by the Asst. Commissioner of Customs, DBK (XOS), ACC, Sahar, Mumbai. Where Joint Secretary (Revision Application) has mentioned that Demand of already sanctioned Drawback Claim can be confirmed only if Export sales proceeds are not received in time. Since export sale proceeds have been realized within stipulated time period, as such demand is liable to be dropped if the said BRC's are found valid on verification.

4. Personal hearing in the matter was granted to the applicant on 27.04.2023 and Shri Hemal D. Randeria, Consultant appeared on behalf of

the applicant and submitted a written submission. He submitted that they came to know about the OIO only when their consignment was held up based on alert in the EDI. He submitted that once they received OIO they immediately filed appeal within time. He further submitted that all relevant remittances have been received and Commr(A) has rejected appeal without considering their submissions. He requested to allow the application.

5. Government has carefully gone through the relevant case records available in case files, the written and oral submissions and also perused the impugned Order-in-Original and the Order-in-Appeal.

6. Government notes that the Commissioner (Appeals) vide the impugned Order-in-Appeal has found the appeal of the applicant to be time barred and has dismissed the same without going into the merits of the case. Government also notes that Commissioner (Appeals) has computed the time limit by taking into account the date on which the Order-in-Original dated 27.03.2018 was issued. The applicant on the other hand has submitted that they never received a copy of the said Order-in-Original and became aware of the same only when their consignment was held up based on alert in the EDI. He submitted that once they received OIO subsequent to which they filed the appeal before the Commissioner (Appeals) on 26.11.2019. Government finds that a certified copy of the said Order-in-Original was given to the applicant with the approval of the Commissioner of Customs(X) on 06.11.2019. Government notes that Section 128(1) of the Customs Act, 1962 provides that the sixty day period for filing of appeal before the Commissioner (Appeals) has to be computed from the date of communication of the Order-in-Original to the parties concerned. On examining the impugned Order-in-Appeal, Government finds that no evidence has been recorded by the Commissioner (Appeals) to indicate that the impugned Order-in-Original was served/communicated to the applicant. Government finds that no evidence has been adduced by the Department before the Commissioner (Appeals) or during the course of these proceedings to indicate that the said Order-in-Original dated 27.03.2018 was served on the applicant prior to the date on which they were given a copy of the same

on 06.11.2019. Given these facts, Government finds that the applicant received a copy of the impugned Order-in-Original on 06.11.2019 and have filed an appeal against it on 26.11.2019, which is well within the prescribed time limit of sixty days. Thus, Government finds that the Commissioner (Appeals) has erred in computing the time limit by taking the date of the issue of the Order-in-Original in account rather than the date of communication of the same to the applicant, as required by the law. In view of the above, Government finds the decision of the Commissioner (Appeals) to hold the appeal of the applicant to be time barred to be incorrect and hence sets aside the impugned Order-in-Appeal No. MUM-CUSTOMS-APP-1138/2019-20 dated 17.01.2020.

7. Further, Government finds that the applicant has submitted that the BRCs required by the Department and also that they have received the payments in foreign exchange with respect to all the export consignments in question. Government finds that the issue needs to be re-examined by the Original authority by taking into account the submissions of the applicant and hence remands the case back to the original authority for being decided afresh. The applicant should be provided sufficient opportunity to place on record their submission in the matter.

8. The Revision Application is allowed in the above terms.

  
(SHRAWAN KUMAR)

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

ORDER No. 642/2023-CUS (WZ) /ASRA/Mumbai dated 08.9.23

To,

M/s. Dharia Switchgears & Controls P. Ltd.,  
Dharia House, Plot No. D-3,  
MIDC Phase-II, Manpada Road,  
Dombivli(East), Thane,

Maharashtra - 421 204.

Copy to:

1. Commissioner of Customs (Export), Air Cargo Complex, Mumbai.
2. Commissioner of Customs (Appeals) Mumbai, Zone - III.  
5<sup>th</sup> floor, Awas Corporate Point, Makwana Lane, Behind S.M. Centre,  
Andheri - Kurla Road, Marol, Mumbai - 400 059.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.