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F.Nos. 373/50/DBK/13-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..9-4-14.....

ORDER NO. _____ 65/14-Cus DATED 07.04 .2014 OF THE GOVERNMENT OF
INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF
INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

SUBJECT : REVISION APPLICATION FILED, UNDER SECTION
129 DD OF THE CUSTOMS ACT 1962 AGAINST THE
ORDER-IN-APPEAL No. 23/13 (TTN) dated 28.03.13
passed by Commissioner of Customs (Appeals),
Trichy

APPLICANT : M/s S. Duraisamy and Sons, 1-A, Old Natham Road,
Madurai – 625 014

RESPONDENT : Commissioner of Customs, Tuticorin

ORDER

This revision application is filed by M/s S. Duraisamy and Sons, 1-A, Old Natham Road, Madurai – 625 014 against the order-in-appeal No. 23/13 (TTN) dated 28.03.13 passed by Commissioner of Customs (Appeals), Trichy with respect to order-in-original No. 743/12 dated 25.07.12 passed by Assistant Commissioner of Customs, ICD Station John Tuticorin.

2. Brief facts of the case are that the applicants have exported goods through St. John ICD, Tuticorun valued at Rs.1,36,84,218/- under 14 shipping bills during the period May 2008 to August, 2008. The goods were exported under drawback scheme at All Industry Rates under Section 75 of the Customs Act, 1962. The exporter was sanctioned and paid drawback amount for the above export. On verification of documents by the DRI, Coimbatore it was found that the applicant had availed drawback incentives for the export of cotton woven readymade garments, but had not realized sale proceeds from their foreign buyers M/s Samar Spa, Italy during the period 2008-09. Hence the DRI has issued a show cause notice to the applicant to demand Rs.7,70,268/- along with interest and to appropriate the amount of Rs.7,70,268/- already paid by them. After due process lower authority has demanded and appropriated the amount of Rs.7,70,268/- and demanded interest of Rs.2,94,016/- under Section 75(A) 2 of the Customs Act, 1962.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the same as time barred since it was filed after a delay of more than 30 days.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 129 DD of Customs Act, 1962 before Central Government on various grounds :

4.1 We are a small scale hosiery garment manufacturer. We are a family owned partnership firm. We are in the export market for the last nine years. We were exporting to customers in countries like Italy, Netherlands, Switzerland, Cyprus, and Germany. The export made to one of our Italy customer M/s Samar Spa, we have made all out efforts to realize the export proceeds of Rs.81,34,047/- but in vain. Because of this non-realization, our company came to a standstill position and could not run the business smoothly and could not execute export orders. By disposing of some of the family properties we are trying to continue the export business. This is the first time we are experiencing the non-realization of export proceeds and return of DBK amount to the Government.

4.2 On the basis of our submission of half yearly consolidated Bank realization report, certified by the Chartered Accountant to the respective Customs authorities, we have received phone call from the Directorate of Revenue Intelligence, Coimbatore about the non-realization of export proceeds. The DRI officials verified all our export records and orally instructed us to return to DBK amount availed on the non-realized export proceeds and also informed us that if we return this DBK amount of Rs.8,25,767/- fully, we would not be penalized either by interest or any type of penalty. We have fully returned the DBK amount of Rs.8,25,767/- to the Government. Also we have paid the interest demand of Rs.2,94,016/- through a bank draft with reserved out right to get back this interest amount.

4.3 We are taking all efforts to get export orders and we have succeeded in our efforts. We assure you that we will contribute our might for our country's export and to reduce the trade balance.

5. Personal hearing scheduled in this case on 21.03.14 at Chennai was attended by Shri P. Velusamy, Manager of Company on behalf of the applicant who reiterated the grounds of revision application.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. Government notes that in this case, Commissioner (Appeals) has rejected the appeal of applicant on the ground of time limitation. So, before considering the merits of the case, it has to be first examined whether appeal was rightly rejected as time barred or not. In this case impugned order-in-original was received by applicant on 02.08.12 and appeal was filed before Commissioner (Appeals) on 28.02.13. The initial period of 60 days for filing appeal expired on 01.10.12. As such appeal was filed after a delay of 5 months. So, the above said factual details are not in dispute. As such the appeal filed after a delay of 5 months is clearly time barred in terms of Section 128 of Customs Act 1962.

7.1 The relevant statutory provisions of filing appeal as contained in sub-section (1) of section 128 of Customs Act are reproduced below :-

" (1) Any person aggrieved by any decision or order passed under this Act by a Customs Officer, lower in rank than a Commissioner of Customs, may appeal to the Commissioner of Customs (Appeals) hereafter in this Chapter referred to as the [Commissioner (Appeals)] within sixty days from the date of 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."

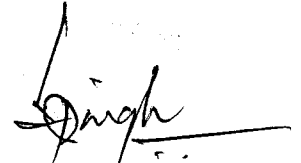
From above provision, it is quite clear that Commissioner (Appeals) has the power to condone delay upto 30 days, whereas delay involved in this case is more than 4 months. Government notes that Hon'ble Allahabad High Court in the case of M/s India Rolling Mills (P) Ltd. 2004 (169) ELT 258 (AL) has held that Commissioner (Appeals) cannot condone delay in filing appeal beyond 30 days. Similar view is taken by Hon'ble Delhi High Court in the case of M.R. Tobacco vs. UOI 2004 (178) ELT 137(Del HC-DB) and in the case of M/s Delta Impex vs. CC 2004 (173) ELT 285 (Del.HC). Now Supreme Court has finally held in the case of Singh Enterprises vs. CCE Jamshedpur 2008 (221) ELT 163(SC) that Commissioner (Appeals) is empowered to condone delay upto 30 days and has no power to allow appeal to be presented beyond

the delay of 30 days. In view of above position, Government holds that Commissioner (Appeals) has rightly rejected the said appeal as time barred.

8. Government notes that revision application cannot be accepted in a case where appeal was rejected by Commissioner (Appeals) as time barred since Government has not power to condone such delay exceeding 30 days. As such this revision application being not maintainable is rejected without going into merits of the case.

9. The revision application thus stands rejected in terms of above.

10. So ordered.



(D.P. Singh)

Joint Secretary(Revision Applicatoin)

M/s S. Duraisamy and Sons,
1-A, Old Natham Road,
Madurai – 625 014

Attest/

(Name of the Assistant Commissioner)
C.B.L.G-O.S.D. (Revision Application)
विश्व मन्त्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
New Delhi/Govt. of India
New Delhi/New Delhi

Order No. 65/14-Cus Dated 07.04.2014

Copy to:

1. The Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin – 628 004.
2. The Commissioner of Customs (Appeals), No.1, Williams Road, Cantonment, Trichirapalli – 620 001.
3. Assistant Commissioner of Customs, St. John ICD Depot, 1663/2B, Harbour Express Bye Pass Road, Tuticorin – 628 008
4. PA to JS(RA)
5. Guard File.
6. Spare Copy

Attest
(Official Seal/Stamp)
रजिस्ट्रार/Assistant Commissioner
C.B.E.C.-G.S.D. (Revision Appraisal)
वित्त मंत्रालय (राज्य वित्त)
Ministry of Finance (Dept. of Rev.)
आर.ए.ए.ए./Govt. of India
आर.ए.ए.ए./New Delhi