

SPEED POST
REGISTERED 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.371/361/DBK/2019/600

Date of Issue: 01.02.2023

ORDER NO. 68/2023-CUS (WZ) /ASRA/Mumbai DATED 30.01.2023 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 DVN Traders,
A-23/24, Pranik Garden, Mahavir Nagar,
Kandivali West, Mumbai – 400 0067.

Respondent : 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-124/19-20 dated 24.05.2019 passed by the Commissioner of Customs (Appeals), Mumbai, Zone - III.

ORDER

The subject Revision Application has been filed by M/s DVN Traders (here-in-after referred to as 'the applicant') against the Order-in-Appeal dated 24.05.2019 passed by the Commissioner of Customs (A), Mumbai, Zone - III, which decided an appeal filed by the applicant against the Order-in-Original dated 31.03.2017 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.6,59,357/- 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 Public Notice No.19/2015 dated 02.12.2015 and Facility Notice No.08/2016-17 dated 18.08.2016 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 31.03.2017, confirmed the demand raised. 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:-

(a) They never received the Show Cause Notice, the intimation regarding the Personal Hearing or the Order-in-Original which was passed by ex-parte;

- (b) That they became aware of the said Order-in-Original only when their shipments for export were withheld by the Customs Authorities due to an IEC alert having been fed in the EDI system and their bank accounts frozen by the Tax Recover Cell of the Customs Department;
- (c) That they obtained the copy of the said Order-in-Original from the RTI Section of the Customs Department and thereafter filed appeal before the Commissioner (Appeals) within the prescribed time limit;
- (d) That the Commissioner (Appeals) had incorrectly interpreted the provisions of Section 153 of the Customs Act, 1962 as the copy of the Order-in-Original was never served on them;
- (e) That the Commissioner (Appeals) failed to appreciate that they could file an appeal only on receipt of the Order-in-Original and that they had presented the Revision Application within three months from the date of communication of the Order-in-Appeal.

In view of the above the applicant requested for the impugned Order-in-Appeal and the Order-in-Original to be set aside.

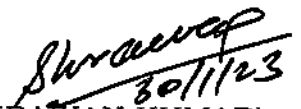
4. Personal hearing in the matter was granted to the applicant on 16.11.2022 and Shri Vishal Dinesh Choksi, and Mrs. Sudha D. Choksi, both authorized representatives of the applicant appeared online for the same. They submitted that they came to know about the instant Order-in-Original when their consignment was stopped based on an alert inserted in the EDI. They submitted that appeal had been filed within time before the Commissioner (Appeals) once they came to know about the Order-in-Original. They further submitted that full foreign exchange remittance relating to this drawback amount had been realized. They requested to allow their claim.

5. Government has carefully gone through the relevant case records, 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 31.03.2017 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 export consignments were held up in the year 2019. They have also submitted that they pursued the issue with the Department and thereafter obtained a copy of the said Order-in-Original under the RTI Act on 30.04.2019 and filed appeal before the Commissioner (Appeals) in the month of May 2019 as indicated by the impugned Order-in-Appeal. 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 31.03.2017 was served on the applicant prior to the date on which it was provided under the RTI Act on their request. Given these facts, Government finds that the applicant received a copy of the impugned Order-in-Original on 31.04.2019 and have filed an appeal against it in the month of May 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 dated 24.05.2019.

7. Further, Government finds that the applicant has submitted that they have received full foreign exchange remittance in respect of the consignment for which the drawback is sought to be recovered. In view of the above, Government finds that the issue needs to be re-examined 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. 68/2023-CUS (WZ) /ASRA/Mumbai dated 30.01.2023

To,

M/s DVN Traders,
A-23/24, Pranik Garden, Mahavir Nagar,
Kandivali West, Mumbai – 400 0067.

Copy to:

1. Commissioner of Customs (Export), Air Cargo Complex, Mumbai.
2. Commissioner of Customs (Appeals) Mumbai, Zone – III,
5th 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.