

F.No. 380/47/DBK/2014-R.A.

F.No. 380/47/DBK/2014-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... 6/7/18

Order No. 75/18-Cus dated 03-7-2018 of the Government of India passed by Shri R. P. Sharma, Principal Commissioner & Additional 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. A256/Cus/(DBK)/Kol/P/2013 dated 18.11.2013, passed by the Commissioner of Customs (Appeals), Kolkata

Applicant : Commissioner of Customs, Kolkata

Respondent : M/s Jaikishan Dass Mall Jute Product Pvt Ltd.

A Revision Application No. 380/47/DBK/2014-RA dated 25.02.2014 is filed by the Commissioner of Customs, Kolkata (herein after referred to as the applicant) against the Order-In-Appeal No. A256/Cus/(DBK)/Kol/P/2013 dated 18.11.2013, passed by the Commissioner of Customs (Appeals), Kolkata, whereby the appeal of M/s Jaikishan Dass Mall Jute Product Pvt Ltd (herein after referred to as the respondent) was allowed against the Order of the Additional Commissioner of Customs dated 28.02.2012 for the reasons that the department has failed to prove that the goods exported were not jute twine but were jute yarn. The applicant has also filed an application for condonation of delay of 1 day on account of procedural faults in the Commissionerate.

2. The Revision Application has been filed by the revenue mainly on the grounds that the Commissioner (Appeals) has not appreciated that the respondent has exported jute yarn only and they have paid^p excess drawback with interest which amounts to accepting the fact that goods exported are jute yarn and not the jute twine.

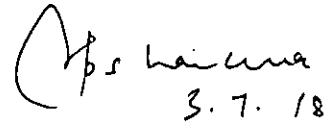
3. A Personal hearing was held on 13.06.2018 and Sh. Aminesh Das, Superintendent, appeared on behalf of the applicant and reiterated the grounds of revision already stated in their revision application. However, no one from the respondent appeared for personal hearing and no request for any other date of hearing was also received from which it is implicit that the respondent is not interested in availing the personal hearing.

4. Government has examined the matter and it is observed that the revision application is delayed by 1 day and it is accepted by the applicant itself. However, no application for condonation of delay is filed along with the revision application and instead a note signed by the Additional Commissioner of Customs, SIIB, Kolkata is enclosed which is not addressed to any authority. Therefore, it can not be considered an application for condonation of delay. Further, even if it is accepted as an application, the reason for 1 day delay is stated to be procedural fault in the Commissionerate. However, nature of procedural fault and how it prevented the applicant in filing the revision application in time is not elaborated in the said note. The reason given by the applicant is quite vague and it is rather clear acceptance of the fact that delay has occurred not because of any reason beyond their control but was because of working lapses on the part of concerning officials only which can not be considered as sufficient cause as envisaged in Section 129 DD(2) of the Customs Act, 1962. Consequently delay is not found condonable and hence the revision application is time barred. Besides above, the revision application is not found maintainable on merit also as the applicant has not produced any concrete evidence to establish that the respondent had exported jute twine of lesser than 20000 decitex. Undisputedly the goods were declared as jute twine by the respondent in their Shipping bill and the same were allowed for export by the Customs authorities after required examination of the goods. No sample of the exported goods was obtained obviously because the

departmental authorities did not have any doubt with regard to the nature of goods declared by the applicant and the dispute has been raised much after the goods were exported and when these are not physically available for verification. In fact the departmental case is entirely based on the premise that the respondent had mentioned some code number in their documents and on analysing thereof it was gathered that the exported jute items were of less than 20000 decitex which could not be jute twine. The analysis of code number given in the export documents is stated to be based on an officers visit to the Institute of Jute Technology, Kolkata and his discussion with a professor of that institute and a book titled as "Technical Handbook on Physical Testing of Jute Fibres and Yarns" written by Sh. Asis Mukhopadhyay and published by Institute of Jute Technology, Kolkata. However, the name of Professor with whom the matter was discussed is not revealed in the revision application and no written opinion from any professor is also produced in support of their say. Even the relevant extracts of the above mentioned book is not provided along with the revision application or otherwise and the officer appearing for the applicant during the personal hearing also failed to produce any concrete evidence that the respondent had exported the jute yarn and not the jute twine. The payment of some amount by the respondent during the investigation by accepting that they had claimed excess drawback of duty can not be considered as clinching evidence to prove department charge that they had exported only the jute yarn. Thus, the Government finds that the

applicant's case is based on presumption and assumption and is not supported by any substantive evidence to establish that the respondent did not export jute twine. Hence, the Government does not find any reason to interfere with the order of Commissioner (Appeals).

5. Accordingly, the Revision Application filed by the department is rejected.


3.7.18

(R.P.Sharma)

Additional Secretary to the Government of India

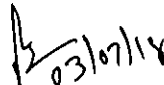
Commissioner of Customs (Port),
15/1, Strand Road, Customs House,
Kolkata -700001

Order No. 75/2018-CW dt. - 03-7-18

Copy to:-

1. M/s Jaikishan Dass Mall Jute Product Pvt. Ltd, 12, Ho Chi Minh Sarani, Kolkata 700071.
2. The Commissioner (Appeals), Customs House, Strand Road, Kolkata 700001
3. The Additional Commissioner of Customs, SIIB, Customs House, Kolkata 700001.
4. PS to RS (Revision Application)
5. Guard File
6. Spare Copy.

ATTESTED


03/07/18
(Ravi Prakash)
OSD (RA)

8/10/2018

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