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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. 371/33/DBK/14-RA / 2025

Date of Issue: 28.11.2018

ORDER NO. 807/2018-CUS (WZ) /ASRA/Mumbai DATED 16-10-2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : M/s. Citizen Trading Co.,  
1/5, Nishan Pada Cross Lane,  
Mumbai 400 009

Respondent : Commissioner of Customs(Appeals), Mumbai-II, JNCH, Nhava Sheva, Taluka Uran, Dist. Raigad, Maharashtra 400 707.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 1364/CFS-Mulund/2013/JNCH/EXP-263 dated 18.12.2013 passed by the Commissioner of Customs(Appeals), Mumbai-II.

**ORDER**

This revision application is filed by M/s Citizen Trading Co., 1/5, Nishan Pada Cross Lane, Mumbai 400 009(hereinafter referred to as "the Applicant") against the Order-in-Appeal No. 1364/CFS-Mulund/2013(JNCH)/EXP-263 dated 18.12.2013 passed by the Commissioner of Customs(Appeals), Mumbai-II.

2. The Applicant had filed appeals against the Order-in-Original No. 146/2012-13 dated 12.11.2012 passed by the Assistant Commissioner of Customs, Mulund CFS confirming the demand of Rs. 22,01,551/- and interest thereon under Section 75A(2) read with Section 75(1) of the Customs Act, 1962 read with Rule 16A(1) and Rule 16A(2) of the Customs, Central Excise and Service Tax Drawback Rules, 1995. It was observed by the adjudicating authority that the Applicant had received drawback amounting to Rs. 22,01,551/- for the exports effected by them from Mulund CFS during the period 01.01.2004 to 31.12.2010 but had failed to realize the export proceeds for these exports. The BRC-pending status generated by the EDI system revealed details of the shipping bills filed by the Applicants in which realization was pending. The Authorised Dealer Code, Drawback Value, FOB Value etc. were enclosed with the above Order-in-Original. However, the Applicant failed to respond to the Demand Notice dated 20.06.2012 issued to them. They failed to produce evidence of realization of export proceeds and therefore action for recovery of drawback was initiated against the Applicants under Rule 16A(1) and Rule 16A(2) of the Customs, Central Excise and Service Tax Drawback Rules, 1995 with interest under Section 75A(2) of the Customs Act, 1962.

3.1 The Applicant filed an appeal before the Commissioner(Appeals) on the ground that the order passed by the original authority was ex-parte without verifying the records; that the adjudicating authority had not specified the time period to submit the copies of BRC's; that they had not received any notice for personal hearing; that although they had not filed any reply to the Demand Notice dated 20.08.2010, the adjudicating authority had arbitrarily passed order confirming the demand.



3.2 The lower appellate authority observed that the Applicant had filed appeal on 12.02.2013 which by their own admission was delayed by 26 days over and above the statutory period of 60 days for filing appeal under Section 128 of the Customs Act, 1962. He further observed that the proviso to Section 128(1) of the Customs Act, 1962, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of sixty days, he may allow it to be presented within a further period of thirty days. However, he then without going into the merits of the case, rejected the appeal as barred by limitation.

4. Aggrieved by the order of Commissioner(Appeals), the Applicant has filed revision application. The Applicant has filed the present application on various grounds. They have averred that the first appellate authority has failed to appreciate that they were prevented by sufficient cause from filing the appeal within the prescribed time limit of sixty days and the reasons ascribed for the delay. They further submitted that the adjudicating authority had passed an ex-parte order without granting them time to submit copies of BRC and also that they did not receive any notice for personal hearing in the matter. It was also stated that their reply to SCN vide letter dated 20.08.2010 was not considered by the adjudicating authority and that they have already submitted copies of BRC's. It was further averred that the factum of there being no revenue implication and that they were not given a reasonable opportunity to submit the relevant documents pertaining to the period from 2004 to 2010 which were more than 9 years old at that point of time was not considered. The Applicant further contended that they were not extended an opportunity to present their case on merit. On these grounds, the Applicant prays that the Order-in-Original No. 146/12-13 dated 12.11.2012 be set aside.

5. A Personal hearing was held in this case on 15.02.2018 and Shri Shashikant Shivram Mhetar, Authorised Signatory of the Applicant appeared on their behalf. With regard to the application for condonation of delay filed by them, it was stated that they had mistakenly filed appeal against the impugned Order-in-Appeal before the CESTAT and that the

CESTAT had dismissed their appeal as not maintainable and directed the Applicant to approach the appropriate authority within 30 days of communication of their order. It was submitted that the CESTAT Order was dispatched on 28.04.2014 and the Applicant had thereupon filed revision application on 12.05.2014 which was within the 30 days stipulated in CESTAT Order. The Applicant reiterated their submissions in the instant revision application and pleaded that the impugned order be set aside and the matter be remanded back to the original adjudicating authority.

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

7. Government observes that Demand Notice dated 20.06.2012 was issued to the exporter under Rule 16A of the Drawback Rules read with Section 75 of the Customs Act, 1962 calling upon them to repay the drawback amount of Rs. 22,01,551/- or to submit bank realization certificate, and the same had been confirmed by the adjudicating authority on the ground that the Applicant had failed to submit proof of receipt of export remittance. On appeal, the Commissioner(Appeals) has rejected the appeal solely on the ground that the appeal filed before him was barred by limitation as it had been filed beyond the statutory period of sixty days and since appellate authority did not find the reasons furnished by the Applicant to be sufficient cause to condone the delay beyond sixty days but within the further period of thirty days provided for under the proviso to Section 128(1) of the Customs Act, 1962.


8. The Government notes that the delay on the part of the Applicant in filing appeal before Commissioner(Appeals) beyond the statutory period of sixty days is well within the further discretionary period of further thirty days in case of sufficient cause being shown by the appellant. Although, the lower appellate authority has taken note of the fact that the statute vests him with the necessary powers to condone a further delay of thirty days beyond the period of sixty days, he rejected the appeal as barred by

limitation. It is seen that the Applicant has set out certain grounds to explain the delay in filing the appeal. As such, there do not appear to be any compelling grounds for the Commissioner(Appeals) to reject their application for condonation of delay and considering the applicants appeal on merits.

9. In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. 1364(CFS MULUND)/2013(JNCH)/EXP-263 dated 18.12.2013. Government remands the matter back to the Commissioner(Appeals) to dispose off the appeal filed by the Applicant on merits. The Commissioner(Appeals) shall allow the Applicant to submit the relevant documents, grant them opportunity to be heard and shall pass orders on merit within 8 weeks from the receipt of this order.

10. The revision application is disposed off in the above terms.

11. So ordered.

  
16X1K

(ASHOK KUMAR MEHTA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. 807 /2018-CUS (WZ) /ASRA/Mumbai DATED 16/10/18

To,

M/s. Citizen Trading Co.,  
1/5, Nishan Pada Cross Lane,  
Mumbai 400 009

Copy to:

1. The Commissioner of Customs(General), NCH, Mumbai,
2. The Commissioner of Customs(Appeals), Mumbai-II, JNCH, Nhava Sheva, Taluka Uran, Dist. Raigad,
3. The Deputy Commissioner, TCU(Gen.), NCH, Mumbai,
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.