

REGISTERED
SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 371/24/DBK/17-RA / 2119

Date of Issue 28.11.2018

ORDER NO. ⁸⁶² /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 29.10.2018 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.Stovec Industries Ltd.

Respondent: Commissioner of Central Goods & Services Tax,
Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in- Appeal No.34/2011(Ahd-1) CE/MM/Commr (A)/Ahd dated 24.03.2011 passed by the Commissioner (Appeals-V) Central Excise, Ahmedabad.



ORDER

The instant Revision application is filed by M/S. Stovec Industries, Ahmedabad against the Order in Appeal No.34/2011 (Ahd-1) CE/MM/Commr (A)/Ahd dated 24.03.2011 passed by Commissioner (Appeals-V), Central Excise, Ahmedabad in respect of Order in Original No. 1/JC/DBK/2010 dated 30.06.2010 passed by the Joint Commissioner (Tech), Central Excise, Ahmedabad.

2. Brief facts of the case are that M/s. M/S. Stovec Industries Ltd., are manufacturer exporters and effected export of Rotary Printing Machine under Shipping Bill No.1338446 dated 19.08.2008 and filed application for Brand Rate of Drawback under Rule 7(1) of the Customs and Central Excise Duties and Service Drawback Rules, 1995 on 31.12.2008. Under the said Rules, Drawback is to be filed within 60 days from the date of exports. However, the applicant had filed the Brand Rate fixation letter with a delay of 73 days from the stipulated period. In view of Rule 17 of the Rules, which empowers the Central Government to condone the delay considering any representation made by the exporter, the applicant vide their letter dated 21.04.2009 had requested for condonation of delay.

3. A show-cause Notice was issued by the department proposing to reject the application for delay in submission of the application beyond the statutory time prescribed under Rule 7 of the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995 and the said application was rejected by the Adjudicating Authority. Aggrieved by the said order, the applicant preferred an appeal before the Commissioner (Appeal). On examination of the matter, Commissioner (Appeals) upheld the Order of the lower authority observing that the delay beyond the statutory period can only be condoned by the ministry under the Drawback Rules and no such condonation letter by the Ministry is submitted by the applicant.

4. The applicants filed an appeal with CESTAT against the Order-In-Appeal. CESTAT vide its order dated 17.3.2017 dismissed the appeal as non-maintainable with liberty to the appellant to file the revision application



before the appropriate forum. Hence the present application has been filed by the applicant on 14.07.2017.

3. Personal Hearing was held on 23.10.2018. Shri. Vijay Moolani, Asst. Company Secretary & Asst. Manager appeared on behalf of the applicant and submitted a copy of CBEC letter dated 20.05.2011 condoning the delay beyond 90 days in submission of the Brand Rate application. He has requested for consideration of the same and pleaded for allowing the Revision Application.

4. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the applicant's submissions.

5. It is evident from the facts that the applicant had applied for Brand Rate fixation of drawback under Rule 7 of the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995 on grounds that All India Rate (AIR) of drawback determined for the exports under Shipping Bill No. 1338446 dated 20.08.2008, is less than four-fifth of the duties or taxes paid on the exports. Under the said rules, the application has to be submitted within 60 days from the date of export. However, in the instant case the applicants have submitted the application with a delay of 73 days.

6. Rule 17 of the Drawback Rules provides for exemption or relaxation of any of the provisions of these rules by the Central Government. Under this Rule, the applicants have made an application to the Central Government on 21.04.2009 for condonation of delay in submission of the application. However, they have not received any communication in this regard from the Central Government till the date i.e. 24.03.2011, appeal is decided by the Commissioner (Appeals).

7. The Government finds that the applicant have submitted Drawback Divisions letter F.No.609/B-116/2009-DBK dated 20.05.2011 informing that their application for condonation of delay in respect of Brand Rate Shipping Bill No.1338446 dated 20.08.2008 has been considered favourably for relaxation of time limit beyond 90 days. The said letter was issued to the applicant subsequent to the appeal before the Commissioner (Appeals).



8. The Government observes that the relaxation letter dated 20.05.2011 issued by the Drawback Division of Central Board of Excise and Customs is a new material submission crucial to the facts of the case requiring consideration by the Brand Rate fixation authorities.

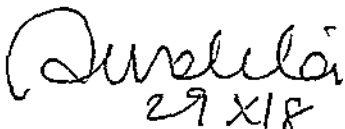
8. In view of the above discussion and findings, the Government holds that order of the Commissioner (Appeals) is liable to be aside and case be remanded to the Original Adjudicating Authority for consideration of the applicants Brand Rate fixation claim favourably in respect of exports made under Shipping Bill No.1338446 dated 20.08.2008, taking into account the Relaxation letter dated 20.05.2011 issued by the Drawback Division of Central Board of Excise and Customs.

9. The Order-in-Appeal No.34/2011 (Ahd-1) CE/MM/Commr (A)/Ahd dated 24.03.2011 passed by Commissioner (Appeals-V), Central Excise, Ahmedabad is set aside. Case is remanded to the Original Authority to pass appropriate orders within 8 weeks from the receipt of the order following the principles of Natural Justice in accordance with the above mentioned observations of the Government and Revision Application is allowed on above terms.

10. So ordered.

ATTESTED


S.R. HIRULKAR
 Assistant Commissioner (R.A.)


 29/10/18
 (ASHOK KUMAR MEHTA)
 Principal Commissioner & ex-officio
 Additional Secretary to Government of India

ORDER No. 862/2018-CUS (SZ) /ASRA/MUMBAI

DATED 29.10.2018

To,

M/S.Stovec Industries Ltd.,
 N.I.D.C, Near Lambha Village,
 Post Narol, Ahmedabad-382405.



Copy to:

1. The Commissioner of Central Goods & Service Tax, Ahmedabad (south), Central Excise Bhavan, Ambavadi-380015.
2. The Commissioner of Central Excise (Appeals), Ahmedabad.
3. Joint Commissioner (Tech), Central Excise, Ahmedabad-I.
4. Sr. P.S. to AS (RA), Mumbai
- ~~5. Guard File.~~
6. Spare Copy.

