

REGISTERED
SPEED POST



F.Nos. 371/48/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..... 21/4/14

ORDER NO. 91/14-Cus DATED 21.04.2014 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 appeal No.
227-228/M-III/2013 dated 09.05.2013 passed by
Commissioner of Customs (Appeals) Mumbai Zone-III,
Mumbai

APPLICANT : M/s Arora Combines, 205, Regal Industrial Estate,
Mumbai

RESPONDENT : Commissioner of Customs(Export), Mumbai

ORDER

This revision application is filed by M/s Arora Combines, 205, Regal Industrial Estate, Mumbai against the order-in-appeal No. 227-228/M-III/2013 dated 09.05.2013 passed by Commissioner of Customs (Appeals) Mumbai Zone-III, Mumbai with respect to order-in-original No. AC/VKT/78/2012/Adj/ACC dated 09.01.2012 passed by Assistant Commissioner of Customs, Air Cargo Complex, Sahar, Mumbai.

2. Brief facts of the case are that a demand of Rs.30,61,745/- being drawback obtained by the applicant was confirmed by the lower authority vide order-in-original No. AC/VKT/78/2012/ADJ/ACC dated 09.01.2012 as the applicant failed to produce validevidence in respect of realization of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999 and as per rule 16(A) sub rule (1) & (2) of Customs, Central Excise duties and Service Tax Drawback Rules, 1995 read with section 75 A(2) of Customs Act, 1962.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the appeal as time barred.

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 the following grounds :

4.1 The order passed by the respondent is patently illegal and without any application of mind.

4.2 The applicant respectfully states that the order-in-appeal is a cryptic order and does not specify the reasons in detail for rejection of the application of condonation of delay.

4.3 The application respectfully states that the applicant has neither received the show cause notice nor the order-in-original till date.

4.4 The applicant respectfully states that the department ought to have appreciated that in case the copy of the show cause notice dated 04.05.2010 and the personal hearing notices fixing the personal hearing dates on 16.11.2011 and 26.12.2011 were received back from the postal authorities as undelivered, the respondents could also have referred to the IEC of the applicant. As both the show cause notice as well as the order-in-original discloses the IEC of the applicant and based on the other addresses available in the IEC, the SCN as well as the personal hearing notices could very well be served at the address mentioned therein. The IEC shows the Mumbai address as "205, Regal Industrial Estate, A D Marg, Sewree West, Mumbai and this office is function since inception.

4.5 In view of the above, respondent clearly erred in not sending the SCN as well as the personal hearing notices to the Mumbai address of the applicant and for the reasons as stated above, the date of receipt of the impugned order to the applicant should be reckoned as 15.11.2012 and accordingly the appeal has been filed.

4.6 The applicant submits that the applicant has received the attested copy of the impugned order on 15.11.2012 and therefore, the appeal is within time permissible under the Customs Act.

4.7 The applicant says and submits that though they have closed their business operations applicant since 2006 and consequently vacated their office premises since 2006 situate at 699/2, R. Muthuswamy & Bros., Industrial Complex, Kamraj Road, Tirupur – 641604, however, the applicants continue to operate from the aforesaid Mumbai address viz. 205, Regal Industrial Estate, A D Marg, Sewree West, Mumbai since inception and the respondents should have served the copies of the proceedings at the known address of the applicants as seen from the IEC.

4.8 Applicant denies the findings of the Commissioner (Appeals) at para No. 2 of the order wherein it is stated that the applicant has not disputed dispatch of notice and the order. The fact is that applicant was not at all aware of the fact that the respondent had dispatched such a communication. The applicant respectfully states that the applicant only learnt about the existence of the order-in-original and show cause notice

for the first time after it was served the Recovery Notice dated 20.10.2012 on 27.10.2012 at the following address viz. "536/5, Veera Pandya, 641605" instead of the original address viz. "699/2, R. Muthuswamy and Brothers, Industrial Complex, Kamaraj Road, Tirupur – 641 604' as mentioned in the Recovery Notice. Therefore, the reliance placed upon the decision of the Hon'ble Madras High Court in the case of Manager, Central Warehousing Corporation, v/s Rita Enterprises [2008 (221) ELT 28 (Mad)] cannot be applied to the facts in the present case for the reasons as stated aforesaid.

4.9 The applicant respectfully states that the attested copy of the order-in-original was furnished to the applicant on 15.11.2012.

4.10 The applicant respectfully states that the appeal was filed on 24.12.2012 i.e. within a period of 58 days from the date of receipt of the Recovery Notice by the applicant and within a period of 39 days from the receipt of the attested copy of the order-in-original by the applicant.

4.11 The applicant respectfully states that in the present case it is obvious that the department has not complied with the provisions of Section 153 of the Customs Act and has apparently dispatched the order-in-original by speed post instead of registered post as specifically laid down under the said provision.

4.12 The applicant respectfully states that a perusal of the relevant records regarding the proof of service of the order-in-original will surely reveal the true facts regarding no/improper service of the order-in-original.

4.13 The applicant submits that the respondent ought to have appreciated and verified that no proceedings have been initiated by the FEMA authorities against the applicant for non realization of export proceeds. In view of the same, the demand of drawback amount of Rs.30,61,745/- to be recovered from the applicant / exporter is required to be set aside.

4.14 The applicant without prejudice to the aforesaid contentions submits that the non-submission of the Bank Certificate of Export and realization in form No.1 in time is a technical breach and the demand of drawback amount of Rs.30,61,745/- to be

recovered from the applicant / exporter as per the show cause notice dated 04.05.2010 alongwith interest at applicable rate deserves to be set aside.

4.15 The applicant respectfully states that it has filed the appeal within the time period of 60 days as laid down under section 128(1) of the Customs Act.

4.16 On merits, the applicant submits that the sale proceeds of the goods exported by the applicant have been duly and fully realized by the applicant and all inward remittances have been received by Tamilnad Mercantile Bank and the Federal Bank, the bankers of the applicant. The applicant craves leave to refer to and rely upon the Bank Certificate of export and realization in form No.1 in respect of drawback amount of Rs.30,61,745/- confirming receipt of export proceeds as proof of compliance of Rule 16(A) sub-Rule (1) & (2) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The applicant submits that in view of the receipt of the remittance by Tamilnad Mercantile Bank and the Federal Bank, the bankers of the applicant, with regard to the sale proceeds of the goods exported by the applicant, the demand of drawback amount of Rs.30,61,745/- to be recovered from the applicant / exporter vide show cause notice dated 04.05.2010 along with interest at applicable rate ought not to be confirmed and needs to be set aside.

5. Personal hearing held in this case on 28.01.2014, was attended by Shri V.M. Advani, Advocate on behalf of the applicant who reiterated the grounds of revision application. The hearing held on 04.04.2014 & 10.04.2014 was attended by Shri A.M. Sachwani, Advocate on behalf of the applicant who reiterated the grounds of revision application and furnished written submissions as detailed below :-

5.1 That we had appeared before your goodself at New Delhi on 04.04.2014 and during the personal hearing we had requested for one more date as we would like place on record some documents concerning with the service of the order-in-original.

5.2 That the applicant had requested the Commissioner of Customs (Exports) Air Cargo Complex, under RTI to furnish the information regarding the proof of mode of

dispatch of the order-in-original sent to M/s Arora Combines that was sent by Speed Post. The office of Commissioner of Customs (Exports) under RTI supplied the required information wherein the requisite details were furnished.

5.3 As per the said information, Speed Post EM Nos. 90139806 7 IN till 90139853 5 IN were mentioned which covered the relevant serial nos. running from 1 to 48 pertaining to all the concerned consignees/addresses to whom various letters/packets were dispatched by Speed Post.

5.4 Thereafter the applicant visited the local post office at Vile Parle from where the speed post regarding the order-in-original pertaining to M/s Arora Combines was actually dispatched to Tirupur. On enquiring with the postal staff, it was learnt that the order-in-original pertaining to M/s Arora Combines was covered under Speed Post EM No. 90139812 4 IN.

5.5 The applicant also had made the application under RTI to the Supdt. of Post Head Post office, Tirupur – 641601 on 04.03.2014 for proof of service of order-in-original pertaining to M/s Arora Combines. The copy of RTI application is annexed with the letter.

5.6 The Supdt. of Post Head Post office, Tirupur – 641601 by letter dated 17.03.2014 under RTI had furnished the reply stating that the packet which was sent EMI no.90139812 4 IN was misplaced at their end. The copy of RTI reply sent by the Supdt. of Post Head Post Office, Tirupur dated 17.03.2014 is annexed with this letter. The same be taken on record.

5.7 The applicant respectfully submits that in view of the above reply received under RTI it is clearly established that the applicant had not received the order-in-original and therefore there is no delay in filing the appeal before Commissioner of Customs (Appeals).

6. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned order-in-original and order-in-appeal.

7. On perusal of records, Government observes that Commissioner (Appeals) has rejected the appeal as time barred. Applicant has argued that they were never served show cause notice dated 04.05.2010, personal hearing notices for 16.11.2011 & 26.11.2011 and impugned order-in-original dated 09.02.2012, that they received the copy of order-in-original on 15.11.2012 alongwith department's covering letter dated 14.11.2012, that thereafter appeal was filed within 2 months on 20.12.2012.

8. This office called a report from original authority about factual position with respect to service of impugned order-in-original dated 09.01.2012. Smt. Jyoti Aggarwal, Assistant Commissioner Customs Drawback (XOS) ACC Mumbai informed vide letter F.No. S/3-Misc DBK(XOS) – 0353/2010-11 ACC dated 30.01.2014 that order-in-original dated 09.01.2012 was sent to M/s Arora Combines by speed post on 27.01.2012, and the same is deemed to have been served to the applicant. Now applicant has submitted a copy of RTI reply No. P2/RTI Act/Dlgs dated 17.03.2014 issued by CPIO & Supdts of Post officers Tirupur Division Tirupur giving information as under :-

“ The information sought for under Right to Information Act 2005 is furnished

| Point No. | Information Sought for | Reply |
|-----------|---|---|
| 1 | The Speed parcel vide No.EM901398124IN (Period within 27.01.2012 – 28.02.2012) – Adjudication letter sent from the Commissioner of Customs (Exports) Mumbai is that delivered to Arora Combines, was doing business at 699/2, R. Muthuswamy & Bros., Industrial Complex, Kamaraj Road, Tirupur – 641 604. | Concerned speed Articles No. EM90138124IN has been misplaced at our end. Hence, not delivered. |
| 2. | If the above is delivered, reveal the name of receiver with Designation, date and seal. | |
| 3. | Furnish the copy of delivery | |
| 4. | If it isnot delivered to whom and on what date it was sent back? | |
| 5. | Furnish the copy of sent back details? | |

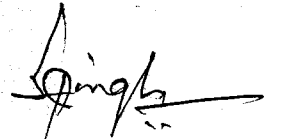
From the above RTI reply it is clear that impugned order-in-original was not served to the applicants. The department has informed that they dispatched the said order-in-original by speed post but they do not have evidence about service of same as no reply was received from postal authorities. As such the contention of the applicant that they had received impugned order-in-original only on 14.11.2012 cannot be rejected. Considering the date of receipt of order-in-original as 14.11.2012 the appeal is filed in time and cannot be rejected as time barred in terms of section 128 of Customs Act, 1962. The said section envisages that appeal may be filed before Commissioner (Appeals) within 60 days from the date of communication to him of the order-in-original. In this case, order-in-original was communicated on 14.11.12 and appeal was filed on 20.12.2012 which is well within 60 days. As such the impugned order-in-appeal cannot legally sustain.

9. As regards merits, applicant has submitted copies of all the BRCs and claimed that export sales proceeds were received by their bank within stipulated period. The BRC are required to be verified as to determine that export sale proceeds were received within stipulated period. If the BRCs are found valid, then demand is liable to be dropped. As such case is required to be remanded back for fresh consideration.

10. Government, therefore sets aside the impugned orders and remands the case back to the original authority for denovo adjudication in the light of above observations. A reasonable opportunity of hearing will be given to the concerned parties.

11. The revision application is disposed off in terms of above.

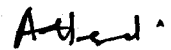
12. So ordered.



(D.P. Singh)

Joint Secretary(Revision Application)

M/s Arora Combines,
205, Regal Industrial Estate,
A.D. Marg, Sewri(W)
Mumbai - 400015



(भागवत शर्मा Bhagwati Sharma)
सहायक आयुक्त (आयुक्त) Joint Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली / New Delhi

Order No. 91/14-Cus Dated 21.04.2014

Copy to:

1. The Commissioner of Customs (Export), Air Cargo Complex, Sahar Cargo Complex, Andheri (E), Mumbai – 400 099
2. The Commissioner of Customs (Appeals), Mumbai-III, Awas Corporate Point, Makwana Lane, Behind S.M. Centre, Andheri-Kurla Road, Marol, Mumbai - 400059
3. Assistant Commissioner of Customs, DBK (XOS), ACC, Mumbai, Air Cargo Complex, Sahar Cargo Complex, Andheri E, Mumbai – 400 099
4. Shri Vijay M. Advani, Advocate, Nulwala Building, 41, Mint Road, Opp. GPO, Fort Mumbai – 400 001.
- ✓ 5. PA to JS(RA)
6. Guard File.
7. Spare Copy

ATTESTED

(B.P. Sharma)
OSD(REVISION APPLICATION)