

REGISTERED
SPEED POST



F.No. 371/63/B/12-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.. 23/4/14

Order No. 97/14-cus dated 22.04.2014 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed,
under section 129 DD of the Customs Act
1962 against the Order-in-Appeal No.
267/M-III/2012 dated 18-09-2012 passed by the
Commissioner of Customs, (Appeals), Mumbai.

Applicant : M/s. S.A.Industries,
Janabhai Patel Chawl,
Dharavi Cross Road, Dharavi,
Mumbai-400017.

Respondent : Commissioner of Customs,
5th Floor, Avas Corporate Point,
Makhwana Lane, Andheri Kurla Road,
Behind S.M. Centre, Andheri (E),
Mumbai Zone-400059.

ORDER

This revision application is filed by applicant M/s. S.A.Industries, Janabhai Patel Chawl, Dharavi Cross Road, Dharavi, Mumbai against the Order-in-Appeal No. 267/M-III/2012 dated 18-09-2012 passed by the Commissioner of Customs (Appeals), Mumbai with respect to Order-in-Original No. DC/RBP/636/10/Adj/ACC dated 19-04-2010 passed by Deputy Commissioner of Customs CSI Airport, Mumbai.

2. Brief facts of the case are that a Demand-cum-Show Cause Notice dated 08-02-2010 was issued to the applicant for recovery of drawback amount of Rs. 3,38,353/- on the ground that proof of export realization of S/Bs listed in the annexure to the Show Cause Notice were not submitted as required under the duty drawback rules. The applicant neither replied to the show cause notice nor appeared for the personal hearing. Hence the demand along with applicable interest was confirmed.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals), who rejected the same 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 mainly on the following grounds:

4.1 The sole purpose of issuance of show cause notice was the apprehension of the authority, as to the foreign exchange realized due to goods exported under such shipping bills as specified in the show cause notice, to evidence which the applicant exporter had produced concerned Bank Realization Certificates before the ACC, Sahar on March 26, 2010, as advised by him.

4.2 It is well within the knowledge of Commissioner (Appeals) that the department has accepted the fact of concerned BRCs having provided to it by the applicants, and in spite of which the demand as raised in the show cause notice was confirmed along, with the interest thereupon by Deputy Commissioner specifying the

reason thereto as '*The exporter has neither submitted reply to the show cause notice nor appeared for the personal hearing.*'

4.3 When the Order-in-Original itself was void ainitio, it was not bound upon Commissioner (Appeals) to apply limitations prescribed under the section 128 of the Customs Act 1962 to reject the appeal. It was rather forthcoming that on the ground of principle of natural justice the applicants be heard on merits of the case, considering situations underwent by them during adjudication.

4.4 It is long been held by Hon'ble Supreme Court of India that 'Limitation is a matter of procedure' [AIR 1958 SC 915], relying on which Hon'ble High Court of Uttar Pradesh-Allahabad in the matter of M/s. E Sefton & Co. Pvt. Ltd. [1993 (63) ELT 626 (All.)].

4.5 Applicants now draw your kind attention to Rule 17 of the Customs, Central Excise and Service Tax Drawback Rules, 1995, about 'power to Relax' entrusted to the Central Government.

5. Personal hearing scheduled in this case 10-04-2014 at Mumbai was held on 03-04-2014 at Delhi on the written request of applicant which was attended by Shri R.K.Sharma, advocate on behalf of the applicant who reiterated the grounds of Revision Application.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government notes that in the instant case, Commissioner (Appeals) has rejected the appeal of applicant on the ground of time limitation. So, before considering the merits of the case, it has to be first examined whether appeal was rightly rejected as time barred or not. In this case impugned order-in-original was received by applicant on 02.08.12 and appeal was filed before Commissioner (Appeals) on 28.02.13. The initial period of 60 days for filing appeal expired on

01.10.12. As such appeal was filed after a delay of 5 months. The above said factual details are not in dispute. As such the appeal filed after a delay of 5 months is clearly time barred in terms of Section 128 of Customs Act 1962.

7.1 The relevant statutory provisions of filing appeal as contained in sub-section (1) of section 128 of Customs Act are reproduced below :-

" (1) Any person aggrieved by any decision or order passed under this Act by a Customs Officer, lower in rank than a Commissioner of Customs, may appeal to the Commissioner of Customs (Appeals) hereafter in this Chapter referred to as the [Commissioner (Appeals)] within sixty days from the date of communication to him of such decision or order :

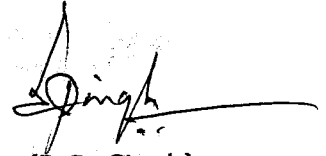
Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days."

From above provision, it is quite clear that Commissioner (Appeals) has the power to condone delay upto 30 days, whereas delay involved in this case is more than 4 months. Government notes that Hon'ble Allahabad High Court in the case of M/s India Rolling Mills (P) Ltd. 2004 (169) ELT 258 (AL) has held that Commissioner (Appeals) cannot condone delay in filing appeal beyond 30 days. Similar view is taken by Hon'ble Delhi High Court in the case of M.R. Tobacco vs. UOI 2004 (178) ELT 137(Del HC-DB) and in the case of M/s Delta Impex vs. CC 2004 (173) ELT 285 (Del.HC). Now Supreme Court has finally held in the case of Singh Enterprises vs. CCE Jamshedpur 2008 (221) ELT 163(SC) that Commissioner (Appeals) is empowered to condone delay upto 30 days and has no power to allow appeal to be presented beyond the delay of 30 days. In view of above position, Government holds that Commissioner (Appeals) has rightly rejected the said appeal as time barred.

8. Government notes that revision application cannot be accepted in a case where appeal was rejected by Commissioner (Appeals) as time barred since Government has no power to condone such delay exceeding 30 days. As such this revision application being not maintainable is rejected without going into merits of the case.

9. The revision application thus stands rejected in terms of above.

10. So ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. S.A.Industries,
Janabhai Patel Chawl,
Dharavi Cross Road, Dharavi,
Mumbai-400017.

ATTESTED

Order No. 97/14-Cx dated 22-04-2014

Copy to:

1. Commissioner of Customs, 5th Floor, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Behind S.M. Centre, Andheri (E), Mumbai Zone-400059.
2. The Commissioner of Customs, (Appeals), 5th Floor, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Behind S.M. Centre, Andheri (E), Mumbai Zone-400059.
3. Deputy Commissioner (Drawback) R office of Customs (Export), CSI Airport, Mumbai.
4. Shri. R.K.Sharma and Associates Pvt. Ltd. 157, 1st Floor, DDA Office Complex, C.M Jhandewalan Extension, New Delhi-110055.

✓ 5. PS to JS(RA)

6. Guard File.

7. Spare Copy

ATTESTED

N Devi

(Nirmala Devi)

Section Officer (REVISION APPLICATION)

(निर्मला देवी / NIRMALA DEVI)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi