

REGISTERED  
SPEED POST



F.No. 372/01/DBK/14-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 20/11/17

Order No. 5/17-Cus dated 12/11-2017 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 Custom Act, 1962.

Subject : Revision Application filed, under section 129 DD of the Customs Act—1962—against—the—Order-in-Appeal—No.10/Cus/DBK/P/640/2013 dated 12.2.2013, passed by the Commissioner of Customs (Appeals), Kolkata

Applicant : M/s R.A.Exports, Kolkata

Respondent : Commissioner of Customs, Kolkata

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**ORDER**

A revision application No. 372/01/DBK/14-RA dated 31.3.15 is filed by M/s R.A.Exports, Kolkata (hereinafter referred to as the applicant) against the Order-in-Appeal No.10/Cus/DBK/Kol/P/2013 dated 12.2.2013, passed by the Commissioner of Customs (Appeals), Kolkata who has rejected their appeal against the Order of the Assistant Commissioner of Customs.

2. The brief facts leading to the present proceeding are that the applicant received drawback amount from the Custom Department on export of goods. But later on recovery proceeding was initiated against the applicant for non-realization of export proceed and recovery of Rs.660945/- along with interest was confirmed by the Assistant Commissioner of Customs (DBK) vide his Order dated 7.6.12. Their appeal against the said OIO is also rejected by the Commissioner (Appeals) vide his above referred Order on the ground of limitation without going into the merit of the case.

3. The above revision application has been filed mainly on the ground that they had adduced enough evidence to prove that export proceeds were realized by them in time and the Commissioner (Appeals) should have adopted a liberal approach in condoning the delay.

4. A personal hearing was held in this case on 14.11.17 and it was attended by Shri O.P.Sharma, Shri Manoj Tiwari, Advocates, for the applicant, and by Shri S.Mukherjee, Assistant Commissioner of Customs (DBK), Kolkata, for the respondent. While Shri O.P.Sharma reiterated the above grounds of revision, Shri Mukherjee opposed the revision application for the reasons mentioned in the OIA and OIO.

5. On examination of the revision application, Order of the Commissioner (Appeals) and the Order of the Assistant Commissioner, it is evident that the applicant did not submit the required BRCs to the Assistant Commissioner of

Customs in their reply to the show cause notice issued for the recovery of drawback of duty amount and even during the personal hearing held on 18.1.12. As a result, the Assistant Commissioner confirmed the demand of Rs.660945/- along with interest. Subsequently, they did not file any appeal before the Commissioner (Appeals) in time. It was filed on 9.11.12 against the OIO received on 21.6.11 and that too only when they received the detention notice dated 25.10.12 for recovery of confirmed duty drawback amount. The Commissioner (Appeals) has accepted in his Order that they produced BRCs evidencing that the export proceeds have been realized within the prescribed period of one year by the applicant. But he has also recorded that they had not produced the same before the Assistant Commissioner of Custom in reference to show cause notice issued to them for recovery of the drawback amount and now he cannot entertain their appeal filed beyond 2 months from the receipt of the Order of Assistant Commissioner as he is unable to condone the delay for more than 30 days under Section 128 of the Customs Act 1962. Hence, the applicant's appeal was rejected on the ground of limitation despite merit of the case was in favour of the applicant. Government also finds that it is not empowered to condone the delay in filing the appeal before the Commissioner (Appeals) under any of the provisions of the Customs Act and accordingly no modification in Commissioner (Appeals)'s Order is warranted in this case.

6. In addition to above, as if already delayed filing of appeal before the Commissioner (Appeals) was not enough, the applicant has filed the present revision application on 31<sup>st</sup> March 2015 against the Commissioner (Appeals)'s Order dated 12.2.13. Whereas the applicant was required to file revision application within 3 months of the receipt of the Commissioner (Appeals)'s Order which they received on 16.2.13. But the applicant, instead of filing the revision application with the Government, filed an appeal before the CESTAT on 20.9.13 which was dismissed on 7.3.14 on the ground of not having jurisdiction on the matter relating to drawback of duty. But even then the applicant did not realise their mistake and still did not file revision application with the Government. On the contrary they proceeded with the CESTAT and filed an application for modification of the CESTAT's Order dated 7.3.14 which was finally rejected on 17.12.14 and thereafter the revision application has

been filed on 31.3.15 which is after the gap of more than 2 years from the receipt of Commissioner (Appeals)'s Order on 16.2.13. The applicant has pleaded that the period consumed by them in pursuing their appeal before CESTAT should be excluded for counting the limitation period for filing revision application before the Government and to support this argument they have placed reliance on Section 14 of the Limitation Act, 1963. However, the Government is not persuaded by the applicant's above contention for several reasons. First, Section 14 is not made applicable to the matters relating to customs by virtue of any section in the Customs Act or by any other legal provision. Secondly, the limitation period for filing a revision application is specified in sub-section 2 of Section 129DD of the Customs Act and it does not have any reference to Section 14 of the Limitation Act. Thirdly, even if Section 14 is applied for the present case, it is evident from Section 14 of the Limitation Act itself that the period consumed before a wrong Court is to be excluded only if the matter was pursued before the wrong Court in good faith. But evidently no good faith is visible in the present proceeding. Even if their first round of appeal before the CESTAT from 29<sup>th</sup> April 2013 to 7<sup>th</sup> March 2014 is considered to be due to their confusion, their subsequent wasting of time during the period 2<sup>nd</sup> April 2014 to 17<sup>th</sup> December 2014 by filing application for modification of CESTAT's Order dated 7<sup>th</sup> March 2014 cannot be considered to have been pursued in good faith. It was manifestly sheer persistence and recklessness on the part of the applicant whereby almost 9 months were wasted. Further even after the rejection of their application for modification on 17<sup>th</sup> December 2014, the applicant took its own time and filed the present application on 31<sup>st</sup> March 2015 only by taking more than 3 and 1/2 months. Thus even if the period of 10 months 7 days starting from 29<sup>th</sup> April 2013 to 7<sup>th</sup> March 2014 during which the first round of appeal was pursued before the CESTAT is excluded from the total delay of 2 years 15 days in filing the revision application, the applicant does not have any explanation for causing delay in filing the application by remaining more than 14 months for which even the Government is not empowered to condone. As per first proviso to sub-section 2 of Section 129DD of the Customs Act, the Central Government may allow the revision application to be presented within a further period of 3 months if it is specified that the applicant was prevented by sufficient cause from presenting the application

within the aforesaid period of 3 months. But the above detailed discussed facts reveal that there has been no sufficient cause in this case during more than 14 months which might have prevented the applicant in filing this revision application, without loss of further delay not to speak of filing in time and above all the Government is not empowered to condone the delay of above magnitude in any circumstances.

7. In this light of above discussion, the Government finds no deficiency in the Order of the Commissioner (Appeals) and the revision application filed by the applicant is rejected as time barred.

*(R.P. Sharma)*  
17.11.17

(R.P.Sharma)

Additional Secretary to the Government of India

M/s R.A.Exports  
5, Tiljala Road,  
Kolkata-700039

Order No. S/17-Cus dated 17/11-2017

Copy to:

1. The Commissioner of Customs, 15/1, Strand Road, Customs House, Kolkata-700001
2. The Commissioner of Customs (Appeals), Kolkata, M.S.Building, 2<sup>nd</sup> Floor, Customs House, 15/1, Strand Road, Customs House, Kolkata-700001
3. The Deputy Commissioner of Customs (Drawback Department), Customs House, Kolkata
4. PA to AS(RA)
5. Shri O.P.Sharma, Advocate, C/O S.K.Tiwari & Co., Ch.No.133, Patiala House Court, New Delhi-110001
- ✓ 6. Guard File.
7. Spare Copy

ATTESTED

*(Ravi Prakash)*  
17/11/17  
(Ravi Prakash)  
GSD-(RA)