

REGISTERED
SPEED POST



F.No. 372/22/DBK/2018-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..10/12/2020

Order No. 13/2020-Cus dated 08-12-2020 of the Government of India passed by Sh. Sandeep Prakash, 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. KOL/Cus(port)/AA/488/2018 dated 20.02.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s Kalpataru Power Transmission Ltd.

Respondent : Commissioner of Customs(Port), Kolkata

ORDER

A Revision Application No.372/22/DBK/18-RA dated 02.04.2018 has been filed by M/s Kalpataru Power Transmission Ltd. (hereinafter referred to as the applicant) against the OrderNo.KOL/Cus(port)/AA/488/2018 dated 20.02.2018, issued by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals) vide the above mentioned Order-in-Appeal has rejected the appeal as time barred observing that the applicant failed to produce sufficient cause which prevented them from filing the appeal beyond the stipulated period of sixty days as per Section 128 of the Customs Act, 1962 .

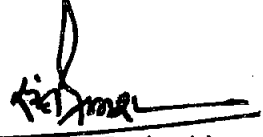
2. Brief facts of the case are that the applicant filed a drawback claim in respect of 3 Shipping Bills with the jurisdictional Customs authorities. The said claim was rejected by the jurisdictional Dy. Commissioner of Drawback, Custom House, Kolkata on the ground that the applicant had failed to submit the proof to the effect that the export proceeds in respect of 3 Shipping Bills in dispute have been realized in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals) which was rejected as time barred. The instant revision application has been filed mainly on the ground that the applicant was not given sufficient opportunity to explain the delay in filing the appeal. As regards the delayed filing of appeal before the Commissioner (Appeals), it has been stated that their office is located in Gandhinagar, Gujarat, and had difficulty in organizing filing of appeal at Kolkata.

3. Personal hearing in virtual mode was attended by Sh. Shridev Vyas, Advocate, on behalf of the applicant. He stated that the Order-in-Original was received on 17.01.2017 where as the Commissioner (Appeals) has taken the date of order i.e. 25.11.2016 as the date of receipt of O-I-O by the applicant. Even if this was to be admitted, the appeal was filed within the condonable period. Considering that the date of receipt is shown as 17.01.2017 in the Memorandum of Appeal, the

Commissioner (Appeals) ought to have given an opportunity to them to substantiate their claim before rejecting the appeal as time barred. None appeared for the department.

4. Government has examined the matter. It is observed that the Commissioner (Appeals) has rejected the appeal as time barred as the appeal was ostensibly not filed within the stipulated period of 60 days in terms of Section 128 of the Customs Act, 1962. It is, however, observed that Form C.A.-1 filed at the time of filing of appeal before the Commissioner (Appeals) mentions the date of communication of the decision or order appealed against to the applicant as 17.01.2017. On the other hand, the Commissioner (Appeals) in the impugned Order-in-Appeal has stated that the Appeal was filed on 30.01.2017 against the O-I-O dated 25.11.2016, "i.e. after expiry of sixty days from the date of communication of the impugned order. In this case, the appeal was filed after 66 days". Thus, the Commissioner (Appeals) appears to have considered the date of issuance of O-I-O i.e. 25.11.2016 as the date of receipt of the Order in Original by the applicant. The impugned order-in-Appeal does not indicate/adduce any reason whatsoever for rejection of the claim of the applicant that the said O-I-O was received by them on 17.01.2017. Thus, the impugned O-I-A appears to have been passed without considering the facts available on records. Government observes that the fact whether the said O-I-O was received by the applicant on 25.11.2016 or 17.01.2017 is required to be verified at the end of Commissioner (Appeals) and it is only there after that the Commissioner (Appeals) can draw a conclusion whether the appeal was filed within statutory time period of 60 days or not and if not then decide whether the condonation of delay is warranted or not. In case there was no delay or if delay is condoned, the Appeal should be decided on merits. The matter is, thus, remanded back to Commissioner (Appeals) with the above said directions.

5. Accordingly, the impugned Order-in-Appeal is set aside and the revision application is allowed by way of remand.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Kalptaru Power Transmission limited
101, Part III, GIDC Sector -28,
Gandhi Nagar, Gujarat – 382028

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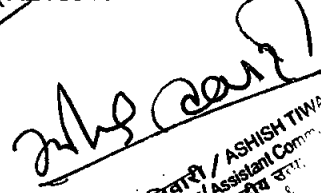
Copy to:

1. The Commissioner of Customs (Port), 15/1 Strand Road, Custom House, Kolkata - 700001.
2. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata- 700001.
3. Deputy Commissioner, (Drawback, Port), 15/1 Strand Road, Custom House, Kolkata - 700001.
4. PS to AS(RA)
5. Guard File.
6. Spare Copy

Attested

(Nirmala Devi)

Section Officer (REVISION APPLICATION)



आशीष तिवारी / ASHISH TIWARI
सहायक आयुक्त/Assistant Commissioner
सीय वस्तु एवं सेवा कर, केन्द्रीय दफ्तर,
CGST, Central Excise & Service Tax
राजस्व विभाग / Department of Revenue
भारत सरकार / Government of India
नई दिल्ली / New Delhi