

REGISTERED  
SPEED POST



F.No. 372/65/DBK/2018-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. 20/7/21

Order No. 130/2021-Cus dated 19-7-2021 of the Government of India passed by Sh. Sandeep Prakash, 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/1429/2018 dated 02.08.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s Creative Limited, Kolkata

Respondent : Commissioner of Customs (Port), Kolkata

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**ORDER**

A Revision Application No.372/65/DBK/18-RA dated 05.11.2018 has been filed by M/s Creative Limited, Kolkata, (hereinafter referred to as the Applicant) against the Order No. KOL/Cus(Port)/AA/1429/2018 dated 02.08.2018, issued by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal against the Order-in-Original No. KOL/CUS/DC/109/DBK(Port)/2017 dated 19.01.2017, as time barred observing that the Applicant failed to present 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.

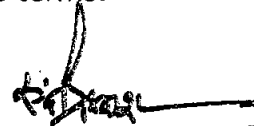
2. Brief facts of the case are that the Applicant filed drawback claims in respect of 32 Shipping Bills with the jurisdictional Customs authorities. The said claims were sanctioned by the jurisdictional Dy. Commissioner of Customs, Drawback, Custom House, Kolkata. However, on scrutiny of the XOS statement, it was observed by the office of Respondent that the Applicant had failed to submit the proof to the effect that the export proceeds in respect of 13 of the aforesaid 32 Shipping Bills had been realized. Accordingly, show cause notice was issued in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, to the Respondent for the recovery of drawback availed amount of Rs. 3,62,429/- along with interest, which was confirmed by the original authority, vide aforesaid Order-in-Original dated 19.01.2017. Aggrieved the applicant filed an appeal before the Commissioner (Appeals), which was rejected as time barred.

3. Personal hearing was fixed on 22.06.2021 and 19.07.2021. Respondent department, vide letter dated 18.06.2021, has stated that the department has no additional submissions other than those already stated in OIO and OIA and, accordingly, the case may be decided. None appeared on behalf of the Applicant on both the dates nor any request for adjournment has been received. Since the matter can be decided on the basis of records itself, the case is taken up for final decision without affording any further opportunity for personal hearing.

4. Government has examined the matter. It is observed that the Commissioner (Appeals) has rejected the appeal as time barred as the appeal was not filed within the stipulated period of 60 days in terms of Section 128 of the Customs Act, 1962. Applicant has pleaded that the delay of 14 days in filing the appeal before the Commissioner (Appeals) was due to the late receipt of BRCs from Bank. It is also contended that they were not given sufficient opportunity to explain the delay in filing the appeal. The Government observes that the realization of export proceeds is at the heart of dispute in the instant case. Therefore, to present an effective appeal, BRCs are important documents. As such, time taken in obtaining these documents constitutes sufficient cause to condone the delay. In the facts and circumstances of the case, the Commissioner (Appeals) should have, therefore, condoned the delay under Proviso to sub-section (1) of Section 128 of the Customs Act, 1962 and decided the case on merits. In the case of Commissioner of Customs & Central Excise, Allahabad vs. Sh. Ashok Kumar Tiwari {2014-TIOL-2254-HC-ALL-CX}, the Hon'ble Allahabad High Court has upheld the order of CESTAT wherein the

Tribunal had condoned the delay when the appeal was filed on the last day of condonable period of three months (after excluding the public holiday on which the limitation period expired). Therefore, the Government condones the delay of 14 days in filing the appeal before the Commissioner (Appeals) and remands the case to the Commissioner (Appeals) to be decided on merits.

5. The revision application is allowed by way of remand, in above terms.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Creative Ltd.,  
12, Dargah Road,  
Kolkata - 700017.

Attested



(लक्ष्मी राघवन)  
(LAKSHMI RAGHAVAN)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi

Section Officer (REVISION APPLICATION)

Order No. 30/21-Cus dated 19-7-2021

Copy to:

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