

SPEED POST



F.No. 372/32/DBK/2019-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..19/2/21.

Order No. 155/21-Cus dated 19-8-2021 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 under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/CUS(CCP)/AA/375/2019 dated 03.06.2019 passed by the Commissioner of Customs (Appeals), Kolkata.
- Applicant : M/s Trishan Expots Pvt. Ltd., Kolkata.
- Respondent : The Commissioner of Customs (Preventive), Kolkata.
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ORDER

A Revision Application, bearing no. 372/32/DBK/2019-RA dated 30.07.2019, has been filed by M/s Trishan Exports Pvt. Ltd., Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(PORT)/AA/375/2019 dated 03.06.2019 passed by the Commissioner of Customs (Appeals), Kolkata, vide which the appeal filed by the Applicant against the Order-in-Original No. 10/DBK/CCP/WB/SLG/2018-19 dated 27.11.2018 has been rejected as being beyond jurisdiction.

2. Brief facts of the case are that the Applicant had filed a drawback claim for an amount of Rs. 2,96,758/-. At the time of filing of Bill of Export the Applicant was required to make a declaration on the face of the Bill of Export that in respect of duties where drawback is being claimed no separate claim for rebate of duties shall be made. The said declaration was not made by the Applicant at the stage of filing of Bill of Export. The said drawback claim was rejected by the Assistant Commissioner of Customs (Tech), CCP, Siliguri, on the ground that the condonation of non-compliance with the requirement of declaration on the face of Bill of Export by the Exporter, as required under the provisions of Rule 12(1)(a)(ii) of Customs, Central Excise Duty and Service Tax Drawback Rules, 1995, was not considered by the Commissioner (Preventive). Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals) who rejected the appeal on the ground that an appeal against the decision/order of the Commissioner of Customs (Preventive) does not lie with the Commissioner (Appeals).

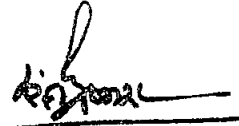
3. The revision application has been filed on the grounds that the order of Commissioner for not considering the exemption, if any, was not provided to them; and that the reason for rejecting the request for condonation by the competent authority was not conveyed to them.

4. Personal hearing, in virtual mode, was held on 19.08.2021. Sh. N. K. Chowdhury, Advocate, appeared on behalf of the Applicant. He highlighted that the Commissioner (Appeals) had proceeded to decide the appeal on a wrong premise that the Commissioner had refused exemption to them under the Drawback Rules and held that he had no jurisdiction to decide an appeal against the order passed by Commissioner whereas in fact they had filed appeal against the order of Assistant Commissioner. Further they had made no request for exemption and hence the question of Commissioner refusing such a request does not arise. Hence the matter may be remanded to Commissioner (Appeals) for decision on merits. No one appeared for the respondent department. No request for adjournment has also been received. Therefore, the matter is taken up for disposal based on records.

5. The Government has examined the matter. It is observed that the adjudicating authority has rejected the drawback claim on the ground that the Commissioner has not considered the request of the Applicant for condonation. However, there is no reference in the OIO of the order, if any, passed by the Commissioner vide which the request of the Applicant was not considered. The

Applicants have, during the course of personal hearing, submitted that they had not made any request to the Commissioner (Preventive) for exemption. So the question of any order passed by the Commissioner does not arise at all. In these circumstances, Government finds that the Commissioner (Appeals)'s Order is based on the presumption and assumption that the appeal filed before him arose out of a decision made by the Commissioner. As such, the impugned OIA is liable to be set aside with the direction to the Commissioner (Appeals) for decision afresh, on merits, after due verification from records.

6. In view of the above, the revision application is allowed by way of remand to the Commissioner (Appeals).



(Sandeep Prakash)

Additional Secretary to the Government of India

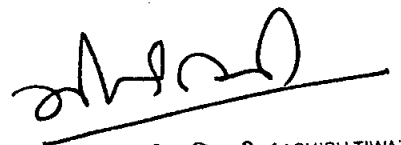
M/s Trishan Exports Pvt. Ltd.,
Suit – 507, Diamond Prestige,
41A, AJC Bose Road,
Kolkata- 700017.

Order No. 155/21-Cus dated 19-8-2021

Copy to:

1. The Commissioner of Customs (Preventive), Customs House, 3rd Floor, 15/1, Strand Road, Kolkata- 700001.
2. The Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700001.
3. PA to AS(RA)
4. Guard File
5. Spare Copy

ATTESTED



आशीष तिवारी / ASHISH TIWARI
सहायक आयुक्त / Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi