

SPEED POST



F.No. 372/21/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 22/9/21

Order No. 187/21-Cus dated 22-9-2021 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(PORT)/AA/71/D/2019 dated 24.01.2019 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s K.G.N. International, Kolkata.

Respondent : The Commissioner of Customs (Preventive), Kolkata.

.....

ORDER

A Revision Application, bearing no. 372/21/DBK/2019-RA dated 25.04.2019, has been filed by M/s K.G.N. International, Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(PORT)/AA/71/D/2019 dated 24.01.2019 passed by the Commissioner of Customs (Appeals), Kolkata, vide which the appeal filed by the Applicant against the Order-in-Original No. 15/DC(DBK)/2015-16 dated 13.01.2016 has been rejected as time barred.

2. Brief facts of the case are that the Applicant availed drawback in respect of exports made against the 21 shipping bills, however, the export proceeds in respect of these impugned Shipping Bills were not realized. Therefore, the original authority, vide Order-in-Original dated 13.01.2016, confirmed the demand of Rs. 55,15,571/- etc. of the drawback paid, under 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.

3. The revision application has been filed on the grounds that the Order-in-Original was received by them on 24.09.2016 by filing a RTI application whereas the appeal was filed on 23.11.2016 and hence their appeal before the Commissioner (Appeals) was filed well within the stipulated time period of sixty days. Department has filed cross objections, vide letter C.No. VIII(48)46/DBK/BRC/CCP/WB/2019/526 dated 03.07.2019.

4. Personal hearings in the matter were fixed on 29.08.2021, 08.09.2021 and 22.09.2021. No one appeared for the Applicant and the respondent department. No request for adjournment has also been received. As sufficient opportunities have been granted, the matter is taken up for disposal based on records.

5. Government has examined the matter. It is observed that, in terms of Section 128 of the Customs Act, 1962, the appeal before the Commissioner (Appeals) can be filed within a period of sixty days or further extended period of thirty days, i.e.,

maximum period (including condonable period) within which the appeal can be filed is 90 days. In the instant case, the appeal before the Commissioner (Appeals) was filed after a delay of 270 days i.e. beyond the condonable period. Government further observes that while rejecting the appeal, the Commissioner (Appeals) has observed that the demand notice was received by the Applicant on time so they must have received the OIO also in the same span of time. The contention of the Applicant that they had received the order only on 24.09.2016 by filing an RTI application and it was not received by them earlier is unsubstantiated. The respondent department has contended that the OIO dated 13.01.2016 was communicated to the Applicant vide Speed Post – EW3944665725IN and the same was never returned to their office by the postal staff. In terms of Section 153(3) ibid, when an order is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved. No evidence has been placed on record by the Applicant to prove the contrary, in the present case. As such, the Government does not find any infirmity in the order of Commissioner (Appeals).

6. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

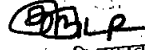
M/s K.G.N. International,
101/B, C.R. Avenue, Room No. 4A,
Kolkata- 700073.

Order No. 187/21-Cus dated 22-9-2021

Copy to:

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

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