

REGISTERED
SPEED POST



F.No. 375/34/DBK/2021-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. 06/7/22

Order No. 212/22-Cus dated 06-7-2022 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 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CC(A)Cus/D-I/Export/NCH/02/2021-22 dated 05.04.2021, passed by Commissioner of Customs (Appeals), New Custom House, New Delhi.

APPLICANT : Sh. Deepak Kumar Pandey, New Delhi.

RESPONDENT : The Commissioner of Customs (Export), Air Cargo, New Delhi.

ORDER

A revision application No. 375/34/DBK/2021-RA dated 05.07.2021 has been filed by Sh. Deepak Kumar Pandey, New Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D- I/Export/NCH/02/2021-22 dated 05.04.2021, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi, vide which the appeal filed by the Applicant against the Order-in-Original No. SKM/JC/ACE/128/2018 dated 27.03.2018, passed by the Joint Commissioner of Customs, Air Cargo (Export), New Custom House, New Delhi, has been rejected as time barred.

2. Brief facts of the case are that M/s Umesh Exports (herein after referred to as the Exporter) had filed five Shipping Bills, through M/s JMK Enterprises, for the export of "Polyester Ladies trouser". The SIIB branch examined the goods and found that the goods were old and used clothes of different fabrics and poorly stitched. Further, the goods were highly overvalued. A market enquiry was conducted by the Respondent department wherein it was found that the goods were old, very poor quality and were not fit for export. Accordingly, a show cause notice dated 17.10.2017 was issued to six persons, including the Applicant herein. Vide the above mentioned Order-in-Original the adjudicating authority, inter-alia, imposed a penalty of Rs. 1,00,000/- on the Applicant under Section 117 of the Customs Act, 1962. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected as time barred.

3. The revision application has been filed, mainly, on the grounds that the Applicant had received the impugned OIO dated 27.03.2018 only on 04.01.2019, and, hence, the appeal filed before the Commissioner (Appeals) was in stipulated time period. Several submissions have been made on merits of the case as well.

4. Personal hearing, in virtual mode, was held on 06.07.2022. Sh. Bhawan Singh, Advocate appeared for the Applicant and reiterated the contents of the revision application. He submitted that the OIO was received by the Applicant only on 04.01.2019 and, hence, appeal was not time barred. Sh. Sanjeev Kumar, Superintendent confirmed on the basis of records that the OIO had been sent to the Applicant on 27.03.2018 by registered post. Hence the appeal was correctly rejected by the Commissioner (Appeals) as time barred.

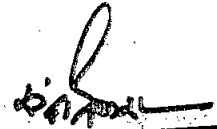
5.1 The Government has examined the matter carefully. It is observed that, in terms of Section 128 of the Customs Act, 1962, the appeal before the Commissioner (Appeals) can be filed within a period of sixty days or further extended period of thirty days, i.e., maximum period (including condonable period) 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 306 days, i.e., beyond the condonable period.

5.2 Applicant has contended that the subject OIO was received by them only on 04.01.2019 and, hence, the appeal was not time barred. However, it has been brought on record that the OIO was sent to the Applicant by registered post. The

Digitally signed by Sh. A.P. Singh, Secretary to Government of Punjab, Chandigarh, India, DN: cn=Sh. A.P. Singh, o=Government of Punjab, ou=Secretary to Government of Punjab, email=sh.arp@punjab.gov.in, c=IN

Government observes that, in terms of Section 153(3) of the Act 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. Thus, in the present case, the OIO sent by registered post on 27.03.2018 is to be deemed to have been received by the Applicant within 3-4 days thereafter. No evidence has been placed on record by the Applicant to prove the contrary. As such, the Government does not find any infirmity in the order of Commissioner (Appeals) rejecting the appeal filed by the Applicant herein as time barred.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Deepak Pandey,
RZF-769/3B, Gali No. 9,
Raj Nagar-II
Palam Colony, New Delhi 110077.

Order No. 212/22-Cus dated 06-07-2022

Copy to:

1. The Commissioner of Customs (Export), Air Cargo, New Custom House, New Delhi-110037.
2. The Commissioner of Customs (Appeals), New Custom House, new Delhi 110037.
3. Sh. Bhawan Singh Bilwal, Advocate, High Court, Ch. No. 830, Lawyers Chamber, Dwarka Court, new Delhi 110075.
4. P.S TO A.S (RA)
5. Guard File
6. Spare Copy

Geshate
06/7/22

ATTACHED

