

SPEED POST



F.No. 375/29/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 20/10/21

Order No. 231 /21-Cus dated 20/10/21 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. 259(SM)CUS/JPR/2018 dated 07.09.2018 passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Jaipur.
- Applicant : M/s Tashe Power India Pvt. Ltd., Alwar
- Respondent : The Commissioner of Customs, Jodhpur.
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ORDER

A Revision Application, bearing no. 375/29/DBK/2019-RA dated 01.05.2019, has been filed by M/s Tashe Power India Pvt. Ltd., Alwar (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 259(SM)CUS/JPR/2018 dated 07.09.2018 passed by the Commissioner (Appeals), Customs & CGST, Jaipur, vide which the appeal filed by the Applicant against the Order-in-Original No. 45/2016/DBK dated 16.03.2016 has been rejected as time barred.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of 66 Shipping Bills with the jurisdictional Customs authorities, and received a drawback amount of Rs.11,29,165/-. Subsequently, on scrutiny, it was found that the Applicant had failed to submit the proof to the effect that the export proceeds in respect of the relevant Shipping Bills had been realized. Accordingly, a show cause notice dated 09.10.2015 was issued in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, to the Applicant for the recovery of drawback availed amount of Rs.11,29,165/- along with interest, out of which the demand of Rs. 85,608/- was confirmed alongwith interest by the original authority, vide aforesaid Order-in-Original dated 16.03.2016. A penalty of Rs. 5000/- was also imposed 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 ground that the delay in filing the appeal before the Commissioner (Appeals) was due to the fact that they had

wrongly filed for rectification of the OIO before the Assistant Commissioner, ICDE, Concore. Several submissions have been made on merits as well.

4. Personal Hearing, in virtual mode, was held on 20.10.2021. Sh. Jatin Mahajan, Advocate, attended the hearing on behalf of the Applicant and reiterated the contents of the revision application. No one attended the hearing on behalf of the respondent department nor a request for adjournment has been received.

5. The RA has been filed on 01.05.2019 when the impugned OIA was admittedly received on 28.11.2018. Thus, the RA has been filed beyond the normal limitation period of 03 months provided under Section 129DD *ibid*. However, in light of the reasons explained, the delay is condoned.

6. The Government has examined the matter carefully. It is observed that in terms of Section 128 *ibid*, the appeal before the Commissioner (Appeals) can be filed within a period of sixty days or further extended period of 30 days i.e. maximum period (including condonable period) within which the appeal can be filed is 90 days. In the instant case, the appeal was filed with a delay of more than 300 days i.e. beyond the maximum period of 90 days, as permissible under Section 128 of the Customs Act, 1962. Applicant has contended that they had filed a rectification request of the OIO dated 16.03.2016 before the adjudicating authority and due to which the appeal before the Commissioner (Appeals) was delayed. However, there is no provision in law for the rectification of Order-in- Original by the same authority. The Hon'ble Supreme Court has, in the case of Singh Enterprises vs. Commissioner of Central

Excise {2008 (221) ELT 163 (SC)} in respect of the identical provisions under the Central Excise Act, 1944, held that the appellate authority has no power to allow the appeal to be presented beyond the statutorily prescribed condonable period of 30 days. Therefore, the Government does not find any infirmity in the order of Commissioner (Appeals).

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



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Tashe Power India Pvt. Ltd.,
F-194, Kushkhera Industrial Area,
Near Bhiwadi,
District Alwar, Rajasthan.

Order No. 231 /21-Cus dated 20/10/2021

Copy to:

1. The Commissioner of Customs, Jaipur, New Central Revenue Building, Statue Circle, "C" Scheme, Jaipur – 302 005.
2. The Commissioner (Appeals), Central Excise & CGST, Jaipur, New Central Revenue Building, Statue Circle, Jaipur – 302 005.
3. Sh. Jatin Mahajan, Advocate, 37, LGF, Vinodpuri, Lajpat Nagar – II, New Delhi – 110024.
4. A to AS(RA)
5. Guard File
6. Spare Copy

G. Bhatia
20/10/2021
ATTESTED
GULSHAN BHATIA
Superintendent