

REGISTERED
SPEED POST



F.No. 372/44/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..01-11-21

Order No. 247/2021-Cus dated 01-11-2021 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(CCP)/AA/334/2018 dated 05.02.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Sh. Prosanto Saha, Prop. M/s R.D. Fashion, Kolkata

Respondent : Commissioner of Customs (Preventive), Kolkata

ORDER

Revision Application No.372/44/DBK/2019-RA dated 18.12.2019 has been filed by Sh. Prosanto Saha, Prop. M/s R.D. Fashion, Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(CCP)/AA/334/2018 dated 05.02.2018, passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals), vide the above-mentioned Order-in-Appeal, has rejected the appeal of the Applicant, against the order- in-Original No.58/DC(DBK)/2015-16 dated 21.03.2016 passed by the Deputy Commissioner of Customs, Drawback Cell, CC(P), Customs House, Kolkata.

2. Brief facts of the case are that the Applicant filed drawback claim in respect of 03 Shipping Bills with the jurisdictional Customs authorities, which were sanctioned. Subsequently, on scrutiny, 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 the impugned Shipping Bills had been realized. Accordingly, a show cause notice dated 23.4.2015 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. 12,44,848/- along with interest, which was confirmed by the original authority, vide aforesaid Order-in-Original dated 21.03.2016. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected on the ground that the export proceeds were realized beyond the stipulated time period.

3. The revision application has been filed, mainly, on the ground that the export proceeds had been realized, though they were not received within the stipulated time period; that once the BRCs are uploaded on the DGFT website it is construed that the delay, if any, in realizing the export proceeds, had also been regularized by the Reserve Bank of India. Thus, no drawback is recoverable in the present case considering that actual export of goods and realization of export proceeds is already

proved from records and statutory benefits cannot be held up due to the technical lapses, i.e., the delay in realizing the export proceeds.

4. Personal hearing was fixed on 07.10.2021, 20.10.2021 and 29.10.2021. None appeared on behalf of the Applicant nor any request for adjournment has been received. Respondent department, vide letter ^{dated} 14.02.2020, has submitted the comments against the Grounds of Appeal and stated that personal hearing is not required. Since sufficient opportunities have been granted to the Applicant, therefore, in the interest of justice the case is being taken up for disposal on the basis of facts available on record. 157

5. On examination of the relevant case records, the Commissioner (Appeals)'s order, the revision application and Condonation of Delay application, it is observed that the impugned OIA was admittedly received by the Applicant in time and it was handed over to their lawyer for filing the instant revision application, on 25.02.2018. The revision application has, however, been filed on 18.12.2019. In the Form of revision application, the date of communication of Order-in-Appeal is stated to be 06.08.2018. Therefore, the instant revision application has been filed after a period of more than 21 months (if date of receipt is taken as 25.02.2018) and after a period of more than 16 months (if date of receipt is taken as 06.08.2018). As per Section 129DD of the Customs Act, 1962, 1944, an application under subsection (1), i.e., revision application can be made within 3 months from the date of communication to the Applicant of the order against which the application is being made. However, proviso to said subsection (2) provides discretion to the Government to allow Applicant to present the application within a further period of 3 months if the Government is satisfied that the Applicant was prevented by sufficient cause from presenting the application within the normal period of 3 months. In the present case, the revision application has been filed beyond the condonable period of 03 months. Hence, the Government acting as a statutory authority under the Section 129 DD *ibid* cannot condone this delay, which is beyond the statutorily provided condonable period.

6. The revision application is rejected as barred by limitation.



(Sandeep Prakash)

Additional Secretary to the Government of India

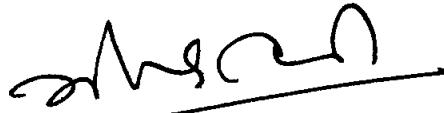
Sh. Prosanto Saha,
Prop. M/s R.D. Fashion,
31/1, Chatawalla Gali,
Second floor, Room No. 302,
Kolkata 700012.

Order No. 247/21-Cus dated 01-11-2021

Copy to:

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

Attested



आशीष तिवारी / ASHISH TIWARI, I
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