

REGISTERED  
SPEED POST



F.No.375/17/DBK/2022-RA  
F.No.375/18/DBK/2022-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue 03/08/22

Order No. 255-256/22-Cus dated 03-08-2022 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 Applications filed, under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CC(A)Cus/D-II/Exp/ICD/TKD/1558-59/2021-22 dated 19.01.2022 passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : M/s. Gipps Aero Pty. Ltd.

Respondent : Commissioner of Customs, Export, Inland Container Depot, Tughlaqabad, New Delhi.

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**ORDER**

Two Revision Applications, bearing Nos. F.No.375/17/DBK/2022-RA & 375/18/DBK/2022-RA dated 24.03.2021 & 25.03.2021, respectively, have been filed by M/s. Gipps Aero Pty Ltd., Mumbai (hereinafter referred to as Applicant) against the Order-in-Appeal No. CC(A)Cus/D-II/Exp/ICD/TKD/1558-59/2021-22 dated 19.01.2022, passed by Commissioner of Customs (Appeals) New Delhi. The Commissioner (Appeals) has rejected the appeals filed by the Applicant against the Orders-in-Original Nos. 192/2018 dated 16.08.2018 and 198/2018 dated 18.10.2018, passed by the Assistant Commissioner of Customs, Drawback, ICD Tughlaqabad, New Delhi.

2. Brief fact of the case are that the Applicant had imported aircraft on temporary basis for 13 days after obtaining permission from DGCA. However, at the request of the Applicant, the said permission was further extended upto 60 days from the date of import by DGCA. But when Applicant failed to re-export the aircraft within the stipulated period of 60 days, the department initiated the proceedings against the Applicant under the provisions of Customs Act, 1962 and the aircraft was seized. The Commissioner of Customs, Kolkata, allowed provisional release of the aircraft. The said aircraft was re-exported under the provisions of Section 74 of the Customs Act, 1962 from ICD, Tughlaqabad, Delhi. The Commissioner of Customs, Kolkata, vide OIO No. KOL/CUS/AIRPORT/ADMN/20/2013 dated 18.11.2013, ordered for the confiscation of the aircraft, but its redemption was allowed on payment of fine, penalty and customs duty for violating the provisions of Customs Act, 1962.

Aggrieved, the Applicant filed an appeal before the CESTAT against the denial of the benefit of Notification No. 12/2012, (sl. No. 450) etc., which is said to be pending before the CESTAT. In the meantime, after re export of aircraft, the Applicant claimed duty drawback from ICD, TKD under the provisions of Section 74 of the Customs Act, 1962. But the Dy. Commissioner, ICD, Tughlaqabad, New Delhi, rejected the drawback claim of the Applicant holding that duty is not finally assessed and the matter is sub-judice. The Applicant filed an appeal before Commissioner (Appeals), which was rejected. Aggrieved, Applicant filed a revision application before the Government. The Government, vide Order No.02/2018-Cus dated 01.01.2018, set aside the order of the Commissioner (Appeals). In compliance of the GOI Order dated 01.01.2018, the original authority sanctioned the drawback claim equivalent to 60% of the duty paid, i.e., Rs.49,55,716/-, vide OIO No. 192/2018 dated 16.08.2018. Further, vide OIO NO. 198/2018 dated 18.10.2018, passed by the Assistant Commissioner of Drawback, Export, ICD, TKD, New Delhi, interest amounting to Rs. 1,25,454/- was also sanctioned in terms of Section 75A (1) of the Customs Act, 1962. Aggrieved with the Orders dated 16.08.2018 & 18.10.2018, Applicant filed CM Nos. 38228/2018 & 10190/2019 in WP (C) No. 7433/2018 before the Hon'ble High Court of Delhi. These applications were dismissed by Hon'ble High Court, vide Order dated 24.07.2019, on the ground that the impugned orders are appealable orders but granted liberty to the Petitioner (i.e. Applicant herein) to challenge the same "before appropriate forum in accordance with law." Accordingly, Applicant filed two appeals before the Commissioner (Appeals) against the Orders dated 16.08.2018 and 18.10.2018, which were rejected as time barred.

3. The revision applications have been filed, mainly, on the grounds that no personal hearing was granted by the Commissioner (Appeals) and, thus, the principles of natural justice were not adhered to; and that appeals were filed within the statutory period of limitation as the period spent in prosecuting any suit, appeal, application or the like to be excluded for computing the statutory period of limitation. Several contentions have been raised on the merits of the case as well.

4. Personal hearing, in virtual mode, was held on 29.07.2022. Sh. Dinesh Agarwal, Consultant, appeared on behalf of the Applicant and reiterated the contents of the revision applications. He highlighted that the appeals have been decided by the Commissioner (Appeals) without hearing them. Hence, the matter may be remanded for de-novo consideration. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5. The Government has examined the matter carefully. Applicant has contended that no personal hearing was granted by the Commissioner (Appeals) before deciding their appeals. There is no mention in the impugned OIA, of any hearings being granted. Therefore, to verify this contention of the Applicant, the Case File Nos. Commissioner/Appls./Exp/TKD/55-56/2019-20, relating to the impugned OIA, were called for from the office of the Commissioner of Customs (Appeals), New Custom House, New Delhi. The files have been perused. It is observed that no personal hearing was granted to the Applicant before deciding their appeals. Hence, the principles of natural justice were not followed. Therefore, it would be in the interest

of justice that the matter be remanded back to the Commissioner (Appeals) with the direction to decide the case afresh after following the principles of natural justice.

6. In view of the above, the revision applications are allowed by way of remand to Commissioner (Appeals), with directions as above.



(Sandeep Prakash)


Additional Secretary to the Government of India

M/s. Gipps Aero Pty. Ltd,  
Represented through  
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Order No. 255-256 /22-Cus dated 03-08-2022

Copy to:

1. The Commissioner of Customs, (Exports), Inland Container Depot, Tughlaqabad, New Delhi 110020
2. Commissioner of Customs (Appeals), Delhi, New Customs House, Near IGI Airport, New Delhi 110037
3. PS to AS(RA)
4. ✓ Guard File.
5. Spare Copy

Attested  
20/2016  
  
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