

REGISTERED
SPEED POST



F.No. 375/35/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... 17/11/21

Order No. 262/21-Cus dated 17-11-2021 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 under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 369-371 (SM)CUS/JPR/2018 dated 01.11.2018, passed by the Commissioner (Appeals), Customs & CGST, Jaipur.

Applicant : M/s Kin Fabrics, Jaipur.

Respondent : The Commissioner of Customs, Jaipur.

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ORDER

A revision application No. 375/35/DBK/2019-RA dated 14.05.2019 has been filed by M/s Kin Fabrics, Jaipur (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 369-371 (SM)CUS/JPR/2018 dated 01.11.2018, passed by the Commissioner (Appeals), Customs & CGST, Jaipur, vide which the appeals filed by the Applicant against the Orders-in-Original Nos. 32-33/2014-15-DC dated 22.05.2014, 182/2014-15-DC dated 16.08.2014 and 65/2015-16-AC dated 19.03.2016, passed by Deputy Commissioner of Customs, Jaipur, have been rejected as time barred.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of several Shipping Bills with the jurisdictional customs authorities, for a total amount of Rs.20,32,419/-, 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, in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Accordingly, show cause notices were issued to the Applicant and the demand of Rs. 20,32,419/- was confirmed by the original authority along with applicable interest. Penalties were also imposed on the Applicants herein. The appeals filed by the Applicant herein against the said Order-in-Original were rejected by the Commissioner (Appeals), vide the impugned Order-in-Appeal dated 01.11.2018.

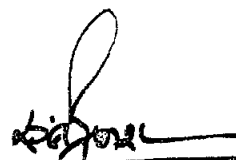
3. The revision application has been filed, mainly, on the grounds that copies of the Order-in-Original dated 22.05.2014 was received by them only on 03.01.2017, that dated 16.08.2014 only on 03.01.2017, and that dated 19.03.2016 only on 25.03.2017 whereas the appeals were filed on 22.02.2017, 22.02.2017 and on 06.04.2017, respectively and hence, the appeals before the Commissioner (Appeals) were filed well within the stipulated time period of sixty days: that the Commissioner (Appeals) has wrongly relied on the provisions of Section 153(3) whereas the said provisions was not in existence at the time of passage/delivery of impugned OsIO.

4. Personal hearing, in virtual mode, was held on 17.11.2021. Sh. Suhrid Bhatnagar, Advocate, appeared for the Applicant and reiterated the contents of the revision application. He also relied upon CESTAT's Final Order No. 51782/2021 dated 18.08.2021 in the case of M/s Ghadshyam Enterprises, Behror in support of his contentions. None appeared for respondent department nor any request for adjournment has been received. Therefore, the case is being taken up for final decision.

5. Government has examined the matter. It is observed that the revision application has been filed, mainly, on the ground that the provisions of Section 153(3) of Customs Act, 1962 were not in existence when the impugned OIOs were passed. Therefore, reliance of the Commissioner (Appeals) on the provisions of Section 153(3) to place the onus of proving that the subject Orders-in-Original were not received in time on the Applicant herein, is not legally valid. Government observes that the impugned OIOs were passed by the original authority on

22.05.2014, 16.08.2014 and 19.03.2016 whereas the new provisions of Section 153 that includes new sub-section (3) were made effective from 29.03.2018 by virtue of Section 99 of the Finance Act, 2018 (13 of 2018). Thus, the Commissioner (Appeals) has relied upon the provisions that were not in existence at the time when the subject OIOs came to be passed. As such, the Government holds that the Commissioner (Appeals) had erred in holding that the impugned OIOs were deemed to have been delivered. Therefore, it would be in the interest of justice that the matter is remanded back to Commissioner (Appeals) to decide the appeal afresh, including that of limitation, keeping in view the legal provisions, as applicable.

6. Accordingly, the revision application is allowed by way of remand to the Commissioner (Appeals), with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India


M/s Kin Fabrics,
D Villa, Station Road,
Jaipur – 302 006 (Rajasthan).

Order No. 262/21-Cus dated 17-11-2021

Copy to:

1. The Commissioner of Customs, Jaipur, New Central Revenue Building, Statue Circle, 'C' Scheme, Jaipur – 302 005.
2. The Commissioner (Appeals), Customs & CGST, Jaipur, New Central Revenue Building, Statue Circle, Jaipur – 302 005.
3. M/s. Acumen Tax Consultants, F-127, City Star Central Spine Vidhyadhar Nagar, Jaipur – 302 039.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED


(लक्ष्मी राघवण)
(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