

REGISTERED  
SPEED POST



F.No. 375/76/DBK/2019-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... 07/12/21

Order No. 277 /21-Cus dated 07-12-2021 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. 389(CRM)/Cus/JPR/2019 dated 04.10.2019, passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur.

Applicant : M/s Jalaj Exports, Jaipur.

Respondent : The Commissioner of Customs, Jaipur.

ORDER

A revision application No. 375/76/DBK/2019-RA dated 11.12.2019 has been filed by M/s Jalaj Exports, Jaipur (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 389(CRM)/Cus/JPR/2019 dated 04.10.2019, passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur, vide which the appeal filed by the Applicant against the Order-in-Original No. 150/2014-15-DC dated 02.06.2014, passed by the Deputy Commissioner of Customs, Air Cargo Complex, Sanganer, Jaipur, has been dismissed as time barred.

2. Brief facts of the case are that the Applicant filed drawback claim in respect of 01 Shipping Bill No. 561 dated 20.05.2011, with the jurisdictional customs authorities, for a total amount of Rs.26,348/-, which was 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 aforesaid Shipping Bills had been realized, in terms of Rule 16/16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Accordingly, Show Cause Notice dated 19.11.2013 was issued to the Applicant and the demand of Rs. 26,248/- was confirmed by the original authority, along with applicable interest, vide the above-mentioned Order-in-Original. A penalty of Rs. 7000/- was also imposed under Section 117 of the Act *ibid*. 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 not received the impugned OIO dated 02.06.2014 and received the same only on 29.11.2018 and, hence, the appeal filed before the Commissioner (Appeals) was in stipulated time period.

4. Personal hearing, in virtual mode, was held on 03.12.2021. Sh. Suhrid Bhatnagar, Advocate, appeared for the Applicant. After proceeding with the matter for some time, Sh. Bhatnagar requested for short adjournment. The matter was again taken up for hearing on 06.12.2021 where Sh. Bhatnagar submitted that:

(i) As per the screenshot of India Post submitted by him, Registered Post is addressee specific whereas Speed Post is address specific. Therefore, these are different modes.

(ii) Section 153 of the Customs Act, 1962 contemplates the service by Registered Post and not by Speed Post.

(iii) The OIO sent by Speed Post was not received by them.


(iv) The Commissioner (Appeals) did not give opportunity to explain this position.

No one appeared for the respondent department nor any request for adjournment has been received. Hence the matter is taken up for decision based on records available.

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 1460 days i.e., beyond the condonable period. Government further observes that while rejecting the appeal, the Commissioner (Appeals) has observed that the impugned OIO was sent through Speed Post on 06.06.2014 and same was never returned to the office of the original authority.

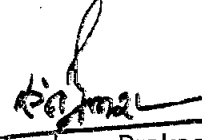
5.2 The contention of the Applicant appears to be that the Section 153 of the Customs Act, 1962 contemplates service by the 'Registered Post' and not by 'Speed Post', which are two different modes. As such, by dispatching the OIO by 'Speed Post', the department has not complied with the provisions of Section 153 ibid. The Government observes that the Hon'ble Orissa High Court has, in the case of Jay Balaji Jyoti Steels Ltd. Vs. CESTAT, Kolkata {2015(37) STR 673 (ORI)}, held that in view of Section 28 of the Indian Post Office Act, 1898 read with the Rule 66 B of Indian Post Office Rule, 1933 both 'registered post' and 'speed post' have to be treated as 'registered post' within the fold of said Section 28. This decision of the Hon'ble Orissa High Court has been affirmed by Hon'ble Supreme Court {2015(40) STR J 133(Supreme Court)}. Further, in the case of Shyam Ferro Alloys Ltd. Vs. Asstt. CC (Appg), Visakhapatnam {2016(340) ELT 488(AP)}, the Hon'ble Andhra Pradesh High Court has relied upon the judgment in the case of Jay Balaji Jyoti Steel Ltd.(supra) to hold that "In our considered view, the expression "registered post" appearing in Section 153(a) of the Customs Act, 1962 has to be construed as

including within its preview, the method of registering any article, to be taken by speed post". Thus, the subject contention of the Applicant is not acceptable. 

5.3 Another contention of the Applicant is that the subject OIO was received by them only on 29.11.2018 by filing a letter dated 21.11.2018 with the original authority. The Government observes that the show cause notice dated 19.11.2013 was issued by the department by 'registered post' but the Applicant claims to have not received it. Further, it is stated in the department's letter dated 29.11.2018, through which an attested copy of the OIO was supplied to the Applicant, that besides the subject OIO, letters dated 05.08.2014, 18.11.2014 & 25.02.2015 were sent to the Applicant through 'speed post'. A Detention Notice dated 18.05.2015, issued under Section 142 of the Customs Act, 1962, was also sent to the Applicant and none of these communications were returned back to the department by the postal authorities. The Government finds it inconceivable that the Applicant did not receive even one of these communications. It is noticed from the letter dated 21.11.2018 that only when at the time of another export in November 2018, the Applicant was required to deposit dues arising out of the subject OIO that they asked for a copy of the subject OIO. Hon'ble Delhi High Court has, in the case of *Brajesh Kumar Dubey Vs. Commissioner of Customs* {2016 (339) ELT 70 (Del)} upheld denial of condonation of delay in similar Circumstances.

5.4 As such, the Government does not find any infirmity in the order of Commissioner (Appeals).

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



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Jalaj Exports,  
G-184/185,  
EPIP Sitapura Industrial Area,  
Jaipur – 302006 (Raj.).

Order No. 277 /21-Cus dated 07-12-2021

Copy to:

1. The Commissioner of Customs, Jaipur, New Central Revenue Building, Statue Circle, "C" Scheme, Jaipur – 302 005.
2. The Commissioner (Appeals), Customs, Central Excise & CGST, New Central Revenue Building, Statue Circle, Jaipur – 302 005.
3. Sh. Suhrid Bhatnagar, Advocate, M/s. Acumen Tax Consultants, 127, Cine Star, Central Spine, Vidyadhar Nagar, Jaipur – 302039.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED



(लक्ष्मी राघवन)  
(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