

**SPEED POST**



F. No. 373/102/DBK/2015-R.A.  
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. 04/10/22

Order No. 308 / 22-Cus dated 04-10-2022 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

SUBJECT : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. TUT-CUS-000-APP-105-14 dated 09.09.2014, passed by Commissioner of Customs & Central Excise (Appeals) Tiruchirappalli.

APPLICANT : M/s. Goodwill Enterprises, Mumbai.

RESPONDENT : Commissioner of Customs, Tuticorin.

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**ORDER**

A Revision Application No.373/102/DBK/2015-RA dated 18.03.2015 has been filed by M/s. Goodvill Enterprises, Mumbai (hereinafter referred to as the Applicant) against the Order-in-Appeal No. TUT-CUS-000-APP-105-14 dated 09.09.2014, passed by the Commissioner of Customs & Central Excise (Appeals) Tiruchirappalli. Commissioner (Appeals), vide the impugned Order-in-Appeal, has rejected the appeal of the Applicant herein, against the Order in Original No. 1345/2013, dated 19.06.2013, read with the Corrigendum dated 14.08.2013, passed by the Assistant Commissioner of Customs, Customs House, New Harbour Estate, Tuticorin, as time barred.

2. Brief facts of the case are that the Applicant availed drawback of Rs. 56,49,157/- in respect of exports made during January 2011 to June 2011. However, it was subsequently noticed that the export proceeds were not realised in respect of SB No. 2424042 dated 04.02.2011. Therefore, the original authority, vide the above mentioned Order-in-Original dated 19.06.2013 read with the corrigendum dated 14.08.2013, confirmed the demand of Rs. 4,23,686/- of the drawback paid, under Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Besides, a penalty of Rs. 40,000/- was also imposed on the Applicant herein 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 grounds that the export proceeds were realised in full; that the Order-in-Original was misplaced in their office which had to delay in filing of the appeal; and that filing of revision application was delayed because they initially stated drafting an appeal to CESTAT and subsequently they were advised to file revision application.

4. Personal hearing, in virtual mode, was held on 03.10.2015. Sh. Paresh Mistry, Sr. Executive appeared for the Applicant and reiterated the contents of the revision application. Upon being asked about the reasons for delay in filing the RA, Sh. Deepak

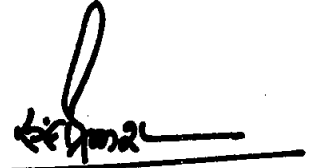
Dalyanani, CEO stated that it happened due to oversight at their end. No one appeared for the Respondent Department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5.1 The Government has carefully examined the matter. As per sub-section (2) of the Section 129DD of the Customs Act, 1962, an application under sub-section (1), i.e., revision application can be made within 3 months from the date of communication of the order against which the application is being made. However, proviso to said sub-section (2) provides discretion to the Government to allow an application to be presented 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. Applicant, vide letter dated 14.03.2015, has admitted that the revision application ought to have been filed by or before 21.12.2014 but the same has been filed only on 18.03.2015, i.e., beyond the stipulated period of filing and the delay is due to various reasons and these reasons were not elaborated. Though, it is claimed in the RA that delay occurred as they were initially drafting an appeal to CESTAT, in the personal hearing it is stated that the delay happened due to oversight. Thus, it is apparent that the Applicant has not shown sufficient cause for condonation of delay beyond 22.12.2014, and the instant revision application is liable to be rejected on this ground alone.

5.2 Further, the Commissioner (Appeals) has also rejected the appeal as time barred, as the Applicant had not filed the appeal within the stipulated period. As per sub-section (1) of Section 128 of the Customs Act, 1962, an appeal before the Commissioner (Appeals) can be made within 60 days from the date of communication to the appellant of the order against which the appeal is being made. However, proviso to said sub-section (1) provides discretion to the Commissioner (Appeals) to allow an appeal to be presented within a further period of 30 days, if the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the normal period of 60 days. Government observes that the appeal before the Commissioner (Appeals) was filed only on 03.01.2014, though the Order appealed against was admittedly communicated to the Applicant herein on 22.06.2013 and the corrigendum on 02.09.2013. Thus, the appeal was filed beyond the condonable period of 30 days, even

if the date of receipt of the corrigendum is taken as the date of communication of the OIO. It is settled by a catena of judgments of the Hon'ble Supreme Court that the Commissioner (Appeals) is not empowered to condone the delay beyond the statutorily provided condonable period of 30 days [Ref. Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur {2008 (221) ELT 0163 (SC)} & Amchong Tea Estate vs. UOI {2010 (257) ELT 3 (SC)}]. Therefore, the Government does not find any infirmity in the order of Commissioner (Appeals).

6. The Revision application is rejected for the reasons aforesaid.



(Sandeep Prakash)

Additional Secretary to the Government of India

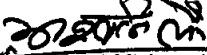
M/s. Goodwill Enterprises, 1204,  
Glen Heights, Cliff Avenue,  
Hiranandani Gardens, Powai,  
Mumbai-400076.

Order No. 308/22-Cus dated 04/10-2022

Copy to:-

1. The Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin.
2. The Commissioner of Customs & Central Excise (Appeals), No. 1 Williams Road, Cantonment, Tiruchirappalli-620001.
3. Sh. Goodwill Enterprises, Unit# 119, Building No 6 Mittal Industrial Estate, Andheri-Kurla Road, Andheri (E), Mumbai-400059.
4. P.S. To A.S (RA)
5. Guard File
6.  Spare Copy

ATTESTED

  
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