

SPEED POST



F. No. 375/29/DBK/2020-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.....07/03/22

Order No. 76/22-Cus dated 07/03/2022 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 Application filed, under Section 129DD of the Customs Act 1962 against the Order-in-Appeal No. 487-Cus-APPL/LKO/2019 dated 18.09.2019 passed by the Commissioner (Appeals), Customs, Central Excise and CGST, Lucknow.

Applicant : M/s. G.D. International, Kanpur.

Respondent : The Commissioner of Customs (Preventive), Lucknow.

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**ORDER**

A Revision Application No. 375/29/DBK/2020-RA dated 25.02.2020 has been filed by M/s. G.D. International, Kanpur, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 487-Cus- APPL/LKO/2019 dated 18.09.2019, passed by the Commissioner (Appeals), Customs, Central Excise and CGST, Lucknow. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original, bearing no. 52/AC/Air cargo/LKO/2017-18 dated 31.12.2017, passed by the Assistant Commissioner of Customs, Air Cargo, CCSI Airport, Amausi, Lucknow, as time barred.

2. Brief facts of the case are that the Applicant filed drawback claim in respect of exports made against Shipping Bill No. 349 dated 08.06.2016, with the jurisdictional customs authorities, for a total amount of Rs. 44,302/-, 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 Bill had been realized, in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Accordingly, a Show Cause Notice dated 21.07.2017 was issued to the Applicant and a demand of Rs. 44,302/- was confirmed by the original authority along with the interest payable thereon, vide the above mentioned Order-in-Original dated 31.12.2017. A penalty of Rs. 4,500/- was also imposed on the Applicant herein, under Section 117 of the Customs Act, 1962. The appeal filed by the Applicant herein has been rejected, as barred by limitation, vide the impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that the delay in filing the appeal before the Commissioner (Appeals) was due to the fact that the wife of the Counsel had expired and owing to that reason Counsel was not in a position to handle the Applicant's work; and that the export proceeds were realised in time.

4. Personal hearing, in virtual mode, was held on 07.03.2022. Sh. Anuj Shukla, Advocate appeared for the Applicant and submitted that the appeal could not be filed before the Commissioner (Appeals), in time, due to difficulties at the end of previous lawyer of the Applicant. Hence, it would be in the interest of justice if the Applicant is not made to suffer for the mistake of his lawyer. Sh. Ajay Mishra, Additional Commissioner, appeared on behalf of the Respondent department and supported the order of Commissioner (Appeals).

5. The revision application has been filed with a delay of 34 days which is attributed to Applicant's illness. Delay is condoned.

6. On examination of the relevant case records, the Commissioner (Appeals)'s order and the revision application, the Government observes that the appeal before the Commissioner (Appeals) was filed in March, 2019, though the Order appealed against was admittedly communicated to the Applicant herein in January, 2018. 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. In this case, the OIO was communicated to the Applicant herein in January, 2018, and appeal was filed in March, 2019. Thus, the appeal was filed much beyond the condonable period of 30 days. 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).

7. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

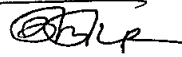
M/s G. D. International,  
2/72, Triveni Nagar,  
Meerpur Cantt.,  
Kanpur - 208004

Order No. 76/22-Cus dated 07/03/2022

Copy to:

1. The Commissioner (Appeals), Customs, Central Excise and CGST, 3/194, Vishal Khand -3, Gomti Nagar, Lucknow 226010.
2. The Commissioner of Customs, Preventive, Lucknow, Hall No. 3, 5<sup>th</sup> and 11<sup>th</sup> floor, Kendriya Bhawan, Sector – H, Aliganj - 226024.
3. Sh. Anuj, Shukla, Advocate, 320, Murli Bhawan, 10-A, Ashok Marg, Lucknow 226001.
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