

REGISTERED
SPEED POST



F.No. 375/33/DBK/2020-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.....08/3/22.....

Order No. 77/21-Cus dated 08-03-2021 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. 04(SM)/Cus/JPR/2020 dated 29.01.2020, passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur.

Applicant : M/s India Impression, Sikar.

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

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ORDER

A revision application No. 375/33/DBK/2020-RA dated 13.03.2020 has been filed by M/s India Impression, Sikar (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 04(SM)CUS/JPR/2020 dated 29.01.2020, passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur, vide which the appeal filed by the Applicant against the Order-in-Original No. 523/2016-17 dated 31.01.2017, passed by the Assistant Commissioner of Customs, ICD, Concor, Jaipur, has been dismissed, as time barred.

2. Brief facts of the case are that the Applicant filed drawback claim in respect of two Shipping Bills, with the jurisdictional customs authorities, for a total amount of Rs.1,22,713/-, 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 13.05.2016 was issued to the Applicant and the demand of Rs. 1,22,713/- was confirmed by the original authority, alongwith applicable interest, vide the above-mentioned Order-in-Original. A penalty of Rs. 15,000/- 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 received the OIO dated 31.01.2017 only on 08.11.2019 and, hence, the appeal filed before the Commissioner (Appeals) was in stipulated time period.

4. Personal hearing, in virtual mode, was held on 07.03.2022. Sh. Suhrid Bhatnagar, Advocate, appeared for the Applicant and reiterated the contents of the revision application. He specifically relied upon the order of CESTAT in the case of Ghadshyam Enterprises (Final Order No. 51782/2021 dated 18.08.2021, Principal Bench, Delhi). None appeared for the respondent department nor any request for

adjournment has been received. Therefore, the case is being taken up for final decision.

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, while rejecting the appeal as time barred, the Commissioner (Appeals) has observed that the impugned OIO was sent through Speed Post on 31.01.2017 and same was never returned to the office of the original authority. Further, the Applicant was asked by the Respondent department, vide letters dated 23.08.2017, 16.10.2017 and dated 11.09.2018 (quoting the reference of earlier letters dated 23.08.2017 and 16.10.2017) to deposit the Government dues. Applicant, vide Challan dated 19.12.2018 and Challan dated 26.08.2019, deposited an amount of Rs. 75,000/- and Rs. 50,000/-, respectively.

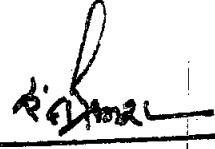
5.2 It is contended by the Applicant that the subject OIO was received by them only on 08.11.2019 by filing a letter dated 08.11.2019 with the original authority. The Government observes that the show cause notice dated 13.05.2016 was issued by the department by 'registered post' but the Applicant claims to have not received it. Further, it is stated in the department's letter dated 11.09.2018, that recovery notices vide letters dated 23.08.2017, 16.10.2017 and 11.09.2018, were also sent to the Applicant and none of these communications were returned back to the department by the postal authorities. Significantly, the Applicant had paid part of the dues on 19.12.2018. Thus, it is evident that the Applicant was well aware about the OIO dated 31.01.2017, atleast on 19.12.2018. There is no reason or explanation forthcoming as to why the Applicant, even after paying part of the dues on 19.12.2018, waited for 11 months before seeking a copy of OIO, on 08.11.2019. In this view of the matter, the contention that the Applicant received the OIO only on 08.11.2019 can not be accepted. Hon'ble Delhi High Court has, in the case of Brajesh Kumar Dubey Vs.

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Commissioner of Customs {2016 (339) ELT 70 (Del)}, upheld denial of condonation of delay in a case where the Party despite being aware of the recovery proceedings, took a plea that the adjudication order was not served upon him.

5.3 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

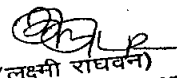
M/s India Impression,
Om Bhawan, Malio Ki Gali
Station Road,
Sikar 332001.

Order No. 77/22-Cus dated 08-03-2022

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 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