

'SPEED POST'



F. No. 375/51/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 31/08/22

Order No. 115/2022-Cus dated 31-08-2022 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. 105/CUS/APPL/LKO/2020 dated 29.05.2020, passed by the Commissioner (Appeals), Customs, GST & Central Excise, Lucknow.

Applicant : M/s Super Tannery Ltd., Kanpur

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

ORDER

A Revision Application No. 375/51/DBK/2020-RA dated 09.09.2020 has been filed by M/s Super Tannery Ltd. Kanpur, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 105/CUS/APPL/LKO/2020 dated 29.05.2020, passed by the Commissioner (Appeals), Customs, CGST & Central Excise, Lucknow. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicant herein against the Order-in-Original No. 06/DC/Air Cargo/LKO/2019-20 dated 25.06.2019, passed by the Deputy Commissioner of Customs, Air Cargo, CCSI Airport, Lucknow, on the ground that the Applicant did not make the mandatory pre-deposit of 7.5%, as per Section 129 E of the Customs Act, 1962.

2. Brief facts of the case are that the Applicant filed drawback claims in respect of 03 Shipping Bills, with the jurisdictional customs authorities, for a total amount of Rs. 2,69,812/-, 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 aforesaid 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 Notice dated 28.03.2019 was issued to the Applicant and a demand of Rs. 1,94,938/-, out of Rs. 2,69,812/-, along with applicable interest was confirmed by the original authority, vide the above mentioned Order-in-Original dated 25.06.2019. A penalty of Rs. 30,000/- was also imposed under Section 117 of the Customs Act, 1962. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected as non-maintainable on the grounds that the Applicant did not make the mandatory pre-deposit.

3. The instant revision application has been filed, mainly, on the ground that the pre-deposit was not made due to bonafide mistake but the Commissioner (Appeals)

gave them no opportunity to rectify the defect before rejecting the appeal. The Applicant had made the pre-deposit vide TR-6 Challan No. 9 dated 17.07.2020; and that the drawback may be allowed; or the matter may be remanded for disposal on merits.

4. Personal hearing in, virtual mode, was held on 30.03.2022. Sh. Ashish Kumar Shukla, Advocate, attended the hearing on behalf of the Applicant and reiterated the contents of revision application. He submitted that the pre-deposit was not made due to a bonafide mistake but the Commissioner (Appeals) gave them no opportunity to rectify the defect before rejecting the appeal. The pre-deposit has since been made vide TR6 Challan No. 9 dated 17.07.2020. Hence matter may be remanded to the Commissioner (Appeals) for decision on merits. 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. The Government has examined the matter carefully. It is observed that the Commissioner (Appeals) has rejected the appeal on the ground that the Applicant herein did not make the mandatory pre-deposit, as per Section 129E of the Customs Act, 1962. It is not disputed that being a mandatory condition the pre-deposit ought to have been made. The Applicant has claimed that requisite pre-deposit had not been made due to a bonafide mistake and the Commissioner (Appeals) did not give them any opportunity to rectify the defect before passing the impugned order. A copy of TR-6 Challan dated 17.07.2020, evidencing that pre-deposit had been made, has been placed on record. The Government gathers from the very cryptic and non-speaking Order-in-Appeal that the Commissioner (Appeals) did not afford any opportunity to the Applicant for rectification of defect nor the principles of natural justice were followed before the appeal was rejected. The Government, therefore, deprecates the process followed by the Commissioner (Appeals) and holds that subject to verification of requisite pre-deposit having been made, it would be in the

interest of justice that the matter is remanded to Commissioner (Appeals) to decide the appeal afresh, on merits.

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


(Sandeep Prakash)

Additional Secretary to the Government of India

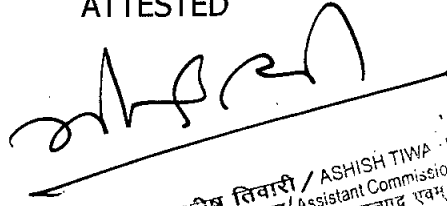
M/s Super Tannery Ltd.,
187/170, Jajmau Road,
Kanpur-208010 (U.P.).

Order No. 115/2022-Cus dated 3/-03-2022

Copy to:

1. The Commissioner (Appeals), Customs, GST & Central Excise, 3/194, Vishal Khand-3, Gomati Nagar, Lucknow.
2. The Commissioner of Customs (Preventive), Lucknow, Hall No.3, 5th and 11th Floor, Kendriya Bhawan, Sector-H, Aliganj, Lucknow-226024.
3. Sh. Amit Awasthi, Advocate, 7/116A, H-1, 1st Floor, Radhey Apartment, Swaroop Nagar, Kanpur-208002.
4. PA to AS(RA)
5. ~~Guard File.~~
6. Spare Copy.

ATTESTED



आशीष तिवारी / ASHISH TIWARI
सहायक आयुक्त / Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi