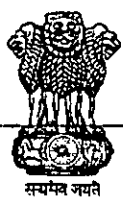


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SPEED POST



F.No. 375/33/DBK/2014-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.....11/11/12

Order No. 52/2017-Cus dated 6-12-12 of the Government of India passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed; under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CC(A)Cus-432/2014 dated 26.03.2014 passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : M/s. J.S. Designer Ltd.

Respondent : Commissioner of Customs, Export, Air Cargo, New Delhi

ORDER

A Revision Application No. 375/33/DBK/2014-RA dated 14.10.2014 has been filed by M/s. J. S. Designer Ltd. (hereinafter referred to as applicant) against the order No. CC(A)Cus-432/2014 dated 26.03.2014, passed by Commissioner (Appeals) New Delhi. Besides that applicant has also filed an application for condonation of delay of 89 days for the reason that the documents were misplaced in their office and due to that the revision application could not be filed on time.

2. Brief fact of the case are that the applicant had filed a shipping bill for the export of ladies knitted blouse and claimed the classification under CTH 610603A. On examination of the goods, it was observed by the adjudicating authority vide its OIO that the goods were rightly classifiable under CTH 61140203A and not under 610603A as claimed by the applicant. Further, the goods were ordered to be confiscated under Section 113(i) of the Customs Act, 1962. However, an option was given to applicant to redeem the goods on payment of fine of Rs. 1,50,000/- and Penalty of Rs. 50,000/- was also imposed on the applicant. Being aggrieved, the applicant filed an appeal before Commissioner (Appeals), who has, vide its above mentioned order in Appeal, rejected the appeal of the applicant relating to the classification of the goods but set aside the redemption fine and penalty on the applicant. Now, the applicant, vide the instant revision application, has challenged the order of Commissioner (Appeals) on the ground that the classification ordered by the adjudicating authority is without any basis and hence deserve to be set aside.

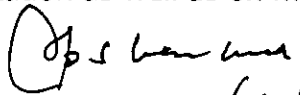
3. Personal hearing in this case was fixed on 20.11.2017 and the same was attended by Sh. Vikas Sarin, Advocate. Sh. Sarin reiterated the grounds of revision already pleaded in their revision application and also stated that the Chennai Custom House has also approved the classification of the product in question in instant revision application under CTH 610603A.

4. On examination of the revision application and other relevant records, it is noticed that the first issue to be decided is whether delay of 89 days in filing the instant revision application is condonable in this case. As per Sub Section 2 of ~~Section 35EE of Central Excise Act, 1944, a revision application can be filed only~~ within 3 months from the date of communication of the Commissioner (Appeal)'s order. Further, the delay of 90 days in filing the revision application can be condoned by the Government on the ground that the applicant was prevented by any sufficient cause from filing the revision application in time. The applicant has stated in their condonation of delay application that the applicant could not file the application with the Government on time because the file pertaining to present case was unfortunately misplaced in their office. The reason adduced by the applicant is manifestly very vague, casual and cannot be considered as sufficient cause which prevented them from filing the instant revision application on time as keeping the documents was entirely within their control. The applicant has not explained which document was missing because of which revision application could not be filed in time. In fact, all the documents required for filing revision application could be easily obtained from the office of the original adjudicating authority or first appellate authority if these were genuinely misplaced. But no evidence of any such effort has been adduced. Hence apparently delay has occurred due to lack of seriousness of the applicant or their advocate. Accordingly the applicant's case is not covered by the term 'sufficient cause' as is envisaged in Section 35 EE and, therefore, the Government does not consider it serving case for condonation of delay. Hence the application filed by the applicant is time barred.

5. Coming to the merit of the case also, the contention of the applicant that their exported product are classifiable under CTH 610603A and the adjudicating authority has wrongly classified the same under 61140203A is not found supported by any concrete material. They have merely cited description of the goods as was given in the Shipping Bill and relied upon Public Notice No. 22/2012 dated 06.07.2012 issued by Commissioner of Customs, Air Cargo (Exports), NCH, New Delhi, wherein garments of different description have been discussed for the guidance of trade and departmental officers. However, reliance on Public Notice is

not sufficient here and the classification of applicant product is to be determined by the actual make, dimensions, size and other features of the products only. All these criteria of the products exported were examined by original adjudicating authority and he has arrived at the conclusion after seeing the sample of the products that these are not blouses as claimed by the applicant. He has expressly noted that the garment under reference neither have the opening in the neckline nor the garment is of very low cut. Accordingly, the Dy. Commissioner has concluded that the exported garment are not blouses classifiable under CTH 610603A and are other garment's falling under CTH 6114 . The sample of the exported goods was not produced before the first appellate authority and it is not produced even before the Government along with revision application or even during the personal hearing. Hence, it is not feasible for the Government at this juncture to accept the above claim of the applicant merely on the basis of the description of the exported garments given in the revision application.

6. In view of the above discussions, the revision application filed by M/s J. S. Designer Ltd. is not found maintainable on both limitation as well as on merit.


(R.P.Sharma) 6.12.17

Additional Secretary to the Government of India

M/s. J. S. Designer Ltd.,
Patparganj Industrial Area,
Delhi- 110092.

ATTESTED


(Ravi Prakash)
OSD (REVISION APPLICATION)

Order No. 52/17-Cus dated 6-12-2017

Copy to:

1. The Commissioner of Customs, Air Cargo (Exports), New Customs House, Near IGI Airport, New Delhi 110037
 2. Commissioner of Customs (Appeals), Delhi, New Customs House, Near IGI Airport, New Delhi 110037
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3. Deputy Commissioner, Air Cargo (Exports), New Customs House, Near IGI Airport, New Delhi 110037
 4. Mr. Pradeep Jain, Advocate, 370-371/21st floor, Sahi Hospital road, Jangpura (\bhogal), New Delhi 110014
 5. PS to AS(RA)
 6. Guard File.
 7. ~~Spare Copy~~
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