

REGISTERED
SPEED POST



F.No. 380/41/DBK/14-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.. 8.8.18

Order No. 105/18-Cus dated 6-8-2018 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. Kol/Cus/Port/AM030/2015 dated 30.06.2015, passed by the Commissioner of Customs (Appeals), Kolkata

Applicant : Commissioner of Customs, Kolkata (Port)

Respondent : M/s Tractor India Ltd.

ORDER

A revision application number 380/41/DBK//2014-RA dated 21.10.2015 has been filed by the Commissioner of Customs, Kolkata (Port) (hereinafter referred to as the applicant) against the Commissioner (Appeals)'s Order No. Kol/Cus/Port/AM030/2015 dated 30.06.2015 whereby the appeal of the respondent, M/s Tractor India Ltd., filed against Order-in-Original dated 10.12.2013, of the Deputy Commissioner of Customs, Drawback Department (Port), Custom House, Kolkata, was allowed. The Deputy Commissioner had, vide his above mentioned order, sanctioned the drawback claim of the respondent on reduced rates under the provisions of Notification no. 23/2008-Cus dated 01.03.2008 by considering the re-exported goods as used, instead of new goods as claimed by the applicant. However, the Commissioner (Appeals), vide his above mentioned Order-in-Appeal, modified the order of the lower authority by allowing drawback at enhanced rate of 98% of duty paid at the time of import.

2. The revision application has been filed mainly on the ground that Commissioner (Appeal)'s has erred in holding that the re-exported goods were new only and the lapse of non-declaration of the goods not having been used after their importation is only procedural one.

3. Hearing in this case was held on 22.05.2018 and it was availed by Sh. Subrato Mukherjee, Assistant Commissioner (Drawback), Kolkata Custom Houses, on behalf of the applicant who reiterated the grounds of revision already pleaded in their revision application. On behalf of the respondent Sh. Nand Kishore Kothari, CA, appeared for personal hearing and reiterated the reasons for quashing the revision application of the applicant's already given in their written submissions dated 22.05.2018.

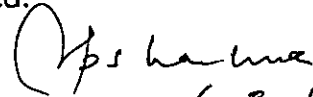
4. Government has examined the matter and it is observed at the outset that the revision application has been filed on 21.10.2015 against the Order-in-Appeal dated 30.06.2015. Since the date of receipt of the said Order-in-Appeal by the applicant was not mentioned in the revision application, this office vide letter dated

27.10.2015 requested the applicant to provide the date of communication of the Order-in-Appeal. But its communication to the applicant was not informed even thereafter till now. Hence, there is no option but to consider the date of Order-in-Appeal as its communication date also particularly when the office of the Commissioner(Appeals) is situated in the main Custom House itself in Kolkata where the office of the applicant is also located. Thus in absence of any specific date given by applicant, it can be assumed that the Order-in-Appeal dated 30.06.2015 was received by the applicant on 30.06.2015 itself and accordingly the revision application dated 21.10.2015 is filed beyond three months from the receipt of the Order-in-Appeal. Even if the Order-in-Appeal may have been received a few days after 30.06.2015 still the revision application is filed beyond three months. Whereas as per Section 129 DD(2) of the Customs Act, 1962 the normal period for filing revision application is 3 months from the receipt of Order-in-Appeal and in case the application is not filed within the prescribed period of 3 months, the Central Government, on being satisfied that the applicant was prevented by sufficient cause from presenting the application within 3 months, can allow the presentation of the application within further extended period of 3 months. But despite of delayed filing of revision application, no application for condonation of delay has been filed along with the application and accordingly it is liable for rejection as time barred.

5. Besides above, the revision application is also not found maintainable on merit also as the order of the Deputy Commissioner of Customs is entirely based on an assumption that the re-exported goods had been used after importation thereof because the respondent had not declared that they had not used the same prior to re-export. But this conclusion is not corroborated by any evidence whatsoever and it is not supported even by the examination report of customs officer in dock who had examined the re-exported goods. Further it is noticed that the respondent did not give any type of declaration with regard to use or no use of the goods and thus they completely missed declaration part in the Shipping bill. This omission was not got corrected by the concerning Customs assessing officer also while the Shipping bill was presented before him/her for assessment. Thus there is no evidence to establish that the re-exported goods had been used earlier and the

conclusion of the original authority is based sheerly on assumption and presumption only. Therefore, the Government does not find any infirmity in the Order-in-Appeal.

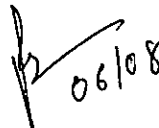
6. Accordingly, the revision application filed by the revenue is rejected.


(R.P. Sharma) 6-8-18

Additional Secretary to the Government of India

Commissioner of Customs (Port)
15/1 strand Road, Customs House,
Kolkata - 700001

ATTESTED


06/08

(Ravi Prakash)
OSD (REVISION APPLICATION)

Order No. 105/18-Cus dated 6-8-2018

Copy to:

1. M/s Tractor India Ltd, 1, Taratolla Road, Garden Reach, Kolkata 700024
2. Commissioner of Customs (Appeals), 15/1 strand Road, Customs House, Kolkata - 700001
3. The Assistant Commissioner of Customs (Drawback)(Port), 15/1 strand Road, Customs House, Kolkata - 700001
4. PS to AS(RA)
- ✓ 5. Guard File.
6. Spare Copy