



REGISTERED
SPEED POST

F.No. 371/05/DBK/13-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... 30/4/14

ORDER NO. 103/14-Cus DATED 30.04.2014 OF THE GOVERNMENT OF
INDIA, PASSED BY SHRI D.P.SINGH, JOINT SECRETARY TO THE GOVERNMENT OF
INDIA, UNDER SECTION 129 DD OF THE CUSTOM ACT, 1962.

Subject : Revision application filed under Section 129 DD of the
Custom Act, 1962 against the order-in-appeal No.880/MCH/
983/MCH/DC/Drawback/2012 dated 13.12.2012 passed by
the Commissioner of Custom (Appeals), Mumbai Zone-I.

Applicant : M/s Status Fashions, Mumbai

Respondent : Commissioner of Customs (Export Promotion), Mumbai

ORDER

This revision application is filed by the applicant M/s Status Fashions, Mumbai against the order-in-appeal No. 983/MCH/DC/Drawback/2012 dated 13.12.2012 passed by the Commissioner of Custom (Appeals), Mumbai Zone-I with respect to order-in-original passed by the Deputy Commissioner of Customs (DBK), New Custom House, Mumbai.

2. Brief facts of the case are that:

2.1 During the period 1999-2001 the applicant had affected Exports of their Dyed Fabrics using Duty paid yarn in the goods manufactured and exported by them. For the duty paid yarn used in the manufacture of the exported goods the applicant were entitled to Brand Rate of Duty Drawback. The applicant filed various applications under Rule 6 (1) of the Customs & Central Excise Duties Drawback Rules 1995, (the said drawback Rules) for fixation of Brand Rate of Duty Drawback through the respective Central Excise Commissionerate from time to time, which were duly verified by the concerned officers as mandated under the said Rule and forwarded to Drawback Directorate, New Delhi for Brand Rate fixation. They had filed brand rate of duty drawback claims and the department released the payment of some applications and other applications was put on hold assigning the reason that the "Claim of Brand Rate of Duty drawback is not possible to be fixed in respect of the application on the basis of the Circular No.39/2001-Cus dated 06.07.2001 by the Ministry. These Brand rate fixation applications were pending and exporters preferred to challenge the validity and retrospective effect of the Circular No.39/2001-Cus dated 06.07.2001 by Writ Petitions in various High Courts in 2003. In the case preferred by M/s. Arviva Industries & others, the Hon'ble High Court of Bombay decided the matter on 15.03.2004 and held that the impinged Circular 39/2001-CUS dated 06.07.2001 have only prospective effect and not retrospective effect as was being sought to be done by the Drawback Department.

2.2 Not satisfied with the said Order and Judgment of the Bombay High Court, Union of India/Drawback Department filed an SLP before the Hon'ble Supreme Court of India

challenging the said Judgment of the Hon'ble Bombay High Court in case of M/s. Arviva Industries & others. The Hon'ble Supreme Court by its order dated 10th January, 2007, dismissed the said aforesaid SLP filed by the Union of India with consequential reliefs.

2.3 The Supreme Court decided the matter on 10th January, 2007. However, the department has decided applications of only those exporters who had filed the Court case during that time. Therefore, the Applicant had filed writ petition in the Hon'ble High Court, Bombay. Later the department was directed by the Bombay High Court to decide the applications within 12 weeks by its Order dated 17th January, 2008, extending the benefit of Circular No.68/97-Cus or 39/99-Cus, as the case may be in the brand rate in Applications filed against exports made prior to 06.07.2001.

2.4 In the meantime, procedure for fixation of Brand Rate of Duty Drawback has been revised by the Government and according to the new procedure the jurisdictional Commissioners of Central Excise were empowered to fix the brand rate. Consequently the pending applications were returned to the concerned Commissionerate from the office of the Joint Secretary (DBK), Government of India, Department of Revenue, New Delhi. Accordingly the concerned Central Excise Commissionerate fixed the Brand Rate of drawback in respect of said applications.

2.5 The said claims were finally settled by the Deputy Commissioner of Custom Drawback, New Custom House, Mumbai and the applicants received the drawback payment without any interest. The applicant filed interest claim on delayed payment of drawback @30% which was rejected by the original authority vide impugned order-in-original.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeal), who rejected the same.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application, under Section 129 DD of Customs Act, 1962 before Central Government on the following grounds:

4.1 The Applicants states that all applications for Brand rate of Duty Drawback were submitted in Central Excise department as per then prevailing Rules and regulations in the year 1999-2001. Government has decided that wherever there is delay of 3 months for the payment of Drawback the exporter should be paid interest at rates from 5% to 30%. The exporter had claimed interest as per provisions of Section 27(1) (b), (2) (c) (2) (e) read with Section 27 A & 75A of the Customs Act 1962. The Applicants are eligible for interest on delayed refund as per the above sections of the Customs Act. Therefore Impugned orders are unreasonable, arbitrary and required to be set aside.

4.2 The Applicants states that the Hon'ble Supreme Court of India and various Hon'ble High Courts have confirmed in their Land mark judgments that whenever any refund application is made interest is admissible to the claimant from 3 months of the date of submission till the date of Payment.

4.3 The Applicants states that a point to be considered is that when there is a delay on the part of exporters to pay any money due to the Government it will attract an interest for the delayed period along with penalty. Therefore on this ground also the equity and natural justice should prevail, therefore, the Applicants should be granted interest. The impugned orders passed by the Dy. Commissioner and Commissioner (Appeals) are required to be set aside on this ground alone.

4.4 The Applicants states that, regarding claim of interest, Section 27A of Customs Act 1962 provides that interest at rates 5% to 30% is payable. Further Section 27(1)(b),(2)(c),(2)(e) read with section 27A and 75A of the Customs Act, 1962 provides for payment of highest interest rate of 30%. Since the Applicants were denied their rightful claims by unconstitutional enactment of the Revenue the Applicants has every right to claim the highest interest rate as provided for in Section 27A & 75A of the Customs Act 1962. More over the value of rupee has depreciated substantially during these 8-12 years. Moreover export earnings were exempted from income tax during the period where as the same is taxable now. In view of this fact also the Applicant is

eligible to receive at the highest rate of interest. The impugned orders are required to be set aside on this ground alone.

4.5 The Applicants clarified the point raised in Para No.11 of order-in-appeal regarding non-submission of relevant documents relating to the instant claims, the relevant documents is only the acknowledgement of application from the jurisdictional Central Excise authorities, with date. This information has already furnished to the Dy. Commissioner of Customs and had they any doubt they could have allowed interest from 90 days of shipment date. As any application for brand rate submitted after 90 days from let export date is time barred. Similarly, there is no logic in asking from the original claim amount, as interest is claimed only on the amount paid to the exporter.

4.6 The Applicants submit that the Customs Act Section 75A read with Section 27A of Customs Act 1962 clearly provides that interest should be paid if there is a delay of more than 3 months from the filing date of Drawback claim. "Filing date" as far as Brand rate of duty Drawback is the date on which the exporter had filed his application with the Central Excise department and not the date on which the papers are submitted to the Customs for release the payment. The Dy. Commissioner and the Commissioner (Appeals) did not consider this fact while passing the said impugned orders and required to be set aside on this ground alone.

5. Personal hearing was scheduled in this case on 07.08.2013, 30.10.2013 & 10.04.2014. Shri Joseph Thattil, advocate appeared for hearing on 10.04.2014 on behalf of the applicant who reiterated the grounds of revision application. In their written submissions, they broadly reiterated the grounds of revision application to claim the interest on delayed payment of drawback. Nobody attended hearing on behalf of respondent department on any of these hearings.

6. Government has carefully gone through the relevant case records, oral and written submissions and perused the impugned order-in-original and order-in-appeal.

7. Government notes that in the instant case the interest claim is denied by lower authorities and applicant has contested the impugned order-in-appeal on the grounds stated in para (4) above.

8. The applicant has claimed interest @30% on delayed payment of drawback claim from the date of CBEC Circular dated 6.7.2001 till the date of payment.

8.1 Government notes that section 75A, read under section 27A of Custom Act 1962 provides for interest on delayed payment of drawback of duty at the rate of interest fixed by central Government under section 27A and Government has fixed the interest at 6% per annum. The claim of interest @30% per annum is against the provisions of law and cannot be entertained. As regards payment of interest, the relevant provision of section 75A are reproduced below for understanding the issue:-

"(1) Where any drawback payable to a claimant under section 74 or section 75 is not paid within a period of one month from the date of filing a claim for payment of such drawback, there shall be paid to that claimant in addition to the amount of drawback, interest at the rate fixed under section 27A from the date after the expiry of the said period of one month till the date of payment of such drawback :"

The said provision makes it clear that interest on delayed payment of drawback amount is to be paid after expiry of one month from the date filing a claim for payment of such drawback.

8.2 The manner and time of claiming drawback on goods exported is stipulated under rule 13 of Customs, Central Excise Duties and Service tax Drawback Rules 1995. The rule 13 (2) & 13 (3) states as under:-

" 13. Manner and time for claiming drawback on goods exported other than by post.

1. -----
2. *The said claim for drawback should be accompanied by the following documents, namely:-*

- i) *Copy of export contract or letter of credit, as the case may be,*
- ii) *Copy of packing list,*
- iii) *Copy of ARE-1, wherever applicable,*
- iv) *Insurance certificate, wherever necessary, and*
- v) *Copy of communication regarding rate of drawback where the drawback claim is for a rate determined by the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be under rule 6 or rule 7 of these rules.*

(3) (a) If the said claim for drawback is incomplete in any material particulars or is without the documents specified in sub-rule (2), shall be returned to the claimant with a deficiency memo in the form prescribed by the Commissioner of Customs within 10 days and shall be deemed not to have been filed for the purpose of section 75 A.

b) Where the exporter resubmits the claim for drawback after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed under sub-rule (1) for the purpose of section 75A.

4. -----

5. ----- "

8.3 As per above said provisions the drawback claim is to be filed along with document as mentioned in 2 (i) to (v). The communications regarding rate of drawback where drawback claim is for the rate determined by Commissioner of Central Excise/Customs under rule 6 or 7 of these rules is one of these documents which is to accompany the drawback claim. The drawback claim is treated as complete claim when all the document mentioned in rule 13 (2) (i) to (v) are presented.

8.4 The said Rule 13(3)(a) & (b) clearly stipulate that incomplete claim shall be deemed not to have been filed for the purpose of Section 75A of Customs Act 1962 and it shall be treated as a claim filed under Rule 13(1) for the purpose of Section 75A only when the drawback claim along with all the requisite documents is filed. In this case the brand rate fixation letter is submitted only after 17.1.2008 and therefore claim cannot be treated as filed earlier in 2001.

8.5 Therefore the interest on delayed payment of drawback claim is payable after expiry of one month from date of filing complete drawback claim along with all the requisite documents including the brand rate of drawback fixation order from Central Excise authorities. In view of these statutory provisions, the contention of applicant that interest claim is payable from date of circular dated 6.7.2001 or the date of filing application for fixation of brand rate of drawback is not legally tenable. Similar view is taken on this issue by this authority vide GOI Revision Order No.120/13-Cx dated 25.5.13 in the case of M/s Shree Mahavir Textile Mills, Mumbai. In the said case, said exporter has filed revision application against order-in-appeal No.684/MCH/AC/DBK/NCH/12 dated 9.8.12 passed by Commissioner of Customs (Appeals) applicable to Mumbai Customs Zone-I, Mumbai. The ratio of said order is applicable to this case.

9. The original authority has not mentioned the date of receipt of drawback claim and sanction of drawback claim. In the absence of which it cannot be judged whether there was any delay in sanctioning rebate claim. However, original authority is directed to consider the interest claim for sanction if there was any delay in sanctioning the drawback claims after calculating the delay in terms of statutory provisions discussed above. The impugned Order-in-Appeal is modified to this extent.

10. The revision application is disposed off in terms of above.

11. So ordered.

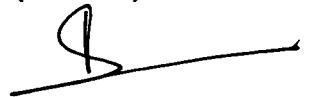


(D.P.Singh)

Joint Secretary to the Government of India

M/s Status Fashions,
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(Attested)



(भागवत शर्मा)
सहायक आयुक्त/Asstt.
CBEC-OSD (Revision)
रिजि. मंत्रालय (विशेष विवरण)
Ministry of Finance (Dept. of Rev.)
भारत सरकार, Government of India
नई दिल्ली

Order No. 103 /14-Cus dated 30. 04.2014

Copy to:-

1. Commissioner of Customs (Export Promotion), Drawback Section, 3rd Floor, Annexe Building, New Custom House, Ballard Estate, Mumbai-400 001.
2. The Commissioner Customs (Appeals) Mumbai Zone-I, New Custom House, Ballard Estate, Mumbai – 400 001.
3. Deputy Commissioner of Customs (DBK), New Custom House, Ballard Estate, Mumbai-400 001
4. Shri Joseph Thattil, Advocate, Room No. 6, 4th Floor, Deval Chamber, Nr. Afternoon Times, Nanabhai Lane, Fountain, Mumbai 400 001.
- ✓ 5. PS to JS (Revision Application)
6. Guard File
7. Spare Copy.



(Bhagwat P. Sharma)
OSD (Revision Application)

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C -O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Revenue)
भारत सरकार/Govt. of India
नई दिल्ली / NEW DELHI