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**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India**  
8<sup>th</sup> Floor, World Trade Centre, Cuff Parade,  
Mumbai- 400 005

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F. NO. 371/93-95/2020-RA / 2945 Date of Issue: 02.05.2021

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127-129  
ORDER NO. /2021-CUS(WZ) /ASRA/Mumbai DATED 19.05.2021 OF  
THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS  
ACT, 1962.

Applicant : M/s Endress + Hauser Wetzler (India) Pvt. Ltd.  
M 171-173, MIDC , Waluj,  
Aurangabad (Maharashtra)- 431136

Respondent : The Commissioner of Customs (Export), Mumbai.

Subject : Revision Applications filed, under Section 129DD of the  
Customs Act, 1962 against the Orders-in-Appeal No.  
MUM-CUSTOMS-APP-606,607,608/2019-20 dated  
30.10.2019 passed by the Commissioner of Customs  
(Appeals), Mumbai-III.

## ORDER

This revision application is filed by M/s V M/s Endress + Hauser Wetzler (India) Pvt. Ltd., M 171-173, MIDC, Waluj, Aurangabad (Maharashtra) – 431136 (hereinafter referred to as “the applicant”) against the Order-in-Appeal No. MUM-CUSTOM-AXP-APP-606,607,608/2019-20 dated 30.10.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Brief facts of the case are that the applicant are engaged in manufacture and export of level and pressure measuring instruments and or parts thereof. The applicant had filed the application for fixation of Brand Rate (Special brand rate fixation scheme) vide their letter dated 28.09.2018 along with request for condonation of delay which was received by the department on 10.11.2018. The condonation for delay was rejected vide letter dated 02.08.2019 issued by the Additional Commissioner (Exports) and letters dated 08.02.2019 and 11.12.2018 issued by the Assistant Commissioner of Customs, Brand Rate Unit (Exports) on the grounds that the applications were filed by the applicant after a delay of 09 months, 11 months and 24 days and more than 12 months respectively from Let Export Order and that the applicant had failed to explain the delay specifically.

3. Being aggrieved by the Order in Original, the applicant filed an appeal before the Commissioner of Customs (Appeals), Mumbai – III. The Appellate Authority vide Order in Appeal No. MUM-CUSTOM-AXP-APP-606,607,608/2019-20 dated 30.10.2019 rejected the appeal and upheld the Order in Original. The appellate authority while passing the impugned order in appeal observed that :-

3.1 There was delay of 09 months, 11 months and 24 days and more than 12 months respectively from the date of LEO of the first shipping bill included in the drawback claim application.

3.2 Thus the power to condone the delay was outside the purview of concerned AC/DC and rested with the jurisdictional Commissioner of Customs who can condone the delay and grant extension upto an additional 06 months.

- 3.3 Circular No. 82/98 dated 29.10.1998 clearly states that power to condone delay is to be exercised only when there is a specific reason and with supporting documents. There is no specific reason or documentary evidence had been provided by the applicant to show during which period software was developed or that release of EP copies took more than 45 to 60 days. It appeared prima facie to be false submission because as per the Board's Circular No. 55/2016-Customs dated 23.11.2016, printing of EP copies had been stopped.
- 3.4 The copy of application enclosed with appeal was addressed to AC/DC, Drawback Department that too without any stamp of acknowledgement which suggest that the applicant had not disclosed full facts of the case.
- 3.5 The decision of not granting extension was taken by the Commissioner and the appeal against which lies before Hon'ble CESTAT though no speaking order was issued by Commissioner which was mandated by CBEC vide Para 4 of Circular 13/2010.

4. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds that :

- 4.1 The appellate authority passed a common order in appeal considering common subject matter of appeal whereas the facts in appeals were different therefore there was required separate order in appeal as the applicants were independent legal entities and hence the order in appeal was void and not sustainable.
- 4.2 The order in appeal is neither rejecting appeal nor allowing the appeal and therefore leads to an ambiguity whether to be taken up as rejection of appeal or otherwise, therefore order in appeal is not an order but a finding of the appellate authority with no conclusion.
- 4.3 The appellate authority did not give cognizance of the fact that applicant were not given natural justice by the Commissioner of Customs, ACC, Sahar, Mumbai before passing order of rejection of condonation of delay.
- 4.4 It was submitted that the release of EP copy required 45-60 days and Commissioner observed it to be shallow reason as printing of

EP copies was stopped w.e.f. 23.11.2016 vide Circular No. 55/2016 Cus dated 23.11.2016.

- 4.5 None of the reasons mentioned for delay in the application were flimsy or manipulated as they were not benefitted in making any delay in filing the application.
- 4.6 It is worth mentioning that payment against exports is received on an average between 30-90 days' time and there is delay in the EBRC which is required to be submitted alongwith the application. The set of documents to be certified by the Chartered Accountant is large in number as there are about 150 shipping bills in a quarter, invoices, bill of lading, bills of entries, invoices, challans etc. which are verified by the Central Excise Range officers and as such the reasons advanced by them are true and correct which have been ignored by the Commissioner of Customs.
- 4.7 They had submitted the evidence of export realization immediately after exports through CHA to the authorities. However, they did not take any acknowledgement for the same.
5. A Personal hearing in the matter was granted on 18.06.2021. Shri Sarvesh Kumar Mathur, Advocate attended the same online and reiterated the submissions made. He stated that his request for condonation of delay was not accepted by authorities. He informed that a written submission is being made on that day. He requested for considering the delay in the matter as he was not going to gain anything by delaying the matter.
6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.
7. On perusal of records, Government observes that the application for the fixation of drawback under Rule 7 of the Drawback Rules filed by the applicant was rejected by the department vide letters F. No. S/3/BRU/59/Endress + Hauser /2018-19/ACC dated 02.08.2019, S/3/BRU/79/Endress + Hauser /2018-19/ACC dated 08.02.2019 and S/3/BRU/91/Endress + Hauser /2018-19/ACC dated 11.12.2018 issued by the Additional / Assistant Commissioner of Customs (Exports), ACC, Mumbai. Further, the appellate authority ordered that the appeal so filed by the applicant was not

maintainable before him since no order had been passed by an officer of Customs lower in rank than a Commissioner.

8. The Government observes that the core issue in the case is whether the application for fixation of drawback under Rule 7 of the Drawback Rules, 1995 is hit by the time limit stipulated under procedure.

8.1 The Government notes that the Customs Circular No-13/2010 dated 24.6.2010 prescribes the time limits for filing applications for fixation of Brand Rate of Drawback, supplementary claims of Drawback and for claiming drawback under section 74 of the Customs Act, 1962. The same are as under:

<b>Type of claim</b>	<b>Previous time limits</b>	<b>Revised time limits</b>
Brand rate claim(Rules 6 and 7 of Customs, Central Excise & Service Tax Drawback Rules, 1995)	The claim was required to be filed within 60 days from the date of Let Export Order. This time limit could be extended by 30 days by the Commissioner if he was satisfied that the exporter was prevented by sufficient cause from filing the application within the aforesaid time period.	The claim may be filed within 3 months from the date of Let Export Order. This time limit may be extended by 3 months by the AC / DC and by another 6 months by the Commissioner.

8.2 On perusal of the Revision Application, Order in Original, Order in Appeals and the submissions by the applicant, it is observed that the matter has not been examined by the original authority in light of Board's Circular. The Orders passed by the lower authorities simply state that the applications filed by the applicant were delayed by 09 months, 11 months and 24 days and 12 months respectively from the date of LEO of the first shipping bill included in the drawback application.

8.3 Thus, the Government finds that the orders passed by the lower authorities are cryptic and vague. Also, it is observed that the principles of natural justice were not followed while passing the original order and was passed without an opportunity being offered to the applicant to represent their

case. In view of above, Government holds that the matter should be remanded back to original authority for fresh consideration in the light of above discussion.

9. Accordingly, Government sets aside Orders in Appeal No MUM-CUSTOMS-APP-606,607,608/2019-20 dated 30.10.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III and remands the case back to the original authority for passing well-reasoned order in the light of above discussion after giving reasonable opportunity of hearing to the applicant.

10. Revision Application is disposed off in above terms.

*Shrawan*  
*19/5/21*  
(SHRAWAN KUMAR)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

127-129  
ORDER No. /2021-CUS(SZ) /ASRA/Mumbai DATED 19.05.2021

To,

M/s Endress + Hauser Wetzler (India) Pvt. Ltd.  
M 171-173, MIDC , Waluj,  
Aurangabad (Maharashtra)- 431136

Copy to :-

1. The Commissioner of Customs (Export), Air Cargo Complex, Sahar, Andheri (East), Mumbai – 400 099.
2. The Commissioner of Customs (Appeals), Mumbai Zone – III, Awas Corporate Point, 5<sup>th</sup> floor, Makwana Lane, Behind S.M. Centre, Andheri-Kurla Road, Marol, Mumbai- 400 059.
3. The Assistant Commissioner of Customs, DBK (XOS) Section, Air Cargo Complex Sahar, Andheri (East), Mumbai – 400 099.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
- ✓ 6. Spare copy.