REGISTERED SPEED POST AD

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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 371/42/DBK/13-RA /2008
F. No. 371/37/DBK/14-RA
F. No. 371/07/DBK/15-RA

Date of Issue: 17.08.2021

ORDER NO. 139-141 /2021-CUS (WZ) /ASRA/MUMBAI DATED 15.03.2021 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 Duratex Silk Mills Ltd.
Sanjay Building No. 5, 122, A-Wing,
Mittal Industrial Estate,
Andheri-Kurla Road,
Andheri(E), Mumbai – 400 059

Respondent : 1.Commissioner of Customs(Export Promotion), Mumbai
2. Commissioner of Customs(Export), JNCH
3. Commissioner of Customs(Export), ACC, Mumbai

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against OIA 180/MCH/DC/DBK/2013 dated 07.03.2013 passed by Commissioner of Customs(Appeals), Mumbai Zone-I, OIA No. 156(Drawback)/2012(JNCH)/EXP-19 dated 22.03.2012 passed by Commissioner of Customs(Appeals), Mumbai-II & OIA No. MUM-CUSTM-AXP-APP-584/14-15 dated 03.12.2014 passed by the Commissioner of Customs(Appeals), Mumbai-III.

ORDER

These revision applications have been filed by M/s Duratex Silk Mills Ltd, Sanjay Building No. 5, 122, A-Wing, Mittal Industrial Estate, Andheri-Kurla Road, Andheri(E), Mumbai - 400 059(hereinafter referred to as "the applicant") against OIA 180/MCH/DC/DBK/2013 dated 07.03.2013 passed by Commissioner of Customs(Appeals), Mumbai Zone-I, OIA No. 156(Drawback)/2012(JNCH)/EXP-19 dated 22.03.2012 passed by Commissioner of Customs(Appeals), Mumbai-II & OIA No. MUM-CUSTM-AXP-APP-584/14-15 dated 03.12.2014 passed by the Commissioner of Customs(Appeals), Mumbai-III.

2.1 The applicant filed their applications for fixation of brand rate with the Drawback Division of the Central Board of Excise & Customs, New Delhi(CBEC). On representations from the trade that they are not compensated for excise duty paid on indigenous inputs used in export goods, the CBEC had issued a Circular No. 68/97-Cus dated 02.12.1997 clarifying that the brand rate of drawback would be admissible to exporters who were unable to avail of MODVAT/CENVAT credit of additional duty of customs or central excise duty paid on indigenous inputs used in the manufacture of products exported under DEPB scheme. This benefit was also extended to units working under the compounded levy scheme vide Circular No. 39/99-Cus dated 25.06.1999.

2.2 The CBEC subsequently clarified vide Circular No. 39/2001-Cus dated 06.07.2001 that :

> *"2. ..... It has been observed that Exim Policy provisions are very clear and indicate that exports made under DEPB Scheme shall not be entitled for Drawback. However, the additional customs duty paid in cash on inputs under DEPB can be claimed for adjustment/relief by way of Modvat Credit or Duty Drawback as per rules of DOR. Under duty exemption schemes, facility*

of drawback for duties paid if any was extended only for inputs not covered by SION or inputs not permitted under Advance licences to avoid unintended benefit. It is accordingly clarified that facility of Brand Rate of Drawback for export made under DEPB Scheme against DEPB-cum-Drawback shipping bills shall be allowed ***only*** *in the following situations:*

(a) where the additional duty of customs has been paid in cash ***on inputs imported*** *under DEPB Scheme used in export products & no MODVAT (CENVAT) has been availed for such additional duty paid; and*

(b) where excise duty is paid on indigenous inputs not specified in relevant SION, but used in export product and no MODVAT (CENVAT) has been availed for such excise duty paid.

3. Brand rate of drawback in such cases shall be considered irrespective of whether the export product is dutiable/excisable or not.

4. Circular Nos. 68/97-Cus., dated 2-12-1997 and 39/99-Cus., dated 25-6-1999 shall stand corrected to the extent mentioned above in the preceding paragraphs and other conditions of the said two Circulars shall continue to apply.

5. All pending brand rate applications for exports made under DEPB Scheme against DEPB-cum-Drawback shipping bills may be processed/disposed of accordingly."

2.3 All pending applications were processed in light of above circular dated 06.07.2001. All such applicants were informed that claim of brand rate of drawback is not possible to be fixed in respect of the instant application in view of the Circular No. 39/2001-Cus dated 06.07.2001. A few exporters challenged the validity of the circular dated 06.07.2001 by filing Writ Petitions in various High Courts. In the case concerning Arviva Industries & Ors., the Hon'ble High Court of Bombay in W.P. No. 3003 of 2002 decided the matter

on 15.03.2004 by holding that the circular dated 06.07.2001 would only have prospective effect. The Department preferred appeal before the Hon'ble Supreme Court against the judgment of the Hon'ble Bombay High Court. The Hon'ble Supreme Court[2007(209)ELT 5(SC)] by its judgment dated 10.01.2007 dismissed the SLP filed by the Department. The applicant submitted that the Department decided the applications of only those exporters who had approached court at that time and hence many exporters with similar grievance didn't get any relief. Therefore, the applicant filed Writ Petition Lodging No. 2652 of 2007 before the Hon'ble Bombay High Court. The Hon'ble High Court directed the Department to decide the application according to law within a period of 12 weeks.

2.4 The applicant submitted that during the interim, the procedure for fixation of brand rate of duty drawback had been revised by the Government by empowering the jurisdictional Commissioners of Central Excise to fix the brand rate. In the case of the applicant, the Department of Customs had finally settled claims and the applicant had received payment of drawback after a gap of almost 9 years and such payment was made without paying any interest. The applicant preferred Writ Petition No. 2681 of 2010 before the Hon'ble Bombay High Court seeking interest on delayed payment of brand rate of duty drawback for a period of almost 9 years and also praying that the Assistant Commissioner be directed to expedite the matter. The Hon'ble High Court disposed the matter vide its Order dated 27.01.2011 with direction to the Department to hear and dispose off the application/matter on merits within a period of six weeks from the date of the judgment.

3.1 In compliance of the directions of the Hon'ble High Court, the Deputy Commissioner granted the applicant a personal hearing in the matter. The applicant requested that they be paid interest @ 30% from 06.07.2001 till the date of payment of drawback. The applicant submitted that they were legally entitled for interest for the delayed payment under Section 27A read with

Section 75A of the Customs Act, 1962. They also pointed out that the fixation of brand rate was not delayed for any mistake on their part. Delay occurred due to issues concerning the interpretation of Circular No. 39/2001-Cus dated 06.07.2001 and therefore they were definitely eligible for interest on the delayed payment of drawback. The Deputy Commissioner(DBK), Mumbai rejected the claim for interest vide his OIO No. S/10-100/2011/DBK/DC/SPP dated 08.03.2011 observing that there was no delay in payment of drawback amount once the claim was filed by the applicant.

3.2 Aggrieved by the order passed by the Deputy Commissioner(DBK), the applicant filed appeal before the Commissioner of Customs(Appeals), Mumbai Zone-I. The Commissioner(Appeals) found that the claim for interest from the date of shipment or 06.07.2001 could not be considered for computing the period of delay as the same was beyond the scope of Section 75A of the Customs Act, 1962. The Commissioner(Appeals) stated that the drawback claims had been finalized within the specified period after the finalization of brand rate. The Commissioner(Appeals) also noted that in its order dated 27.01.2011, the Hon'ble Bombay High Court had only directed the Department to dispose off the application of the petitioner applicant on merits. In the light of these findings, the Commissioner(Appeals) upheld the order passed by the Deputy Commissioner and rejected the applicants appeal vide OIA No. 180/MCH/DC/DBK/2013 dated 07.03.2013.

4. Aggrieved by the OIA dated 07.03.2013, the applicant has filed revision application on the following grounds :

(a) They have filed applications for fixation of brand rate of duty drawback in the Central Excise Department as per the rules and regulations prevailing in the years 1999-2001.

(b) As per the various judgments of the Hon'ble Supreme Court of India and the Hon'ble High Courts, that in cases of refund interest would be admissible to the claimant 3 months from the date of submission of the claim till the date

of payment. The applicant placed reliance upon the judgments in the case of Ranbaxy Laboratories Ltd. vs. UOI[2011-TIOL-105-SC-CX] and several other previous judgments.

(c) When there is a delay on the part of exporters to pay any money due to the Government, it attracts interest for the period of delay alongwith penalty. On this ground, equity and natural justice should prevail and therefore the applicant should be granted interest.

(d) It was argued that Section 27A of the Customs Act, 1962 provides for interest at the rate of 5% to 30%. Further Section 27(1)(b), (2)(c), (2)(e) read with Section 27A and 75A of the Customs Act, 1962 provide for payment of the highest rate of interest @30%. The applicants were denied their rightful claim of brand rate of duty drawback by issue of Circular No. 39/2001-Cus dated 06.07.2001 and that the circular was illegal and ultra vires to the constitution.

(e) The rate of interest had been fixed 9% p.a. vide Notification No. 21/2001-Cus(NT) dated 11.05.2001, 8% p.a. vide Notification No. 25/2002-Cus(NT) dated 13.05.2002 and 6% p.a. vide Notification No. 75/2003-Cus(NT) dated 12.09.2003. It was also stated that the value of the rupee had depreciated substantially during the preceding 8-12 years. Moreover, export earnings were exempted from income tax during the period whereas now it is taxable. In view of these changed circumstances, the applicant argued that they were eligible for the highest rate of interest.

(f) The applicant contended that the Section 75A read with Section 27A of the Customs Act clearly provided for interest to be paid if there is a delay of more than three months from the date of filing of drawback claim. It was further stated that "filing date" with regard to brand rate of duty drawback is the date on which the exporter has filed his application with the Central Excise Department and cannot be the date on which papers are submitted to the Customs for release of payment. The applicant averred that the DC and the

Commissioner(Appeals) had not taken this fact into consideration while passing the impugned orders.

5. The applicant was thereafter granted hearings on 26.05.2015, 19.03.2018, 15.10.2019, 20.11.2019, 08.01.2021, 15.01.2021 & 22.01.2021 in R.A. No. 371/42/DBK/2013 filed against OIA No. 180/MCH/DC/DBK/2013 dated 07.03.2013 passed by the Commissioner of Customs(Appeals), Mumbai Zone-I. None appeared for personal hearing on their behalf. However, applicant vide letter dated 08.01.2021 informed that they do not have anything further to submit in the matter and requested to avoid formalities like more personal hearings in the matter.

6.1 In a similar case, the applicant's claim for interest in terms of the directions of the Hon'ble Bombay High Court in Writ Petition No. 2681 of 2010 vide its Order dated 27.01.2011 was taken up for decision by the Assistant Commissioner(DBK), JNCH. The request for payment of interest on the alleged delayed payment of drawback was rejected by the Assistant Commissioner(DBK), JNCH vide his OIO No. 49/2010-11/DBK/AC/MHJR dated 09.03.2011.

6.2 Aggrieved by the OIO No. 49/2010-11/DBK/AC/MHJR dated 09.03.2011, the applicant preferred appeal before the Commissioner(Appeals). On taking up the appeal, the Commissioner(Appeals) observed that since the applicant themselves had not challenged the validity of the circular dated 06.07.2001. Reliance was placed upon the judgment of the Hon'ble Supreme Court of India in the case of State of Punjab vs. Atul Fasteners Ltd.[2007(211)ELT 519(SC)] wherein it was held that interest is admissible in a tax enactment only on two grounds; viz. agreement or statutory provision. It was further held that interest cannot be granted on the basis of equity under a tax enactment. Commissioner(Appeals) therefore rejected the appeal filed by the applicant vide his OIA No. 156(Drawback)/2012(JNCH)/EXP-19 dated 22.03.2012.

6.3 The applicant filed W.P. No. 2784 of 2012 before the Hon'ble Bombay High Court challenging the OIA No. 156(Drawback)/2012(JNCH)/EXP-19 dated 22.03.2012. However, the said writ petition was allowed to be withdrawn by the court with liberty to adopt appropriate proceedings. The applicant has thereupon filed revision application on identical grounds as those set out in para 4 hereinbefore. The applicant was granted opportunity of personal hearing on 21.12.2007, 09.01.2020, 15.01.2020, 08.01.2021, 15.01.2021 & 22.01.2021. The applicant failed to attend hearing on any of the appointed dates. However, the applicant filed letter dated 08.01.2021 requesting to avoid more opportunity of personal hearings and requested that the revision application filed by them be decided on merits.

7.1 The applicant had similarly filed drawback claims with Air Cargo Complex, Mumbai which were subsequently paid to the applicant. Thereafter, the applicants claim for interest in terms of the directions of the Hon'ble Bombay High Court in Writ Petition No. 2681 of 2010 vide its Order dated 27.01.2011 was taken up for decision by the Assistant Commissioner of Customs(Export), Air Cargo Complex, Mumbai. The request for payment of interest on the alleged delayed payment of drawback was rejected by the Assistant Commissioner of Customs(Export), Air Cargo Complex, Mumbai vide his OIO No. AC/NKM/257/10-11/Adjn. ACC dated 09.03.2011.

7.2 Aggrieved by the OIO No. AC/NKM/257/10-11/Adjn. ACC dated 09.03.2011, the applicant filed appeal before the Commissioner(Appeals). The appellate authority observed that the applicant was seeking interest on delayed payment of drawback from the date of shipment or 06.07.2001(date of circular). He found that the provisions of Section 75A of the Customs Act, 1962 becomes applicable only when a claim is filed and prescribes the time limit within which the claim is to be settled. It was further observed that the claim for drawback was deemed to have been filed in terms of Rule 13 of the Drawback Rules, 1995 only when accompanied by the prescribed documents.

Since the applicant had themselves admitted that they had submitted documents to Customs for processing of drawback claim on 19.05.2009 and subsequently registered it on 21.08.2009 and filed indemnity bond on 01.01.2010 in lieu of airline certificates, the drawback claim was effectively submitted only on 01.01.2010 and did not exist on the date of shipment or on 06.07.2001. The Commissioner of Customs(Appeals), Mumbai-III therefore rejected the applicants claim for payment of interest vide his OIA No. MUM-CUSTM-AXP-APP-584/14-15 dated 03.12.2014.

7.3 The applicant then filed revision application against OIA No. MUM-CUSTM-AXP-APP-584/14-15 dated 03.12.2014 on identical grounds as those set out in para 4 hereinbefore. The applicant was granted opportunity of personal hearing on 02.08.2018, 08.01.2021, 15.01.2021 & on 22.01.2021. The applicant failed to attend hearing on the appointed dates. However, the applicant filed letter dated 08.01.2021 requested to avoid more opportunity of personal hearing and requested that the revision application filed by them be decided on merits.

8. Government has carefully gone through the case records, perused the impugned orders-in-appeal, the orders-in-original, the orders of the Hon'ble Bombay High Court in the applicants case. The issue involved in the present case is whether applicant's claim for interest under Section 75A of the Customs Act, 1962 is admissible in the facts & circumstances of the case.

9. Before delving into the merits of the case, Government notes that there is a delay of approximately 700 days in filing the R.A. No. 371/37/DBK/14-RA. However, this delay has occurred on account of the fact that the applicant had directly filed W.P. No. 2784 of 2012 before the Hon'ble Bombay High Court against the impugned OIA No. 156(Drawback)/2012(JNCH)/EXP-19 dated 22.03.2012. Their Lordships have subsequently allowed the writ petition to be withdrawn "with liberty to adopt the appropriate proceedings" on 08.05.2014. The applicant has thereafter moved to file revision application on

21.05.2014(13 days). On going through the Form CA-8 filed by the applicant, it is observed that they have received the impugned OIA on 25.03.2012 and have filed the writ petition before the Hon'ble Bombay High Court on 22.06.2012(89 days). Needless to say, the applicant has filed the writ with the expectation of succeeding and is not expected to prepare for an alternate remedy before that petition is disposed off by the Hon'ble Court. After excluding the time spent from filing writ petition till its disposal by the High Court, it is observed that the applicant has taken a total of 102 days(89 days for filing W.P. + 13 days for filing R.A. after order of HC on W.P.). The statutory time limit for filing revision application under Section 129DD of the Customs Act, 1962 is three months. Beyond this initial period of three months, the Central Government is vested with powers to condone a further period of three months if it is satisfied that the applicant was prevented by sufficient cause from presenting the revision application within the first three months. In the present case, the date of filing of revision application falls within the condonable period. Government therefore condones the delay in filing the revision application.

10.1 On going through the revision applications, Government finds that the applicant had sought interest from the date of shipment/circular(06.07.2001). The Department has denied the same on the ground that the claims have been paid within the time limit after submission of claims for payment of drawback and that if there was any delay it was solely due to the applicant not submitting all required documents. The issue regarding the prospective applicability of the Circular dated 06.07.2001 had been settled by the Hon'ble Supreme Court vide its judgment dated 10.01.2007. However, the Department decided drawback applications of only those exporters who were petitioners before the Hon'ble High Court. The applicant therefore filed writ petition vide W.P. Lodging No. 2652 of 2007 whereupon the Hon'ble Bombay High Court vide its order dated 17.01.2008 directed the Department to decide the matter within a period of 12 weeks of its order. It is on the basis of this order of the

Hon'ble Bombay High Court that the applications for fixation of brand rate were finally processed and brand rate was fixed by the Department.

10.2 Government observes that the applicants had filed applications for fixation of brand rate which were processed in light of Board's Circular No. 39/2001-Cus dated 06.07.2001. Applicant was informed that fixing brand rate is not possible in view of

> *"2. ..... It has been observed that Exim Policy provisions are very clear and indicate that exports made under DEPB Scheme shall not be entitled for Drawback. However, the additional customs duty paid in cash on inputs under DEPB can be claimed for adjustment/relief by way of Modvat Credit or Duty Drawback as per rules of DOR. Under duty exemption schemes, facility of drawback for duties paid if any was extended only for inputs not covered by SION or inputs not permitted under Advance licences to avoid unintended benefit. It is accordingly clarified that facility of Brand Rate of Drawback for export made under DEPB Scheme against DEPB-cum-Drawback shipping bills shall be allowed* ***only*** *in the following situations:*
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> *(c) where the additional duty of customs has been paid in cash* ***on inputs imported*** *under DEPB Scheme used in export products & no MODVAT (CENVAT) has been availed for such additional duty paid; and*
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> *(d) where excise duty is paid on indigenous inputs not specified in relevant SION, but used in export product and no MODVAT (CENVAT) has been availed for such excise duty paid.*
>
> *3. Brand rate of drawback in such cases shall be considered irrespective of whether the export product is dutiable/excisable or not.*
>
> *4. Circular Nos. 68/97-Cus., dated 2-12-1997 and 39/99-Cus., dated 25-6-1999 shall stand corrected to the extent mentioned above in*

the preceding paragraphs and other conditions of the said two Circulars shall continue to apply.

5. All pending brand rate applications for exports made under DEPB Scheme against DEPB-cum-Drawback shipping bills may be processed/ disposed of accordingly."

Circular dated 06.07.2001. Applicant accepted above decision and did not contest the same. In other words, the applicant was not aggrieved by the decision of the Department to keep their applications for fixation of brand rate on hold. It was only after the judgment of the Hon'ble Supreme Court in the case of UOI vs. Arviva Industries (I) Ltd.[2007(209)ELT 5(SC)] that the applicant moved the Hon'ble Bombay High Court. The said writ petition was finally decided on 17.01.2008. In this regard, Government places reliance upon the landmark judgment of the Hon'ble Supreme Court in Mafatlal Industries Ltd. vs. UOI[1997(89)ELT 247(SC)] dealing with a similar situation, Hon'ble Supreme Court's findings are reproduced below.

"70. *Re : (II) : We may now consider a situation where a manufacturer pays a duty unquestioningly - or he questions the levy but fails before the original authority and keeps quiet. It may also be a case where he files an appeal, the appeal goes against him and he keeps quiet. It may also be a case where he files a second appeal/ revision, fails and then keeps quiet. The orders in any of the situations have become final against him. Then what happens is that after an year, five years, ten years, twenty years or even much later, a decision is rendered by a High Court or the Supreme Court in the case of another person holding that duty was not payable or was payable at a lesser rate in such a case. Is it open to the manufacturer to say that the decision of a High Court or the Supreme Court, as the ease may be, in the case of another person has made him aware of the mistake of law and, therefore, he is entitled to refund of the duty paid by him? Can he invoke Section 72 of the Contract Act in such a case and claim refund and whether in such a case, it can be held that reading Section 72 of the Contract Act along with Section 17(1)(c) of the Limitation Act, 1963, the period of limitation for making such a claim for refund, whether by way of a suit or by way of a writ petition, is three years from the date of discovery of such mistake of law? Kanhaiyalal is understood as saying that such a course is permissible. Later decisions*

commencing from Bhailal Bhai have held that the period of limitation in such cases is three years from the date of discovery of the mistake of law. With the greatest respect to the learned Judges who said so, we find ourselves unable to agree with the said proposition. Acceptance of the said proposition would do violence to several well-accepted concepts of law. One of the important principles of law, based upon public policy, is the sanctity attaching to the finality of any proceeding, be it a suit or any other proceeding. Where a duty has been collected under a particular order which has become final, the refund of that duty cannot be claimed unless the order (whether it is an order of assessment, adjudication or any other order under which the duty is paid) is set aside according to law.

So long as that order stands, the duty cannot be recovered back nor can any claim for its refund be entertained. But what is happening now is that the duty which has been paid under a proceeding which has become final long ago - may be an year back, ten years back or even twenty or more years back - is sought to be recovered on the ground of alleged discovery of mistake of law on the basis of a decision of a High Court or the Supreme Court. It is necessary to point out in this behalf that for filing an appeal or for adopting a remedy provided by the Act, the limitation generally prescribed is about three months (little more or less does not matter). But according to the present practice, writs and suits are being filed after lapse of a long number of years and the rule of limitation applicable in that behalf is said to be three years from the date of discovery of mistake of law : The incongruity of the situation needs no emphasis. And all this because another manufacturer or assessee has obtained a decision favourable to him. What has indeed been happening all these years is that just because one or a few of the assessees succeed in having their interpretation or contention accepted by a High Court or the Supreme Court, all the manufacturers/Assessees all over the country are filing refund claims within three years of such decision, irrespective of the fact that they may have paid the duty, say thirty years back, under similar provisions - and their claims are being allowed by courts. All this is said to be flowing from Article 265 which basis, as we have explained hereinbefore, is totally unsustainable for the reason that the Central Excise Act and the Rules made thereunder including Section 11B/Rule 11 too constitute "law" within the meaning of Article 265 and that in the face of the said provisions - which are exclusive in their nature - no claim for refund is maintainable except under and in accordance therewith. The second basic concept of law which is violated by permitting the above situation is the sanctity of the provisions of the Central Excises and Salt Act itself. The Act provides for levy, assessment, recovery, refund, appeals and all incidental/ancillary matters. Rule 11 and Section 11B, in particular, provide for refund of taxes which have been collected contrary

to law, i.e., on account of a mis-interpretation or mis-construction of a provision of law, rule, notification or regulation. The Act provides for both the situations represented by Sections 11A and 11B. As held by a seven - Judge Bench in Kamala Mills, following the principles enunciated in Firm & Illuri Subbaiya Chetty, the words "any assessment made under this Act" are wide enough to cover all assessments made by the appropriate authorities under the Act whether the assessments are correct or not and that the words "an assessment made" cannot mean an assessment properly and correctly made. It was also pointed out in the said decision that the provisions of the Bombay Sales Tax Act clearly indicate that all questions pertaining to the liability of the dealer to pay assessment in respect of their transactions are expressly left to be decided by the appropriate authorities under the Act as matters falling within their jurisdiction. Whether or not a return is correct and whether a transaction is exigible to tax or not are all matters to be determined by the authorities under the Act. The argument that the finding of the authority that a particular transaction is taxable under the Act is a finding on a collateral fact and, therefore, resort to civil court is open, was expressly rejected and it was affirmed that the whole activity of assessment beginning with the filing of the return and ending with the order of assessment falls within the jurisdiction of the authorities under the Act and no part of it can be said to constitute a collateral activity not specifically or expressly included in the jurisdiction of the authorities under the Act. It was clarified that even if the authority under the Act holds erroneously, while exercising its jurisdiction and powers under the Act that a transaction is taxable, it cannot be said that the decision of the authority is without jurisdiction. We respectfully agree with the above propositions and hold that the said principles apply with equal force in the case of both the Central Excises and Salt Act and the Customs Act. Once this is so, it is un-understandable how an assessment/adjudication made under the Act levying or affirming the duty can be ignored because some years later another view of law is taken by another court in another person's case. Nor is there any provision in the Act for re-opening the concluded proceedings on the aforesaid basis. We must reiterate that the provisions of the Central Excise Act also constitute "law" within the meaning of Article 265 and any collection or retention of tax in accordance or pursuant to the said provisions is collection or retention under "the authority of law" within the meaning of the said article.

In short, no claim for refund is permissible except under and in accordance with Rule 11 and Section 11B. An order or decree of a court does not become ineffective or unenforceable simply because at a later point of time, a different view of law is taken. If this theory is applied universally, it will lead to unimaginable chaos. It is, however, suggested that this result follows only in tax matters because of Article 265. The

explanation offered is untenable as demonstrated hereinbefore. As a matter of fact, the situation today is chaotic because of the principles supposedly emerging from Kanhaiyalal and other decisions following it. Every decision of this Court and of the High Courts on a question of law in favour of the assessee is giving rise to a wave of refund claims all over the country in respect of matters which have become final and are closed long number of years ago. We are not shown that such a thing is happening anywhere else in the world. Article 265 surely could not have been meant to provide for this. We are, therefore, of the clear and considered opinion that the theory of mistake of law and the consequent period of limitation of three years from the date of discovery of such mistake of law cannot be invoked by an assessee taking advantage of the decision in another assessee's case. All claims for refund ought to be, and ought to have been, filed only under and in accordance with Rule 11/Section 11B and under no other provision and in no other forum. An assessee must succeed or fail in his own proceedings and the finality of the proceedings in his own case cannot be ignored and refund ordered in his favour just because in another assessee's case, a similar point is decided in favour of the manufacturer/assessee."

10.3 The judgment in the case of Mafatlal Industries Ltd. clearly sets out that in cases where an assessee does not contest the decision taken against him or files an appeal but the appeal goes against him and he keeps quiet or in a case where he files a second appeal/revision, fails and then keeps quiet, the assessee would not be entitled to relief subsequently. The benefit of any subsequent judgment adverse to revenue can be had only when the assessee finally succeeds in his own proceedings. In the present case, the applicant had not filed any appeal when he was informed that fixing of brand rate is not possible. The applicant filed writ petition only after the Supreme Court judgment in the case of Arviva Industries (I) Ltd. It was not as if the applicant had contested the decision originally and had immediately filed appeal. Therefore, the applicant cannot claim parity with Arviva Industries (I) Ltd. who were the petitioners in W.P. No. 3003 of 2002[2004(167)ELT 135(Bom)] and obtained a favourable decision against the rejection of their brand rate applications. Therefore, the Department has correctly rejected the applicants claim for interest as they had adhered to the directions of the High Court and disposed off the claims within the specified time limit.

11. Be that as it may, in a statute for taxation, payment of interest cannot be made in the absence of a specific provision in the statute and the stipulated point therein when the liability of interest would commence. In so far as interest payment on drawback claims is concerned, the provision for grant of interest to an applicant is under Section 75A of the Customs Act, 1962. The relevant text of the same is reproduced below.

> *"SECTION 75A. Interest on drawback. – (1) Where any drawback payable to a claimant under section 74 or section 75 is not paid within a period of two months 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 two months till the date of payment of such drawback:"*

These provisions stipulate payment of interest if drawback payable to a claimant is not paid within a period of two months from the date of filing of claim for payment of such drawback. In the present case, the revision application does not contain any assertion by the applicant that the payment of drawback was delayed after they had filed drawback claim. The applicant would have been eligible for payment of interest if the drawback had not been paid to them within two months of filing drawback claim. Government, therefore, holds that the applicants request for grant of interest from the date of submission of brand rate application or the date of shipment or the date of issue of circular on 06.07.2001 is not maintainable. Since the plea for allowing interest itself is not sustained, no useful purpose would be served by delving into the rate of interest(30%) claimed by the applicant.

12.1 Government observes that the applicant has relied upon some case laws to contend that they are eligible for payment of interest. Many of these case laws relied upon pertain to payment of interest in case of refund claims. As per the applicant themselves, interest is admissible to the claimant of refund

3 months from the date of submission of the claim till the date of payment thereof. These case laws run counter to the claim for interest by the applicant and concede that the date of submission of claim would be the point when the interest liability would commence. In so far as the case laws involving drawback matters are concerned, it is observed that these case laws involve facts which are distinguishable. In most of the cases cited by the applicant, the admissible drawback had not been paid within the stipulated period after the filing of drawback claim. In the judgment passed by the Madurai Bench of the Hon'ble Madras High Court in case of Karur K.C.P. Packagings Ltd. vs. Commissioner of Customs in W.P.(MD) No. 15003 of 2015 and M.P.(MD) No. 1 of 2015, the Learned Judge has made reference to provisions of Section 75A of the Customs Act, 1962 and made the following observation.

> *"5. A mere perusal of the above Section goes to show that where any drawback payable to the claimant is not paid within a period of one month from the date of filing a claim for payment of such drawback interest at the rate fixed under Section 27-A from the date after the expiry of the said period of one month is payable to the petitioner....."*

The inference drawn by the Hon'ble High Court in the text reproduced above is consistent with the findings recorded in the preceding paragraph and fortifies the conclusions arrived at hereinbefore.

12.2 In so far as the decisions of the CESTAT cited by the applicant are concerned, the orders in the case of Marvel Apparels, Styleman vs. CC. Tuticorin in C/184/2010 & C/195/2010 and in the case of Stallion Garments vs. CC, Tuticorin in C/246/2010 have been passed by the Tribunal on appeal against orders passed by Commissioner(Appeals). Government observes that the first proviso to Section 129A(1) of the Customs Act, 1962 provides that no appeal shall lie to the Appellate Tribunal and that the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order if such order

relates to payment of drawback as provided in Chapter X and the rules made thereunder. It does not stand to reason that only revision application against drawback claim would be maintainable before the Central Government under Section 129DD & that the interest on the same drawback claim would be maintainable before an altogether different forum. Since the orders impugned in those proceedings were orders passed by Commissioner(Appeals) on issues concerning payment of drawback, these orders of the Tribunal exceed its jurisdiction, therefore same can not be regarded as a useful precedence. Moreover, facts of instant case are specifically covered by the judgment of the Hon'ble Supreme Court in Mafatlal Industries case. With regard to the orders of the Revisionary Authority relied upon by the applicant; viz. Revision Order No. 194/13-Cus dated 30.08.2013 in the case of M/s Fabco Exports, Mumbai, 105/14-Cus dated 30.04.2014 in the case of M/s Topman Exports, Mumbai and 103/14-Cus dated 30.04.2014 in the case of M/s Status Fashions, Mumbai, the Government has remanded back the proceedings to the original authority as the date of receipt of drawback claim and the date of sanction of drawback claim are not mentioned. Hence, these orders are of no avail to the applicant.

13. In the light of the findings recorded above, Government refrains from modifying the impugned OIA 180/MCH/DC/DBK/2013 dated 07.03.2013 passed by Commissioner of Customs(Appeals), Mumbai Zone-I, OIA No. 156(Drawback)/2012(JNCH)/EXP-19 dated 22.03.2012 passed by Commissioner of Customs(Appeals), Mumbai-II & OIA No. MUM-CUSTM-AXP-APP-584/14-15 dated 03.12.2014 passed by the Commissioner of Customs(Appeals), Mumbai-III. The revision applications filed by the applicant are disposed off on above terms.

Shrawan
15/03/21

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. (39-141)/2021-CUS(WZ) /ASRA/Mumbai DATED 15.03.2021

To,
M/s Duratex Silk Mills Ltd.
Sanjay Building No. 5, 122, A-Wing,
Mittal Industrial Estate,
Andheri-Kurla Road,
Andheri(E), Mumbai – 400 059

Copy to:

1. The Commissioner of Customs(Export Promotion), Mumbai
2. The Commissioner of Customs(Export), JNCH
3. The Commissioner of Customs(Export), ACC, Mumbai
4. The Commissioner of Customs(Appeals), Mumbai-I
5. The Commissioner of Customs(Appeals), Mumbai-II
6. The Commissioner of Customs(Appeals), Mumbai-III
7. Sr. P.S. to AS (RA), Mumbai
8. Guard file
9. Spare Copy