

REGISTERED SPEED POST



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. 371/96/DBK/13-RA/6000

DATE OF ISSUE: 16.10.2020

ORDER NO. 153/2020-CUS(WZ)/ASRA/MUMBAI DATED 31.08.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Subject : Revision applications filed under section 129DD of the Customs Act, 1962 against the Order in Appeal No. 586/2013/Cus/Commr (A)/KDL dated 26.08.2013 passed by the Commissioner of Customs (Appeals), Kandla [At Ahmedabad].

Applicant : M/s Gill & Co. P. Ltd., Mumbai.

Respondent : Commissioner of Customs, Customs House, Kandla.

ORDER

This Revision application has been filed by M/s Gill & Co. P. Ltd., Mumbai (hereinafter referred to as 'the applicant') against Order in Appeal No. 586/2013 /Cus/Commr (A)/KDL dated 26.08.2013 passed by the Commissioner of Customs (Appeals), Kandla [At Ahmedabad].

2. The Brief facts of the case are that the applicant had submitted drawback claim for total Rs. 11,79,528/- (Rupees Eleven Lakh Seventy Nine Thousand Five Hundred Twenty Eight only) in respect of 10 manual shipping Bills under which they had exported Indian Raw Cotton of RITC 52010020 during the period May-2005, June-2005 and November-2006. However, the following original documents had been lost and the applicant filed Police Complaint to that effect on 14.05.2011 with Assistant Commissioner of Police, Chhatrapati Shivaji Terminus Railway Police Station, CST, Mumbai.

1. Export Promotion copy of Shipping Bills,
2. Triplicate copy of Shipping Bills,
3. Original Bank Certificate of Exports & Realisation (BRC),
4. Mate Receipts against the Shipping Bills,
5. Invoice and Packing List.

The applicant submitted copy of a certificate dated 14.05.2011 issued by the Police authorities for the loss of the aforesaid documents. They also furnished indemnity bond against invoice, packing list, copy of shipping bill, bill of lading, BRC bank attested and mate receipt copy self attested. As regards realization of export proceeds, they submitted self-attested copy of Bank Realization Certificate dated 20.05.2011 issued by Union Bank of India, Mumbai. Adjudicating authority, i.e. Deputy Commissioner of Customs (DBK), Customs House, Mundra vide Order in Original No. KDL/440/RKC/DC/MP & SEZ/DK/2012-13 dated 29.06.2012 issued on 13.07.2012, sanctioned the drawback claims totally amounting to Rs.11,79,528/-, by observing that as per rule 13 of Customs & Central Excise Duties Drawback Rules, 1995 triplicate copy of the shipping bill shall be deemed to be the drawback claim filed on the date on which proper officer makes an order permitting exportation of goods.

3. Being aggrieved by the aforesaid Order in Original, the Commissioner of Customs, Kandla reviewed the same in terms of section 129D, and the department filed appeal before Commissioner of Customs (Appeals), Kandla.

4. Commissioner of Customs (Appeals), Kandla vide Order in Appeal No. 586/2013 /Cus/Commr (A)/KDL dated 26.08.2013 (impugned order) allowed the appeal filed by the department by setting aside Order in Original No. KDL/440/RKC/DC/MP & SEZ/DK/2012-13 dated 29.06.2012 passed by Deputy Commissioner of Customs (DBK), Customs House, Mundra alongwith consequential recovery by the appellant department.

5. Being aggrieved with the Order in Appeal No. 586/2013 /Cus/Commr (A)/KDL dated 26.08.2013, the applicant has filed the instant Revision Application on the following grounds:-

5.1 The impugned Order-in-Appeal has been passed by the Commissioner of Customs(Appeals) by not considering the submissions made at the time of personal hearing. It was obligatory on the part of appellate authority to have informed the availability or non availability of the Review Order of the Commissioner of Customs, Kandla and after directing to submit the defense submissions, should have decided the case. The impugned order being unreasoned and non speaking is thus violative of principles of natural justice and the same deserves to be quashed and set aside.

5.2. The appeal filed by the department was not maintainable, as the Review Order of the Commissioner for determination of such points arising out of decision or order of the Deputy Commissioner, has not been brought on record. It is submitted that that the Commissioner is under obligation to pass a Review order under Section 129 D (2) of the Customs Act, 1962, for determination of such points as may be specified by him in his order. It is further submitted that without such order being brought on record, the appeal cannot be considered to have been filed for determination of points as specified by the Commissioner, who has power to review the Order passed by the Deputy Commissioner.

5.3 Without prejudice to the aforesaid contentions, it is submitted that in absence of any Review Order of the Commissioner, the appeal of the department can be considered to have been reviewed and filed by the Deputy Commissioner, which is not permissible.

5.4 The department in the appeal has referred to Rule 13 of the Drawback Rules, 1995, inter-alia contending that there is a provision for extension in filing the claim for a period of three months. It is submitted that the said Rule provide for manner and

time of claiming the drawback on the goods exported. On the contrary, the said Rule 13 provides that the triplicate copy of the shipping bill shall be deemed to be claim filed on the date on which the proper officer gives permission and loading of the goods under Section 51 of the Customs Act, 1962. Thus, in the present case, the date on which the order was given under Section 51 of the Customs Act, 1962, was required to be considered the date of filing of the claim and there was no delay in filing the claim, as observed by the appellate authority.

5.5 The appellate authority has mentioned about the correspondence with the Assistant Commissioner, Bhuj. At the material time the drawback claims for exports through Mundra port were being sanctioned and paid by the Assistant Commissioner, Bhuj. The shipping bills were filed manually. It is after constantly pursuing the matter, that the drawback was sanctioned after ascertaining the exports of the goods, receipt of the sale proceeds and non payment of the drawback by the competent authority at the material time.

5.6 The appellate authority has considered some extraneous and irrelevant facts for allowing the appeal of the department. On one hand, it is observed by him that he did have material facts and on the other hand without any material facts, has doubted the credibility of the certificate issued by the Police authorities. In any way, if there was an iota of doubt in the mind of appellate authority, it was obligatory on his part in the interest of justice to have called for the records from the adjudicating authority, before proceeding to come to any conclusion. The impugned order thus is passed without any basis and on the assumption and unwarranted inferences drawn by the appellate authority.

5.7. The appellate authority has erred in holding that the date of claim was 14.05.2011. The applicant submits that the date of filing of the claim has already been defined in the rules itself and therefore any other date cannot be considered as date of filing of the claim.

5.8. The appellate authority has observed that the adjudicating authority has overlooked various critical components of law and procedures. In making such an observation, it was obligatory on his part to have specified the law and procedures, which were overlooked by the adjudicating authority. In any case, the appellate authority has to consider the grounds of appeal in the review order of the Reviewing

Authority. In the present case, the appellate authority has made an attempt to enter the shoes of the Reviewing Authority, which is not permissible.

5.9 All the documents were submitted manually at the time of exports and it was the office of the Assistant Commissioner of Customs, Bhuj, which was disbursing the payment of drawback to the exporters, at the material time. The adjudicating authority had referred the matter to Bhuj, who had informed that no such payments have been made against the said shipping bills. In or around the same time the EDI was introduced at Mundra port and thereafter, the drawback claims were settled through the EDI system. It is only after vigorous follow up that the drawback was sanctioned after due verification of the documents submitted by the applicant at the insistence of the department.

5.10 The entire appeal of the department is based on a mis-conception, without appreciating the facts of the case. The dispute in the present case is not with regards to eligibility, but with regards to the sanction of the drawback claim by the department after four and a half years. The delay in sanction of the drawback claim is not attributable to the applicant. It was obligatory on the part of the authorities to have sanctioned and paid the said amount of drawback to the account of the applicant, immediately after the let export order was given, based on the triplicate copy of the Shipping Bill.

5.11 The appellate authority has erred in holding that in case of any deficiency, the claim has to be considered to be filed on the date when the deficiency is removed and has accordingly considered the date as 14.05.2011. They refer to sub rule (b) of Rule 13 (3) of the drawback Rules and submit that where the exporter resubmits the claim after compliance, the same will be treated as claim filed under sub rule (1) for the purpose of Section 75 A. Thus the date of filing of the claim would be the date on which the order under Section 51 of the Customs Act, 1962 was passed.

5.12 The appellate authority has erred in holding that the adjudicating authority has over looked various critical components of law and procedure and thus the impugned order suffers from multiple legal infirmities. The appellate authority has referred to section 75A of the Customs Act 1962. The said section 75A deals with payment of interest on draw back and comes in to play only after the drawback claim

is sanctioned. The said section does not have any stipulation on the eligibility and sanction of drawback claim.

5.13 The appellate authority has referred to the decision in the case of Sonali Steels and Alloys Pvt Ltd. in support of limitation. The facts of the above case and the present case are entirely different. In the above case the Hon'ble High Court in Madras was dealing with a case of drawback incase of re-export and the delay was attributable to the company only. In the present case, no such finding or evidence has been brought on record in support of above contention and therefore the ratio of said decision is not applicable in the present case.

5.14 The appellate authority has further referred to the decision in the case of Parthas Exports. The appellate authority has picked up some stray observations from the said decision without considering as to in which context the said observations were made. The observations made at para 14 of the said decision is reproduced below.

"Drawback Rules are self-contained set of rules and are specially provided to deal with various aspects of drawback. When these Rules do not provide any time limit, it must be held as being deliberate and consciously made by the legislature. This argument is further substantiated by the fact that, drawback is not an inherent right of any exporter. It is only an incentive given by the Government to promote exports by way of giving back duties paid. If, in future it is detected that the duties paid have been erroneously returned, provision is made to recover such amount, and no time limit therefore seems to have been prescribed."

The said observation has no implication in the present case and as such the reliance placed by the authority is erroneous.

5.15 The appellate authority has failed to consider the basic fact that in case of All Industries rates of drawback, no separate claim is required to be filed and the drawback amount is credited in to the account of the exporter once an order under section 51 of the Customs Act has been passed.

5.16 The appellate authority has referred to second proviso to section 75 of the Customs Act 1962. However, the said section has no application in the present case, as it is not the case of department that the sale proceeds have not been received within the time allowed under FEMA 1999.

5.17 The observation made by the appellate authority has proceeded on a pre-determined and pre judged manner. The appellate authority is required to confine himself to the grounds of the appeal taken by the appellant in the memo of appeal and should not add any extraneous matter in arriving at the decision. In the present case, the appellate authority has considered the case as if he was the drawback sanctioning original authority.

6. A personal hearing was held in this case on 08.01.2020. Shri Ajay Singh, Advocate, appeared for hearing. He interalia submitted that there was no Review Order of the Commissioner of Customs, Kandla; that FIR was filed with the Chhatrapati Shivaji Terminus Railway Police Station, CST, Mumbai for the loss of documents; that all export remittances were received within six months, that 14.05.2011 was the date of filing FIR with the Police Railway Police Station and not the date of filing of drawback claims; that they rely on Commissioner of Customs, Mumbai Vs Teral Overseas Ltd, 2003(156)ELT 841(Cal).

7. In their written submissions filed on 16.01.2020, the applicant mainly contended as under :-

A) Appellate Authority has arrived at erroneous and misconceived findings only on the basis of assumptions without causing any verification and these findings are erroneous and contrary to the documentary evidence available on record

B) Appellate Authority failed to appreciate that there is no dispute that the goods were exported under claim of drawback and no drawback was sanctioned to the applicant.

C) On going through the findings of Appellate Authority as recorded in para 7 of the impugned order it can be seen that the Learned authority has based his findings on several assumptions without causing any verification whatsoever and based his findings on so-called conspicuously silent aspects of Rule 13. These are at the best assumptions on the part of Appellate Authority and cannot be held as valid and sustainable findings in absence of any supporting evidence. Appellate authority if desired could have caused verification himself or directed the office of original authority to produce documents necessary and or got the verification done. Without causing any verification and merely on the

basis of assumptions, the findings of Learned authority cannot be brushed aside on the basis of mere suspicion.

D) On perusal of paragraph 8 of the impugned order it can be seen that Appellate Authority has given factually incorrect findings merely on the basis of assumption that the certificate for lost documents was issued by the railway authorities instead of police authorities and has found it to be mysterious. The certificate dated 14/5/2011 available on page 56 of the appeal compilation (Annexure - B), shows that the certificate was in fact issued by the Chhatrapati Shivaji Terminus Police Station and not by railway as being assumed by the authority.

E) The findings at para 9 are itself based again on assumption as authority is once again proceeding on the ground that the original authority did not discuss the fact as to how the provisions of 2nd proviso to Section 75 (regarding the receipt of remittances within the stipulated time and FEMA 1999). On perusal of the 2nd para from top on page 80 (internal page 3 of the impugned order in original) it can be seen that the original authority has discussed regarding realization of export proceeds on the basis of self attested copies of bank realization certificates issued by the A.D. bank which shows the realization of export proceeds. While checking these records, Original authority must have also verified the date of receipt which is showing receipt of remittances way back in 2005/2006. Receipt of remittances against the impugned shipments are annexed as part of Annexure A of the present revision application compilation. On perusal of these documents it can be seen that remittances have invariably been received within stipulated time limit and therefore the findings of Appellate Authority are assumptions contrary to the documentary evidence on record and for this reason alone the impugned order in appeal is liable to be set aside in toto.

F) On perusal of para 10 of the impugned order in appeal, it is noticed that Commissioner (Appeals) has arrived at a factually incorrect finding that CHA by letter dated 14/5/2011 requested for drawback claim for the aforesaid shipping bills. Ongoing through the impugned order in original and records of the case, it is noticed that there is no letter dated 14/5/2011 submitted by CHA. On perusal of order in original and specially the page thereof (page 80 of

the revision application) it can be seen that Original Authority has observed "exporter has submitted copy of certificate dated 14/5/2011 showing the details of lost documents". Nowhere in the impugned order there is any mention of letter of CHA dated 14/5/2011. This clearly shows that the findings on which the order of Commissioner (Appeals) is based are factually incorrect, erroneous, misconceived and therefore the impugned order in appeal is liable to be set aside in toto.

8. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused Order-in-Original and the impugned Order-in-Appeal.

9. Government observes that the applicant has contended that the appeal filed by the department was not maintainable for the reasons:-

- Commissioner is under obligation to pass a Review order under Section 129 D (2) of the Customs Act, 1962, for determination of such points as may be specified by him in his order.
- without such order being brought on record, the appeal cannot be considered to have been filed for determination of points as specified by the Commissioner, who has power to review the Order passed by the Deputy Commissioner as the Review Order of the Commissioner for determination of such points arising out of decision or order of the Deputy Commissioner, has not been brought on record.

10. Section 129D(2) of the Customs Act, 1962 reads as under :-

"(2) The [Commissioner of Customs] may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority to apply to the [Commissioner (Appeals)] for the determination of such points arising out of the decision or order as may be specified by the [Commissioner of Customs] in his order."

Further, Rule 4 (2) of Central Excise (Appeals) Rules, 2001, requires that the "form of application in Form No. CA-2 shall be filed in duplicate and shall be accompanied by a certified copy of the decision or order passed by the adjudicating

authority and a copy of the order passed by the Commissioner of Central Excise directing such authority to apply to the Commissioner (Appeals)*.

In compliance of the said requirement, the Deputy Commissioner, Customs, C.H. MP & SEZ, Mundra has enclosed copy of Authorisation from the Commissioner (Customs), Kandla, Brief facts of the case and Grounds of Appeal to the CA-2 form filed before Commissioner of Customs (Appeals), Kandla. Government therefore, holds that as long as CA-2 has been filed by the said Deputy Commissioner along with the copy of authorisation signed by Commissioner(Customs) , as above, the appeal cannot be said to be non maintainable.

11. Government observes that Commissioner (Appeals) while allowing the appeal filed by the department observed as under:-

10. I must also mention, as stated in the impugned order, that the exporter through their CHA, vide Otter dated 14.05.2011 had requested for drawback claim for the aforesaid shipping bills which were filed nearly after more than 5 1/2 years. However, adjudicating authority applied rule 13 of Drawback Rules and considered the date of filing drawback claim as the date of exports. I am of the view that adjudicating authority has gone overboard to alter the date of filing drawback claim, without examining the facts of the case, i.e. whether the triplicate copy of shipping bills were filed along with all required documents and whether any further compliance was pending from the respondent-exporter against any deficiency memo, if issued, etc. For example, if the respondent-exporter had not submitted all the documents specified under rule 13(2) of Drawback Rules, or if they had not furnished compliance to the deficiency memo, if any, issued under rule 13(3), then there is no reason for considering the date of export as the date of filing drawback claim for the purpose of rule 13(1) or section 75A. In such cases, date of filing drawback claim should be 14.05.2011 or even after that (as BRC and indemnity bonds have been filed after 14.05.2011). This could have been confirmed only by verification of records available with the adjudicating authority, which was obviously not done. Determination of the actual date of filing drawback is crucial in the light of mandatory provisions of Section 75A. I hold that the adjudicating authority caused a grave error by zealously picking up the date of filing drawback claim from the archives without any verification.

12. The applicant has argued that on perusal of para 10 of the impugned order in appeal, it is noticed that Commissioner (Appeals) has arrived at a factually incorrect finding that CHA by letter dated 14/5/2011 requested for drawback claim for the aforesaid shipping bills; that ongoing through the impugned order in original and

records of the case, it is noticed that there is no letter dated 14/5/2011 submitted by CHA; that on perusal of order in original and specially the page thereof (page 80 of the revision application) it can be seen that Original Authority has observed "exporter has submitted copy of certificate dated 14/5/2011 showing the details of lost documents"; that nowhere in the impugned order there is any mention of letter of CHA dated 14/5/2011. It was argued that the findings on which the order of Commissioner (Appeals) is based are factually incorrect, erroneous, misconceived and therefore the impugned order in appeal is liable to be set aside in toto.

13. In this regard Government observes in his "Discussion and Findings: the Original Authority has observed that :-

In the instant case, the exporter through their CHA vide letter dated 14.05.2011 have requested for Drawback claim for the above said shipping bills which were filed nearly after Five and half years. However, as per Rule 13 of Customs and Central Excise Duties Drawback Rules 1995 for the manner and time for claiming drawback of goods exported other than by posts says "Triplicate copy of the Shipping Bill for Export of goods under a claim for drawback shall deemed to be a claim for drawback filed on the date on which proper officer of Customs makes an order permitting the clearance and loading of goods for exportation under Section 51 and the said claim for drawback shall be retained by the proper officer making such Order" accordingly the exporter has requested to process the drawback claim manually and the exporter has given the undertaking that 'Drawback claim is not been availed in past in respect to above said Shipping Bills and it appeared that the said claims has rightly claimed above said drawback claims

14. On perusal of Discussion and findings part of the Order in Original, reproduced above, it is clear that the applicant, had in fact through their CHA requested for Drawback claim for the said shipping bills which were filed nearly after five and half years. Hence, the Government does not find any evidence to consider the findings of the Commissioner (Appeals) at para 10 of the impugned Order factually incorrect or erroneous.

15. Government observes that the applicant in its Revision Application has submitted that at the material time the drawback claims for exports through Mundra Port were being sanctioned and paid by the Assistant Commissioner, Bhuj. The shipping bills were filed manually. It is further submitted that in or around the same time EDI was introduced at Mundra Port and thereafter, the drawback claims were settled through the EDI System. Thus, it is clear that for the exports effected by the applicant in the instant case the shipping bills were filed manually. From the above it is clear that though the exports were made through Mundra Port by filing shipping

bills manually the drawback claim was required to be filed by the applicant before Assistant Commissioner, Bhuj.

16. Government further observes that at the time of customs clearance, the EDI system at Mundra port was not functional; therefore the goods were manually cleared for export by the applicant vide 10 manual shipping bills. As per the procedure in respect of goods manually cleared, the exporter is required to be provided with the triplicate copy of shipping bill for lodging drawback claim. It is apparent from the facts narrated that the applicant was also provided with the original triplicate copy of the shipping bill for the said purpose. However, the triplicate copy of the shipping bill was lost by the applicant as has been recorded in the Police Complaint filed on 14.05.2011 with Assistant Commissioner of Police, Chhatrapati Shivaji Terminus Railway Police Station, CST, Mumbai. The applicant is conspicuously silent about the exact date of loss of original documents which also included triplicate copy of shipping bill. If these documents were lost on or around 14.05.2011, then the applicant was very much in possession of these documents before 14.05.2011. Moreover, the applicant has not mentioned any specific cause that prevented them from filing drawback claim immediately on receipt of triplicate copy of Shipping Bill from the Customs after exports or sometime thereafter.

17. The factual matrix of the case brings up certain very intriguing observations. On going through the case records and the facts narrated in the revision application, it is observed that the applicant has reacted to the loss of critical documents including the triplicate copy of shipping bill which had been filed manually after over 5^{1/2} years. In the normal course, in a situation where documents have been lost, an exporter would have immediately made all out efforts to reconstruct the documents by approaching the Department, immediately filing FIR for loss of documents etc. Several Custom Houses have issued Public Notices/Standing Instructions specifying the guidelines to be followed. However, in the present case the applicant has actually slept over the loss of the documents for an extraordinarily long time. Moreover, for exports effected through Mundra Port in Gujarat, the applicant has filed Police Complaint with the Assistant Commissioner of Police, Chhatrapati Shivaji Terminus Railway Police Station, CST, Mumbai. Even after this very delayed action on the applicants part, it appears to be a little out of the ordinary that the applicant chose to approach the Department through their CHA for sanction of the drawback. The approach of the

applicant has been very unusual. It would perhaps be common knowledge, that shipping bills filed manually unlike those filed in the EDI system can be manipulated with ease. Needless to say, the Deputy Commissioner sanctioning the drawback should have exercised more caution while processing the claim and taken note of these facts.

18. Though, as per the provisions of Rule 13 of the Customs, Central Excise Duties, and Service Tax Drawback Rules, 1995 triplicate copy of shipping bills filed for export goods should be deemed to be a claim for drawback filed on the date of permitted exports, the triplicate copy of the shipping bills is the only valid document for sanction of drawback. As stated in preceding para and as per the applicants own say, the triplicate copy in respect of all the 10 manual shipping bills were lost by the applicant and therefore, they could not file the drawback claims earlier and in time. In case where such document is not available or misplaced, Public Notices/Standing Orders issued by the Department for reconstruction of lost documents for sanction of drawback would have been available to the applicant. However, instead of resorting to such a means, the applicant after 5 and ½ years filed a complaint with the Chhatrapati Shivaji Terminus Railway Police Station, CST, Mumbai for loss of such documents on 14.05.2011 and remarkably on the very same day the applicant requested for Drawback claim for the said shipping bills through their CHA.

19. It is pertinent to note that the Public Notice No. 336/2001, dated 10-12-2001 issued by the Commissioner of Customs, Chennai for reconstruction of lost triplicate copies of the shipping bill or the drawback claims, states that

It was pointed out at the drawback committee meeting by the members that exporters are not aware of the documents required to be submitted for reconstruction in case of loss of original claim or triplicate copy of the shipping bill, etc.

Where the claim could not be considered by the department because of loss of file/loss of documents, the exporters are required to submit the following documents for reconstruction:-

- (a) Acknowledgment issued by the department for the claim filed by them;*
- (b) The file No. of the Customs House in which their claim was processed, if known;*
- (c) Exporters copy of the shipping bill;*
- (d) If the EP copy is available, original EP copy should be submitted;*

- (e) Bank Realisation certificate;
- (f) Copy of the Invoice;
- (g) Copy of packing list;
- (h) Indemnity Bond duly notarised on bond paper purchased in T.N.;
- (i) Bill of Lading or mate receipt evidencing shipment.

Standing Order No. 03/2009 dated 04.02.2009 issued by Commissioner of Customs (Export) JNCH, Raigad also on subject "Procedure for reconstruction of Export Promotion Copy Shipping Bill" which at para 9 clearly mentioned that

9. It is clarified that request for reconstruction of documents more than five years old shall not be accepted for reconstruction.

20. In view of the above, Government is of the considered opinion that the applicant had failed to file drawback claim after export of goods and had instead filed the same after 5^(1/2) years of the export of goods. These aspects ought to have been discussed by the Original authority and therefore, Government is in complete agreement with the findings of the Commissioner (Appeals) in his impugned order that

"I am of the view that adjudicating authority has gone overboard to alter the date of filing drawback claim, without examining the facts of the case, i.e. whether the triplicate copy of shipping bills were filed along with all required documents....."

Therefore, the applicant after 5 and ½ years cannot take shelter behind Rule 13 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, that triplicate copy of Shipping Bill for export of goods under drawback claim is deemed to be a claim for drawback, when the main document required for filing the said claim viz. the triplicate copy of shipping bill had been handed over to them after export but was not submitted by them to the Department for processing their drawback claim. It is an established legal principle that the law does not come to the rescue of the indolent.

21. Government observes that the applicant has relied upon Commissioner of Customs, Mumbai Vs Terai Overseas Ltd. 2003(156)ELT 841(Cal.), wherein while rejecting the appeal filed by the Commissioner of Customs and allowing the drawback claim Hon'ble High Court held that filing of documents under Rule 13(2) of Customs

and Central Excise Duties Drawback Rules, 1995 is procedural and the term 'should' used therein is not indicative of being mandatory.

Rule 13 of the Drawback Rules which reads as :

"Triplicate copy of the Shipping Bill for export of goods under a claim for DBK shall be deemed to be a claim for drawback filed on the date on which the proper officer of customs makes an order permitting clearance and loading of goods for exportation under Section 51 and said claim for drawback shall be retained by the proper officer making such order."

The facts of the instant case are that the applicant manually cleared goods for export vide 10 manual shipping bills and the triplicate copy of these shipping bills was not retained by the proper officer and were returned to the applicant, which were lost thereafter and complaint for the same loss was filed with Police Authorities. Therefore, in this case the basic document, i.e. triplicate copy of shipping bill which was required for filing/processing drawback claim was not available with the Department for processing drawback claim. Non availability of this document cannot be equated with collateral documents required to be filed under Rule 13(2) of Customs and Central Excise Duties Drawback Rules, 1995. In the result, the failure of the applicant to submit the triplicate copy of the shipping bill filed manually would amount to not having filed drawback claim. The provisions of Rule 13 of the Drawback Rules would be of no avail to them. Therefore, the applicant's reliance on ratio of the judgment in the case of Commissioner of Customs, Mumbai Vs Terai Overseas Ltd. 2003(156)ELT 841(Cal.) is also misplaced.

22. Hon'ble Apex Court in the case of M/s. Indian Oil Corporation Ltd. v. Commissioner of Central Excise, Vadodara in Civil appeal Nos. 4530-4532 of 2005 with C.A No. 8048 of 2004 decided on 13-1-2012 [2012 (276) E.L.T. 145 (S.C.)], has held that a provision for exemption, concession or exception, as the case may be, has to be construed strictly and if the exemption is available only on complying certain conditions, conditions have to be complied with. In the present case as the triplicate copy of the 10 shipping bills were not retained by the proper officer and returned to the applicant for filing drawback claim and the photocopies of the same were filed only on 14.05.2011 after 5½ years. Therefore, Government concurs with the findings recorded by the Commissioner(Appeals) in the impugned order and holds that the said date[14.05.2011] has to be considered as the date of filing drawback claims by the

applicant. The drawback claims filed by the applicant have correctly been rejected by the Commissioner(Appeals).

23. In view of the foregoing discussion, Government finds no infirmity in the Order in Appeal No. 586/2013 /Cus/Commr (A)/KDL dated 26.08.2013 passed by the Commissioner of Customs (Appeals), Kandla and therefore upholds the same.

24. The revision application is rejected being devoid of merit.

25. So ordered.



(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No 153 /2020-CUS(WZ)/ASRA/Mumbai DATED 31/08/2020

To

M/s Gill & Co. P.Ltd.,
NTC House, N.M.Marg,
Ballard Estate, Mumbai- 400 001.

Copy to :

1. Principal Commissioner Of Customs, Mundra, 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421.
2. Commissioner Of Customs, Ahmedabad Appeals, 7th Floor, Mrudul Tower, Off Ashram Road, Near Times Of India, Navrangpura, Ahmedabad-380009.
3. Assistant Commissioner Of Customs, Mundra, 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421.
4. Sr.P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare copy.