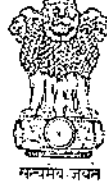


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No. 380/25/DBK/WZ/2019-RA / 838

Date of issue: 08.02.2023

ORDER NO. 178/2023-CUS (WZ)/ASRA/MUMBAI DATED 03.02.2023
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 : Commissioner of Customs (Export), Mumbai

Respondent : M/s. Nahar Textiles Pvt. Ltd.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962, against the Order-in-Appeal No. MUM-
CUS-RN-EXP-124/2018-19 dated 28.09.2018 passed by
the Commissioner of Customs (Appeals), Mumbai.

ORDER

1. This Revision Application is filed by Commissioner of Customs (Export), Mumbai (hereinafter referred to as "the Applicant-Department") against Order-in-Appeal (OIA) No. MUM-CUS-RN-EXP-124/2018-19 dated 28.09.2018 passed by the Commissioner of Customs (Appeals), Mumbai.

2.1 Brief facts of the case are that M/s. Nahar Textiles P. Ltd., (hereinafter referred to as "the respondent"), had exported fabrics under DEPB cum duty drawback scheme. They had filed two drawback claims under Section 75 of the Customs Act, 1962 on 26.05.2008 and 11.05.2009. The claims were initially partially rejected by the adjudicating authority due to non submission of shipping bills duly attested by DGFT and other necessary documents. However, subsequently on the directions of appellate authority vide Order-in-Appeals dated 12.12.2013, the matter was re-adjudicated and the rejected claims were sanctioned.

2.2 However, the respondent filed an appeal for non-payment of interest for the delay in sanction of drawback claimed. The appellate authority vide Order-in-Appeal dated 06.05.2016 remanded the matter back to adjudicating authority as the issue of interest had not been addressed.

2.3 In the de novo adjudication, the original authority vide Order-in-Original dated 24.08.2016 held that as the required documents were not submitted at the initial stage of filing the claim hence interest under Section 75A of the Customs Act, 1962 is not admissible to the respondent. Aggrieved the respondent filed an appeal which was allowed by the appellate authority vide the impugned Order-in-Appeal and it was ordered that the respondent be paid an interest @6% p.a. for the delayed payment of drawback.

3. However, being aggrieved and dissatisfied with the impugned OIA, the Applicant-Department has filed the instant Revision Application mainly on the following grounds:

a) That, a deficiency memo dated 17.09.2010 was issued for want of original triplicate copy of shipping bills or copy of Shipping Bills duly attested by DGFT and other necessary documents required for processing the drawback claim. However, the party had complied with the directions of deficiency memo vide their letter dated 25.07.2014, which was received by the department on 01.08.2014. Thus, it is clear that, there was inordinate delay of about 4 years by the respondent in compliance of the deficiency memo. Therefore, the impugned order dated 28.09.2018 did not adhere to provisions of sub Rule 3(b) of Rule 13 of Drawback Rules, 1995, which provides that:

'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'

b) That, to secure the principle of natural justice, a personal hearing was granted to the exporter on 19.08.2014 and Shri Sajimon K.C., Export Manager attended the PH on behalf of M/s. Nahar Textiles Pvt. Ltd., wherein he showed his inability to provide the Original Triplicate Copy of the shipping bills or the photocopy of the shipping bills attested by DGFT. He further submitted that, the Brand Rate letter dated 22.08.2007 issued by Deputy Commissioner (DBK), Central excise, Thane-II were submitted by them vide letter dated 25.07.2014, which was received by the department on 01.08.2014. He further stated that, along with the letter dated 25.07.2014 he also submitted original customs attested packing lists and invoices in respect of 6 drawback claims.

- c) From the above para, it is clear that, the exporter had not submitted the original documents at the time of filing of drawback claim vide letters dated 26.05.2008 and 11.05.2009, which required for processing the drawback claim and the same had been admitted by the respondent at the time of PH. Therefore, the contention of the respondent that, the original documents were submitted at the initial stage does not hold water. Hence, the impugned order dated 28.09.2018 did not adhere to provisions of sub Rule (3) (a) of Rule 13 of Drawback Rules, 1995, which provides that:

'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 75A'

In view of the above, in the instant case, the final submission of drawback claim should be treated as on 01.08.2014, as the complete submission of the documents as mentioned above received on 01.08.2014 only. On receipt of complete documents the drawback was sanctioned vide O-in-O dated 04.09.2014. Thus, interest under 75A of the Customs Act, 1962 is not admissible in the instant case.

- d) The appellate authority did not consider the fact that, the respondent had not provided the triplicate copy of shipping bills or the photocopy of the shipping bills attested by DGFT officer at the time of filing of drawback claim i.e. on 26.05.2008 and 11.05.2009, which is an essential requirement for processing the drawback claim. Therefore, the impugned order is not in compliance with the Board's Circular No. 71/99 dated 13.10.1999 which provides that

"In a DEPB Shipping Bill, the Triplicate copy is EP copy, which has to be submitted in the original to the licensing authority for grant of DEPB scrip. Hence, the same cannot be submitted to the Custom House as a claim of drawback. Therefore, in such cases, the Photocopy of the shipping bills attested by DGFT officer of respective licensing office may be accepted as drawback copy"

- e) The Appellate Authority has failed to appreciate that, the then Adjudicating Authority processed and sanctioned the drawback claim vide O-in-O No. S/10-287/2009-DBK Sec.75/AC/MSS dated 21.10.2009 in case of 9 S/B's (out of 10 S/B's submitted on 11.05.2009), It is also observed from the para 2 of Order-in-Original No. S/10-02/2013/DBK/AC/SGA dated 16.04.2013 that, the then Adjudicating Authority processed drawback claim in case of 2 S/B's (Out of 7 shipping bills submitted on 26.05.2008), where the party had submitted all the relevant documents required for processing the drawback claim. Therefore, claim of respondent that, relevant documents for all S/Bs were submitted with the letters dated 26.05.2008 and 11.05.2009 cannot be accepted as a true.
- f) The Appellate Authority has failed to appreciate that, in view of the Order-in-Appeal dated 12.12.2013, tremendous efforts were made by the applicant by issuing letters dated 09.04.2014, 17.04.2014, and 30.05.2014 to the Asstt./Dy. Commissioner of Central Excise, Thane-I, Thane-II and Belapur for verification of genuineness of Brand Rate letters submitted by the respondent on 26.05.2008 and 11.05.2009. Letters dated 27.03.14, 17.04.14, 28.05.14 and 03.07.14 were also forwarded to DGFT office to ascertain the quantity of export. However it could not yield any positive results.

From the foregoing para it is evident that, there was no inordinate delay in payment of drawback amount by the department as claimed by

the respondent. Thus, the contention of the respondent regarding inordinate delay of 5-6 years is not true.

On the above grounds, the Applicant-Department prayed to allow the instant Revision Application and set aside the impugned Order-in-Appeal.

4. A Personal hearing was held in this case on 20.12.2022. Shri Viki Thakur and Shri Arvind Pai appeared on behalf of the respondent and submitted that interest @6% is rightly allowed by the Commissioner (Appeals). They requested to maintain the Order of Commissioner (Appeals). No one appeared for the Applicant-Department nor have they sent any written communication.

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

6. Government observes that the issue involved is whether the respondent is entitled to get interest under Section 75A of the Customs Act, 1962?

7. Government observes that the instant matter involves multiple OIOs and OIAs. Therefore, to comprehend the matter in a lucid manner, the summary of content in OIOs/OIAs is given hereunder:

- i. OIO dated 21.10.2009 dealt with drawback claims filed by the respondent in Feb'09 and May'09 in respect of 10 Shipping Bills (S/B). Claims in respect of 9 Shipping Bills were sanctioned, while claim in respect of S/B dated 24.01.2001 was rejected as the respondent submitted a photocopy of Export Promotion copy in lieu of Original Triplicate Copy of the shipping bill. Further, it (S/B) had a remark of provisional assessment, about which the respondent had no explanation.

- ii. OIO dated 16.04.2013 dealt with drawback claim filed by the respondent vide letter dated 26.05.2008 in respect of 5 out of total 7 Shipping Bills (S/B). Claims in respect of 2 Shipping Bills had already been sanctioned, while deficiency memo dated 17.09.2010 had been served to the respondent for submission of Original Triplicate Copy of the shipping bills in respect of claims pertaining to remaining 5 Shipping Bills. The claim was rejected in respect of said 5 shipping bills for failing to fulfill the requisite conditions of Rule 13 of the Drawback Rules, 1995 and Board's Circular No. 71/99-Cus dated 13.10.1999.
- iii. OIA dated 12.12.2013 dealt with appeal filed against OIO dated 16.04.2013. It directed the original authority to process the drawback claim after verifying the authenticity of corroboratory documents submitted by the respondent, with the Commissioner of Central Excise Thane-II and DGFT.
- iv. Denovo adjudication was done vide OIO dated 04.09.2014 and on the basis of letter dated 25.07.2014 of the respondent, whereby six Customs attested invoice (in original), six packing list for the respective invoices (in original) and brand rate letter dated 22.08.2007 issued by DC(DBK), Central Excise, Thane-II had been submitted and oral submissions during personal hearing, the claims pertaining to 6 shipping bills [1 remaining S/B mentioned at aforementioned para 7(i) and 5 S/B's mentioned at para 7(ii)] were sanctioned. However, interest under Section 75A of the Customs Act, 1962 was not found admissible as the respondent had not submitted the stipulated documents at the initial stage of filing the claim.
- v. OIA dated 06.05.2016 dealt with appeal filed against OIO dated 04.09.2014. It remanded the matter back to Original authority to examine the interest claim of the respondent.

- vi. The Original authority vide OIO dated 24.08.2016 concluded that as the complete drawback claim was considered to be accepted on 01.08.2014, viz. date of receipt of letter dated 25.07.2014 of the respondent (mentioned at aforementioned para 7(iv)), vide Rule 13(3) of the Drawback Rules, 1995, hence the claim of interest of the respondent had been rightly rejected vide OIO dated 04.09.2014.
- vii. OIA dated 28.09.2018 dealt with appeal filed against OIO dated 24.08.2016. It allowed interest @ 6% p.a. in respect of claims regarding 5 S/Bs for a period from the expiry of one month from 26.05.2008 and 1 S/B for a period from the expiry of one month from 10.05.2009 till the payment of drawback viz. 19.09.2014.
- viii. The Applicant-Department filed the instant Revision Application against the OIA dated 28.09.2018 on the grounds mentioned at aforementioned para 3.

8.1 Government observes that the concerned Rule 13 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, bears the heading "Manner and time for claiming drawback on goods exported other than by post".

- i. Sub-rule (1) thereof provides that triplicate copy of the Shipping Bill for export of goods under a claim for drawback 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.
- ii. Sub-rule (2) of Rule 13 provides that the claim for drawback should be accompanied by the documents specified thereunder including packing list and rate of drawback fixed by concerned Commissioner.

- iii. Sub-rule (3) of Rule 13 provides that if the claim for drawback is incomplete in any material particulars or is without the documents specified in sub-rule (2), it shall be returned to the claimant with a deficiency memo in the form prescribed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, within 10 days and shall be deemed not to have been filed for the purpose of Section 75A.

Thus, Government observes that a deficient claim is deemed to not having been filed for the purpose of Section 75A of the Act, viz., for the purpose of payment of interest.

8.2 In the instant case, claims which were filed with all the stipulated documents were sanctioned in time after due process and deficiency memo was issued in respect of exports which were filed without supporting documents in terms of Rule 13 of the Drawback Rules, 1995. As per the Applicant-Department, the respondent had submitted the relevant documents on 01.08.2014. The respondent has not disputed this contention. Government observes from the OIO dated 04.09.2014 that during personal hearing with the adjudicating authority, the respondent confirmed that brand rate letter issued by Dy. Commissioner (DBK), Central Excise, Thane-II, packing list and invoices in respect of 6 Exports were submitted by them to the Department on 01.08.2014 vide their letter dated 25.07.2014. On being specifically asked, the respondent informed that these documents were not submitted earlier as the Department had not asked.

8.3 Therefore, the Government agrees with the contention of the Applicant-Department that - *'the final submission of drawback claim should be treated as on 01.08.2014, as the complete submission of the documents was received on 01.08.2014. On receipt of complete documents the drawback was sanctioned vide O-in-O dated 04.09.2014. Thus, interest under 75A of the Customs Act, 1962 is not admissible in the instant case.'*

9. In view of the above discussions, Government sets aside the Order-in-Appeal No. MUM-CUS-RN-EXP-124/2018-19 dated 28.09.2018 passed by the Commissioner of Customs (Appeals), Mumbai and allows the impugned Revision Application.


(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 178/2023-CUS (WZ)/ASRA/Mumbai dated 03.02.2023

To,

M/s. Nahar Textiles Pvt. Ltd.,
302, Jay Antariksh Makwana Road,
CTS No.777, Sir M.V.Road, Marol,
Andheri(East), Mumbai - 400 059.

Copy to:

1. Commissioner of Customs (Export),
New Custom House, Ballard Estate,
Mumbai - 400 001.

2. Commissioner of Customs (Appeals),
Mumbai Zone-I,
2nd Floor, New Custom House,
Ballard Estate,
Mumbai - 400 001

3. Sr. P.S. to AS (RA), Mumbai

4. Guard file

5. Notice Board.