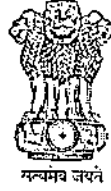


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**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

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

F. No.371/344/DBK/2018-RA / 922

Date of Issue: 09.02.2023

ORDER NO. 189/2023-CUS (WZ) /ASRA/Mumbai DATED 09.02.2023  
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 : M/s Sterling Export Corporation,  
237 + 238/B, GIDC Industrial Estate,  
Naroda, Ahmedabad - 382330.

Respondent : Commissioner of Customs, Ahmedabad,  
Customs House, 1<sup>st</sup> floor, Navrangpura,  
Income Tax Circle, Ahmedabad - 380 009.

Subject : Revision Application filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.AHD-  
CUSTM-000-APP-172-18-19 dated 28.11.2018 passed by  
Commissioner of Customs (Appeals), Ahmedabad.

## ORDER

The subject Revision Application has been filed by M/s Sterling Export Corporation, Mumbai (here-in-after referred to as 'the applicant') against the subject Order-in-Appeal dated 28.11.2018 which decided the appeal by the applicant against the Order-in-Original dated 16.04.2018 passed by the Assistant Commissioner of Customs, ICD-Khodiyar, Gandhinagar.

2. Brief facts of the case are that the applicants had exported goods during the year 2000 and submitted their applications for fixation of brand rate which were received by the Assistant Commissioner, Central Excise, Division - II, Surat on 10.02.2001. These applications were processed and the Deputy Commissioner, Central Excise (BRU), Ahmedabad- I vide letter 11.02.2013 had allowed the Brand rate in respect of the exported consignments. The applicant was subsequently sanctioned drawback amounting to Rs.2,12,392/- vide Cheque dated 13.05.2016 in respect of the said export consignments. The applicant thereafter, vide letter dated 04.10.2017 claimed interest on the delayed payment of drawback on the grounds that they pertained to exports in the period 2000-2001 and hence they should be paid interest for the period involved in the delay in fixing of the brand rate as well as the delay in payment of drawback. The original authority vide Order-in-Original dated 16.04.2018 sanctioned interest @6% for the period beginning 30 days from the date of fixing of the brand rate to the date of payment of drawback. The applicant preferred appeal against the said Order-in-Original before the Commissioner (Appeals) on the grounds that they were eligible for interest @18% and also that the period of delay would include the delay in fixing of brand rate. The Commissioner (Appeals) vide the impugned Order-in-Appeal upheld the order of the original authority and rejected the appeal.

3.1 Aggrieved, the applicant has filed the instant Revision Application against the impugned Order-in-Appeal dated 28.11.2018 on the following grounds: -

(a) They submitted that the liability to pay interest on the delayed refund is a statutory obligation and placed reliance on the decision of the Hon'ble Supreme Court of India in the case of Ranbaxy Laboratories Ltd Vs UOI

(2011-TIOL-105-SC-CX) that whenever any refund application is made interest is admissible to the claimant from three months of the date of submission till the date of payment;

(b) That when there is a delay on the part of exporters to pay any money due to the Government, interest is charged for the delayed period and hence on the ground of equity and natural justice should prevail and therefore, they should be granted interest;

(c) That the claims were filed with the Central Excise authorities on 10.02.2001 and the payment released only on 1305.2016 and hence they were eligible said claims was sanctioned on 06.03.2014, hence they were eligible for interest from the time they had submitted the applications for fixing of brand rate drawback till the disbursement of drawback; that the delay was due to the mis-handling of the issue by the Department;

(d) That the delay was on the part of the Department and all the documents were submitted by them at the time of filing of the claim and there was no allegation in their case and the only reason for holding the claim was to determine whether the Circular no.39/2001-CUS dated 06.07.2001 was prospective or retrospective; that it was held to be prospective and the Drawback was sanctioned thereafter; therefore they were eligible for the interest from the date of the claim;

(e) That the department sat on the claims for a long time and that original authority and appellate authority did not consider the period of delay from the submission of Brand Rate of duty Drawback application in the Central Excise Department till the date of payment for the purpose of calculating interest and hence were unsustainable in law;

(f) They stated that the view of the lower authorities that the rate of interest for delayed payment is 6% is totally wrong; that the Hon'ble High Court Madurai Bench of Madras in case of M/s Karur K.C.P. Packagings Limited Vs. Commissioner of Customs, W.P. (MD) No. 15003 of 2015 judgment dated 27.08.2015 had allowed interest @ 18% for delayed payment of Duty Drawback Claim; that in this case too they are eligible for interest on the delayed payment @ 18%;

(g) They also submitted that the Hon'ble Tribunal had in their decision in the case of Marvel Apparels & Styleman vs CC, Tuticorin had held that filing of the triplicate copy of the Shipping Bills constituted a drawback claim and therefore interest has to be sanctioned after expiry of one month from the date of Let Export Order in respect of the consignments.

In view of the above, the applicant prayed that the impugned Order-in-Original and Order-in-Appeal be set aside and suitable instructions be issued to immediately release the pending payment of interest @ 18% from one month of the submission of the Brand Rate applications. The applicant also requested that the issue of non-payment of interest on same grounds with respect to nine other Shipping Bills by AC/DC, JNCH, Nhava Sheva, NCH, Mumbai and ACC, Ahmedabad be considered in the present Revision Application.

3.2 The applicant made further submissions vide their letter dated 04.11.2022, wherein, it was additionally submitted that :-

(a) The period of the Drawback claims was 2001 and the same was sanctioned and paid only on 06.03.2014; that, however, the Department denied delayed payment of interest for the period from the date of claim and hence the Revision Application for sanction of interest @ 18% on the Drawback from the date of claim to 13.10.2010 on the basis of High Court order of Karur KC.P. Packagings Ltd vs. Commissioner of Cus. Tuticorin [2015 (324) ELT 58 (Mad)]; and interest on delayed payment of interest;

(b) that the only dispute which arises is the period for which interest is payable; that interest on delayed drawback is governed by Section 75A read with Section 27 of Customs Act, 1962; that the interest should have been paid to them suo moto in this case as the delay was on the part of Department as all the documents required were submitted by them at the time of filing the Drawback claims and that the only reason for rejecting their claim was whether the Circular No. 39/2001-CUS dated 06.07.2001 was retrospective or prospective; that it was held to be prospective after which Drawback was sanctioned; hence the impugned orders were required

to be modified and the interest amount should be allowed to them from the expiry of one month of the date of claim;

(c) They submitted that the interest on delayed payment of interest was allowed by various higher appellate forums on the following decisions:-

- The Hon'ble CESTAT, New Delhi Principal Bench in the case of M/s. BSL Ltd. Vs. Commissioner of Central Excise & Central Goods & Service Tax. Udaipur;
- Kerala Chemicals & Proteins Ltd. Vs. CCE, Cochin; 2007(211) ELT 259 Tri-Bang.
- Standard Pencils Pvt. Ltd. Vs. CCE, Chennai; 2010(253) ELT 160 Tri-Chennai.
- Hon'ble High Court of Gujarat at Ahmedabad in the case of Shri Jagdamba Polymers Ltd. Vs. Union of India SCA.No.3163 of 2008 judgment dated 23.08.2012.
- D. J. Works Vs. Dy. CIT: (1992) 195 ITR 227 Guj. HC.
- Chimanlal S. Patel Vs. CIT & Anr.: (1994) 210 ITR 419 Guj. HC.
- CIT Vs. Narendra Doshi: (2002) 254 ITR 606 (SC).
- Hon'ble Supreme Court in the case of Sandvik Asia Ltd. Vs. Commissioner of Income Tax-1, Pune reported in 2006 (196) E.L.T.257.

The applicant submitted that the above decisions were squarely applicable to the present case and hence the orders of the lower authority should be modified.

4. Personal hearing in the matter was granted to the applicant and the respondent/Department on 15.11.2022 and 29.11.2022, however, the applicant vide their letter dated 04.11.2022 requested that the matter be decided on the basis of submissions made by them.

5. Government has carefully gone through the relevant case records, the written submissions and also perused the said Order-in-Original and the impugned Order-in-Appeal.

6. Government finds that the issue involved is regarding the period for which the interest has to be paid and also the rate at which it has to be paid. The applicant is of the view that they should be paid interest @ 18% from one month of the date on which they filed the application for fixing of Brand rate with the Central Excise authorities, whereas the Department has contended that interest was payable @ 6% from one month of the receipt of proper claim for Drawback, including the letters fixing Brand rate issued by the Commissioner of Central Excise.

7. Government finds that, for the consignments in question, the applicant submitted the letters for fixation of Brand Rate to the jurisdictional Central Excise authorities on 07/08.03.2001. Government notes that its finalization was delayed due to litigation, as submitted by the applicant, and were finalized on 11.10.2013. In this context, Government finds that it is pertinent to examine Rule 13 of the Customs & Central Excise Duty Drawback Rules, 1995 (DBK Rules, 1995), which prescribes the manner and time for claiming Drawback and Section 75A of the Customs Act, 1962, which provides for payment of interest on Drawback. The same are reproduced below:-

➤ Rule 13 of the DBK Rules, 1995 reads as follows: -

*“ Rule 13. Manner and time for claiming drawback on goods exported other than by post: -*

*(1) 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.*

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

*(i) copy of export contract or letter of credit, as the case may be,*

*(ii) copy of Packing list,*

*(iii) copy of ARE-1 , wherever applicable,*

*(iv) insurance certificate, wherever necessary, and*

*(v) copy of communication regarding rate of drawback where the drawback claim is for a rate determined by the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be under rule 6 or rule 7 of these rules.*

*(3) (a) If the said claim for drawback is incomplete in any material particulars or is without the documents specified in sub-rule (2), shall be*

*returned to the claimant with a deficiency memo in the form prescribed by the Commissioner of Customs within 10 days and shall be deemed not to have been filed for the purpose of section 75A.*

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

*(4) For computing the period of two months prescribed under section 75A for payment of drawback to the claimant, the time taken in testing of the export goods, not more than one month, shall be excluded.*

*(5) Subject to the provisions of sub-rules (2), (3) and (4), where the exporter has exported the goods under electronic shipping bill in Electronic Data Interchange (EDI) under the claim of drawback, the electronic shipping bill itself shall be treated as the claim for drawback.”*

➤ Section 75A of the Customs Act, 1962 reads as follows: -

*“ SECTION 75A. Interest on drawback. - (1) Where any drawback payable to a claimant under section 74 or section 75 is not paid within a <sup>23</sup>[period of <sup>24</sup>[one month]] from the date of filing a claim for payment of such drawback, there shall be paid to that claimant in addition to the amount of drawback, interest at the rate fixed under section 27A from the date after the expiry of the said <sup>23</sup>[period of <sup>24</sup>[one month]] till the date of payment of such drawback:....”*

A reading of the above, clearly indicates that Rule 13(2)(v) of the DBK Rules, 1995 stipulates that a claim for Drawback should be accompanied by the “*copy of communication regarding rate of drawback where the drawback claim is for a rate determined by the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be ....*.” Given the facts of the case, it is clear that the Brand rates in this case were determined by the jurisdictional Assistant Commissioner only on 11.10.2013, after which the applicant filed their DBK claims. Government further notes that Rule 13(3)(a) of the DBK Rules, 1995 lays down that if a claim for drawback has been filed without the documents prescribed at sub-rule 2, then the same shall be deemed to be have not been filed for the purpose of Section 75A of the Customs Act, 1962. In this case it is clear that the applicant submitted Drawback claims, which were complete in terms of Rule 13 of the DBK Rules, 1995, only after receipt of the letter/communication from the Commissioner of Central Excise determining the Brand Rates. As per Section 27A of the Customs Act, 1962 which

provides for payment of interest on Drawback, interest in this case would be payable only after completion of one month from the submission of a complete claim for Drawback by the applicant, which in this case was after 11.10.2013 on which day the Brand rate fixation letters were issued. Given these set of facts, Government finds that the Commissioner (Appeals) has correctly held that the demand of the applicant for interest from the date of filing of applications for fixing of Drawback cannot be accepted as the applications for Drawback along with the letters fixing the Brand rate was filed by the applicant before the proper officer only after 11.10.2013. In view of the above, Government does not find any infirmity in the findings and order of the Commissioner (Appeals) on this count. Government finds support in the decision of the Hon'ble Tribunal in the case of Web Knit Exports (P) Limited vs Commissioner of Customs, Tuticorin [2013 (295) ELT 612 (Tri.-Chennai)] wherein it was held that interest on Drawback was payable to the exporter only from the date of the Order of the Tribunal vide which it was held that the applicant would be eligible for the Drawback and not from the date of export. It was also held by the Tribunal that the exporter would be eligible for interest under Section 75(A) of the Customs Act, 1962 only after they had submitted all the documents required under Rule 13(2) of the DBK Rules. 1995.

8. As regards, the rate at which interest was payable on the delayed payment of Drawback, Government finds that the same is governed by Section 75A of the Customs Act, 1962 and it states that interest shall be payable in such cases at the rate fixed under Section 27A of the Customs Act, 1962, which reads as under: -

**Section 27A. Interest on delayed refunds.** - *If any duty ordered to be refunded under sub-section (2) of section 27 to an applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, <sup>59</sup>[not below five percent.] and not exceeding thirty percent per annum as is for the time being fixed <sup>60</sup>[by the Central Government by Notification in the Official Gazette], on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:*

A reading of the above indicates that Section 27A provides that interest shall be payable at such rate as fixed by the Central Government, by notification



in the Official Gazette. Government finds that the Central Government vide notification no.75/2003-CE(NT) dated 12.09.2003, which was effective during the material period, had fixed the rate of interest at six per cent per annum for the purposes of Section 27A of the Customs Act, 1962. Given the above, Government finds that the lower authorities have correctly held that the interest in this case will be payable at six per cent per annum. The claim of the applicant for interest at a higher rate is without any legal basis and has been correctly rejected. In view of the above, Government does not find any infirmity in the impugned Order-in-Appeal on this count either.

9. Government has examined the decisions of various authorities in support of their argument that they were eligible for interest at a higher rate than the rate prescribed by the notification cited above. In this context Government finds that this issue was examined by the Hon'ble High Court of Karnataka in the case of CCE, Bangalore vs Hindustan Granites [2015 (323) ELT 708 (Kar.)] wherein the Order of a Single Judge of the same Court granting interest at the rate of 9% was set aside and interest was granted at 6% in terms of Section 11BB of the Central Excise Act, 1944 and notification no.67/2003-CE (NT). Relevant portion of the said Order is reproduced below:-

*" This appeal is preferred by the Revenue challenging only that portion of the order of the learned Single Judge where he has directed payment of interest at 9% on the amount to be refunded, if any.*

*2. The notification dated 12-9-2003 bearing No. 67/2003-C.E. (N.T.) issued under exercise of the powers conferred by Section 11BB of the Central Excise Act, 1944, (hereinafter referred to as 'the Act'), fixes the rate of interest at 6% per annum for the purpose of the said Section. The interest payable in terms of Section 11BB of the Act, which in turn is with reference to the notification referred above. This aspect has not been considered by the learned Single Judge. In that view of the matter the rate of interest is to be reduced to 6% from 9%. Accordingly, we pass the following :*

**ORDER**

*Appeal is partly allowed.*

*3. The rate of interest is reduced to 6% from 9% on any amount to be refunded if any after determination of the Tribunal."*

Government finds that similar view was expressed by the Hon'ble High Court of Madras in the case of C. Padmini Chinnadurai vs A.C. C.Ex., Tirunveli [2010 (257) ELT 538 (Mad)] wherein the Court held that as far as

payment of interest was concerned, the provisions of Section 11BB of the Central Excise Act alone was having its application and that under such provision, Notifications have been issued, determining the rate of interest. Further, the reliance placed by the applicant on the decision of the Hon'ble High Court of Allahabad in the case of Govind Mills Limited vs CCE, Allahabad [2014-TIOL-677-HC-ALL-CX] will not hold good in light of the above cited later decision of the Hon'ble High Court of Karnataka in the case of Hindustan Granites. Further, this decision of the High Court of Allahabad was distinguished by the Hon'ble CESTAT in the case of Devendra Udyog vs Commissioner of CGST, Jodhpur [2020 (372) ELT 385 (Tri.-Del.)] wherein it found as under : -

*" Though the Learned Counsel has laid emphasis on Final Order No. 5/266, dated 4-9-2019 as announced by this very bench wherein after relying the decision of Hon'ble Apex Court in the case of Commissioner, Central Excise, Hyderabad v. ITC Ltd. reported as 2005 (179) E.L.T. 15 (S.C.) and M/s. Govind Mills Ltd. v. C.C.E., Allahabad reported as 2014 TIOL 677 (HC) = 2014 (35) S.T.R. 444 (All.) the interest @ 12% was ordered. It was also the opinion formed that the notification as relied upon by the department cannot supersede the statute. But it is observed as on date that while forming that opinion the words, "as for the time being is fixed by the Central Government by notification in the official gadget" were inadvertently not taken into consideration.*

*7. In Section 11BB, to clarify the rate of interest in the range of 5% to 30%, the statute itself has empowered the Central Government to fix any rate of interest for the time being by way of a notification. This clarifies that once there is a notification of Central Government fixing 6% as the rate of interest same has to be followed as having power of statute. Thus, it is clear that previous final order of this Bench has apparent error on face of its record. The error of adjudication which is very much apparent irrespective once committed cannot be repeated. Again having a look to ITC (supra) and M/s. Govind Mills (supra), it is observed that for the period in ITC (supra) the impugned notification was not applicable and Govind Mills (supra) has absolutely relied upon ITC (supra) being, absolutely, silent to the notification. Contrary thereto, High court of Madras as well as that of Karnataka, it only has been held that the notifications have been issued under the provisions of Section 11B of Central Excise Act determining the rate of interest, the rate as mentioned in the notification shall only be admissible to the assessee. The case law as relied upon for the purpose are C. Padmini Chinnadurai v. Assistant Commissioner Central Excise, Tirunelveli - 2010 (257) ELT 538 (Mad.) and Commissioner of Central Excise, Bangalore v. Hindustan Granites reported as (2015) 323 E.L.T. 708 (Kar.).*

*8. In view of the entire above discussion, I hereby take a different view than the previous decision of this Bench and dismiss the appeal."*

In light of the above, Government finds that the applicant will be eligible to interest at the rate of six per cent per annum as held by the lower authorities and accordingly holds so.

10. Government notes that the applicant has also made a request for being granted interest on the interest payable in their submission dated 04.11.2022. Government finds that the applicant had not made this plea before either of the lower authorities and hence the said plea deserves to be rejected for this reason alone. However, in the interest of justice, Government has examined the decisions cited by the applicant on this count and finds that the either the facts of the cited cases are different to the instant one or they have been distinguished by later decisions of the Higher Courts. Government finds that the Hon'ble Supreme in the case of CIT, Gujarat vs Gujarat Fluoro Chemicals [2013 (296) ELT 433] while distinguishing its judgment in the case of Sandvik Asia Ltd vs CIT, [2006 (196) ELT 257] (*which has been cited by the applicant*) had held that "*only that interest provided for under the statute which may be claimed by an assessee from the Revenue and no other interest on such statutory interest.*" Government finds that there is no legal provision under the Customs Act, 1962 which provides for payment of interest on delayed payment of interest. Government notes that the Larger Bench of the Hon'ble Tribunal in the case of Sun Pharmaceuticals Industries Limited vs CCE Chennai [2005 (185) ELT 253 (Tri-LB)] had held that interest on delayed payment of interest, cannot be held to be permissible under the Central Excise Act and the Rules made thereunder, for want of any specific provision in the Act or the Rules. The ratio of this decision will be equally applicable to the Customs Act, 1962 too. Further, the Hon'ble High Court of Kerala in the case of Commissioner vs Kerala Chemicals & Proteins Limited [2016 (42) STR J315 (Ker)] while deciding the appeal against the decision of the Hon'ble Tribunal, which has been cited by the applicant, held as follows: -

*"The only one issue raised by the Revenue in this appeal against the decision of the CESTAT is as to whether the assessee is entitled to interest on interest due on eligible refund. This issue is covered against the assessee by the Larger Bench decision of the CESTAT in Sun Pharmaceuticals Industries Ltd. v. Commr. of C.Ex., Chennai [2005 (185) E.L.T. 253]. We have gone through that judgment and are in agreement with the ratio thereof. Following the said decision, this appeal is eligible to succeed to that extent."*

Given the above, Government finds that there is no legal provision to support the claim of the applicant for payment of interest on interest and rejects the same.

11. Government finds that the Commissioner (Appeals) in impugned Order-in-Appeal has clearly discussed all aspects of the case and has passed a well-reasoned Order. Government does not find any infirmity in the impugned Order-in-Appeal dated 28.11.2018 and does not find the need to modify or annul the same.

12. The subject Revision Application is rejected.

  
8/2/23  
(SHRAWAN KUMAR)

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

ORDER No. ~~189~~<sup>CUS</sup>/2023-~~CT~~ (WZ) /ASRA/Mumbai dated 08.02.2023

To,

M/s Sterling Export Corporation,  
237 + 238/B, GIDC Industrial Estate,  
Naroda, Ahmedabad - 382330.

Copy to:

1. Commissioner of Customs, Ahmedabad, Customs House, 1<sup>st</sup> floor, Navrangpura, Income Tax Circle, Ahmedabad - 380 009.
2. Commissioner of Customs (Appeals), Ahmedabad, 7<sup>th</sup> floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad - 380 009.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.