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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.371/155/DBK/2018-RA / 898

Date of Issue: 09.02.2023

ORDER NO. 190 /2023-CUS (WZ) /ASRA/Mumbai DATED 08.02.2023
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 Status Fashions,
202, Status House, 2nd floor,
Lathiya Rubber Gully, Andheri - Kurla Road,
Sakinaka, Mumbai - 400 072.

Respondent : Commissioner of Customs (Export -II),
Drawback Section, 3rd floor, Annex. Bldg.,
New Custom House, Ballard Estate,
Mumbai 400 001.

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal
No.MUM-CUSTOMS-SXP-04/2018-19 dated 24.04.2018
passed by Commissioner of Customs (Appeals),
Mumbai Customs Zone - I.

ORDER

The subject Revision Application has been filed by M/s Status Fashions, Mumbai (here-in-after referred to as 'the applicant') against the subject Order-in-Appeal dated 24.04.2018 which decided an appeal by the applicant against the Order-in-Original dated 16.07.2015 passed by the Assistant Commissioner of Customs, Drawback Section, New Custom House, Mumbai.

2. Brief facts of the case are that the applicants manufactured/exported Dyed Synthetic Fabrics during the period 1999-2001. They filed applications for fixation of Brand rate of Duty Drawback in respect of these consignments during the year 2001. Thereafter the issue has gone through several rounds of litigation, the chronology of the same is as under: -

- The Department fixed brand rate for Drawback in respect of some of the Shipping Bills, however, the rest of the Shipping Bills were rejected/put on hold as the Circular No.39/2001-Cus dated 06.07.2001 of the Ministry had clarified that in case of exports under DEPB scheme, Drawback of Central Excise duty could be allowed only on indigenous inputs not specified in the relevant SION and also that it was retrospective in nature. The brand rate letters issued earlier were also revoked;
- On being challenged by another similarly placed exporter, the Hon'ble High Court vide dated 15.03.2004 held that the Circular was prospective in nature;
- The SLP filed by the Department against the said Order dated 15.03.2004 was dismissed by the Hon'ble Supreme Court vide Order dated 10.01.2007;
- Thereafter, the High Court of Bombay vide its Order dated 17.01.2008, in a case filed by another exporter, directed the Department to dispose of the pending applications;
- Accordingly, the brand rates were fixed by the jurisdictional Central Excise Authorities thereafter and after such fixation the applicant filed

their Drawback claims; the same were processed and the Drawback was paid to the applicant;

- The applicant filed claim for interest @ 30 % per annum towards the delayed payment of drawback;
- The original authority rejected the said claims for interest vide Order-in-Original dated 23.05.2011 on the grounds that there was no delay in disbursing the Drawback;
- Appeal preferred by the applicant against this Order-in-Original was dismissed by the Commissioner (Appeals) vide Order-in-Appeal dated 13.12.2012.
- Aggrieved, the applicant filed application for revision before the Revisionary Authority, who vide Order dated 30.04.2014 directed the original authority to re-consider their claims for interest after calculating the delay in terms of the statutory provisions;
- The original authority found that the applicant had submitted their claim along with the brand rate fixation letter on 10.04.2008, as indicated by their letter dated 04.04.2011, and that the drawback was disbursed vide cheque dated 17.10.2008 and accordingly sanctioned interest @ 6% per annum for a period of 160 days amounting to Rs.8077/-;
- The applicant preferred appeal before the Commissioner (Appeals) resulting in the impugned Order-in-Appeal dated 24.04.2018 wherein the Commissioner (Appeals) upheld the order of the original authority and rejected the appeal.

3.1 Aggrieved, the applicant has preferred the instant Revision Application against the impugned Order-in-Appeal dated 24.04.2018 on the following grounds: -

- (a) That the findings of the Assistant Commissioner of Customs and Commissioner of Customs (Appeals) in the impugned orders were

- only on trivial points or on assumption, which was baseless and not sustainable;
- (b) That the liability to pay interest on the delayed refund was a statutory obligation and the same could not be washed off by passing bucks;
 - (c) That the delay was solely due to the Departmental mishandling of the issue and on that count alone they were eligible for the interest on delayed payment for the period calculated after submission of Brand Rate of duty drawback application in Central Excise till the date of payment and hence the impugned orders were required to be set aside;
 - (d) That the Hon'ble Supreme Court of India have confirmed in their judgment 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 and hence the impugned orders were required to be set aside on this ground;
 - (e) That the Department sat on the claims for a long time and the adjudicating authority had allowed the interest @ 6% per annum as per Notification No.75/2003-Customs (NT) dated 12.09.2003 for the period from 30 days after the Custom submission till the date of payment; that the adjudicating authority and appellate authority did not consider the period of delay for interest on delayed payment from the submission of Brand Rate of duty drawback applications in the Central Excise Department till the date of payment in their Orders and hence was totally unsustainable in law;
 - (f) That when there is a delay on the part of exporters to pay any money due to the Government they were charged an interest @18% for the delayed period; therefore, on this ground also the equity and natural justice should prevail, therefore, they should be granted interest @18%;
 - (g) That the view of the Asstt. Commissioner of Customs and Commissioner of Customs (Appeals) that rate of interest for delayed payment is @ 6% only was wrong as 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 rate of interest @ 18% for the delayed payment of Duty Drawback Claim and hence in this case too they

were eligible for the rate of interest for the delayed payment at @ 18%;

- (h) That in the Writ Petition No.87 of 2008 the Hon'ble Bombay High Court had directed the department to decide their pending applications within 12 weeks by its Order dated 17th January, 2008 and Joint Secretary (RA), GOI, New Delhi vide his Order No. 195-196/13-Cus dated 30.08.2013 had instructed the Original authority to consider the interest of delayed payment of drawback in accordance with the provisions of law; but the department had ignored the instructions; that there was inordinate delay in sanctioning the payment and interest; that delay was solely due to departmental mishandling of the issue and on that count alone they were eligible for the interest @ 18% on delayed payment of Brand Rate of duty drawback after the expiry from the date of filing of Brand rate of duty Drawback claims in Central Excise till the date of payment and hence the impugned orders should be set aside on this ground.

In view of the above the applicant requested that the subject Revision Application be allowed and the orders of the lower authority be set aside and suitable instructions issued to release the pending payment of interest @ 18% after the expiry of one month from the date of filing of the claims till the date of payments.

3.2 The applicant made a submission vide letter dated 04.11.2022 wherein they informed that they do not want a personal hearing and provided a synopsis of the issue.

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 did not appear for the same and 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 and oral 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 the time they filed the claims for Drawback during 1999-2001, whereas the Department has contended that interest was payable @ 6% from 2008, when the applicant filed all documents, including the letters fixing Brand rate issued by the Commissioner of Central Excise, before the proper officer.

7. Government notes that the issue of fixing of Brand rate of Duty Drawback in the present case has gone through several rounds of litigation. Government finds that, for the consignments in question, the applicant submitted the letters for fixation of Brand Rate in the year 2008 leading to the jurisdictional Commissioner of Central Excise subsequently fixing the Drawback rate. 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 ²³[period of ²⁴[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 ²³[period of ²⁴[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 Commissioner only during the year 2008, 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 Customs or Central Excise determining the Brand

Rates, which were issued subsequent to applications for the same being made by the applicant in the year 2008. 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 as mentioned above were in the year 2008. 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 shipment 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 during the year 2008. In view of the above, Government does not find any infirmity in the findings and order of the Commissioner (Appeals) on this count.

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, ⁵⁹[not below five percent.] and not exceeding thirty percent per annum as is for the time being fixed ⁶⁰[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 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. On examination of the various cases laws cited by the applicant, Government finds that the facts of the present case are different from those referred and hence they will not have any application here.

10. 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 24.04.2018 and does not find the need to modify or annul the same.

11. The subject Revision Application is rejected.


(SHRAWAN KUMAR)

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

ORDER No. 90/2023-^{CUS} (WZ) /ASRA/Mumbai dated 08.02.2023

To,

M/s Status Fashions,
202, Status House, 2nd floor,
Lathiya Rubber Gully, Andheri - Kurla Road,
Sakinaka, Mumbai - 400 072.

Copy to:

1. Commissioner of Customs (Export -II), Drawback, 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. Notice Board.