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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.371/22/DBK/2018-RA / 902

Date of Issue: 09.02.2023

ORDER NO. 191 /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 Fabco Exports,
130, 6/A, Sanjay Building,
Mittal Industrial Estate,
Andheri - Kurla Road, Andheri (E),
Mumbai - 400 059.
- Respondent : Commissioner of Customs (Export),
Drawback Department, 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-
CUSTM-SXP-165/2017-18 dated 25.10.2017 passed by
Commissioner of Customs (Appeals), Mumbai - I.

ORDER

The subject Revision Application has been filed by M/s Fabco Exports, Mumbai (here-in-after referred to as 'the applicant') against the subject Order-in-Appeal dated 25.10.2017 which decided the appeal by the applicant against the Order-in-Original dated 29.01.2016 passed by the Assistant Commissioner of Customs, Drawback Section, New Custom House, Mumbai - I.

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. 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 in terms of Circular No.39/2001-Cus dated 06.07.2001 of the Ministry. On being challenged by others placed similarly, the Hon'ble High Court held that the said Circular was prospective in nature. The SLP filed by the Department against the said Order was dismissed by the Hon'ble Supreme Court vide Order dated 10.01.2007. The applicant too approached the High Court resulting in the Hon'ble Court directing the authorities to decide the case within 12 weeks of the Order. The applicant were subsequently sanctioned the drawback claimed by them, however, no interest on the same was paid.

3. Thereafter, the applicant approached the Customs authorities for interest on delayed payment of Brand Rate of Duty Drawback and in the absence of any response, filed a Writ Petition in the Hon'ble High Court of Bombay leading to the Order dated 03.02.2011 of the Hon'ble Court wherein the matter was remanded to the original authority with directions to dispose of the case within eight weeks from the date of the Order. The applicant's claim for interest @ 30 % per annum was rejected by the original authority vide Order-in-Original dated 25.03.2011 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 18.10.2012. Aggrieved, the applicant filed application for revision before the Revisionary Authority, who vide Order dated 30.08.2013 directed the original authority to re-consider their claims for interest after calculating the delay in terms of the statutory provisions; The applicant was then sanctioned interest on the delay @ 6% per annum

from the time of filing the drawback claims to the time of its disbursal. However, the applicant claimed that they were eligible for interest @30% per annum from the expiry of three months from the submission of applications for fixing of Brand rate till the date of actual disbursal; the said claim was decided vide Order-in-Original dated 29.01.2016 wherein the original authority held that the interest has been correctly disbursed @ 6% per annum and rejected the claim for interest for the period claimed by the applicant on the grounds that in terms of Rule 13(3)(a) & (b) of the Customs & Central Excise Duty Drawback Rules, 1995 their claim for DBK was complete only after the Brand Rate Fixation letter was submitted, and that the same was done after 17.01.2008 and thus said claims could not be treated as filed earlier; The applicant preferred appeal before the Commissioner (Appeals) resulting in the impugned Order-in-Appeal dated 25.10.2017 wherein the Commissioner (Appeals) upheld the order of the original authority and rejected the appeal.

4.1 Aggrieved, the applicant has preferred the instant Revision Application against the impugned Order-in-Appeal dated 25.10.2017 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 Section 75A read with Section 27A of the Customs Act, 1962 clearly provides that interest should be paid if there is a delay of more than three months from the filing date of Refund claim; that "Filing date" as far as Brand rate of duty Drawback is the date on which the exporter had filed his application with the Central Excise department and not the date on which the papers are submitted to the Customs for release the payment;

(c) That the lower authorities had incorrectly held that rate of interest for delayed payment is @ 6% per annum as per Notification No.75/2003-Customs (N.T) dated 12.09.2003 as the shipment period was in 1999-2001 and hence interest applicable was @15% per annum as per Notification No 36/2000- Cus (N.T) dated 12.05.2000;

(d) That when there is a delay on the part of exporters to pay any money due to the Government, interest @18% 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 @18%;

(e) 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%;

(f) That the department had deliberately ignored the directions of the Hon'ble High Court given in its decision dated 17.01.2008 in WP No73 of 2008 for deciding the case within 12 weeks and that the delay is solely due to departmental mis-handling of the issue and that they were eligible for interest @18% on delayed payment of Drawback;

(g) They were denied their rightful claim of Brand rate of duty drawback by issue of Circular No. 39/2001-CUS dated 06.07.2001; that this Circular was illegal and ultra virus to the Constitution; that Article 14 of the Indian Constitution provided for equal treatment before law for every citizen; that this Circular was discriminatory as it denied refund of the excise duty paid on the yarn to the exporters of processed fabrics manufactured by independent processors together with DEPB; whereas, composite mills having the facilities of (1) spinning (2) weaving (3) processing (dyeing/ printing) were allowed to take CENVAT credit of the excise duty paid on the yarn that such exporter could get back this amount by way of rebate of duty under Rule 18 of Central Excise Rules, 2002; that Revenue could not allow this facility to the composite mills and deny the same to the exporter getting his fabrics processed by an independent processor paying duty under Section 3 of Excise Act 1962 (compounded levy scheme); that in the light of the above explanation it will be appreciated that Circular No. 39/2001- CUS dated 06.07.2001 was indeed ultra virus to the Constitution; that since they were denied their rightful claims by unconstitutional enactment of Revenue, they had every right to claim the applicable highest interest rate as provided in Section 27A & 75A of the Customs Act 1962; 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 from 90

days after submission of Brand Rate of duty drawback applications in Central Excise till the date of payment;

In view of the above, the applicant prayed that the impugned Order-in-Original dated 29.01.2016 and the impugned Order-in-Appeal dated 25.10.2017 be set aside and suitable instructions be issued to immediately release the pending payment of interest @ 18% after the expiry of three months from the date of filing of Brand Rate of duty drawback application in Central Excise department till the date of payment for the sanctioned Brand rate of Duty Drawback claims in respect of 34 Shipping Bills.

4.2 The applicant made further submissions vide their letter dated 05.11.2022, wherein, it was additionally submitted that :-

(a) The period of the Drawback claims was 1999-2001 and the same was sanctioned and paid only in 2008, 2009, 2012 & 2013; 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 till the date of payment on the basis of High Court order of Karur KC.P. Packagings Ltd vs. Commissioner of Cus. Tuticorin; 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;

(b) That the Brand rate approval letters issued in the year 2000 with respect to 16 Shipping Bills there were mistakes/clerical errors and that the same was not rectified in time and hence they could get the Drawback in these cases only in the years 2008 & 2013; that it was evident that the delay was solely due to the departmental mishandling of the issue and hence they were eligible to get interest on the delayed payment from 2000 till date of payment; that further submitted that the delay was due to the misplacement of files in the Drawback Directorate and that these files were subsequently

reconstructed resulting in release of their payment in the year 2008 & 2012 in respect of these files and hence were eligible for interest in respect of these 12 Shipping Bills from 2000 till the date of payment of drawback.

In view of the above, they requested that their Revision Application be allowed and interest may be sanctioned with consequential relief.

5. 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 05.11.2022 requested that the matter be decided on the basis of submissions made by them.

6. 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.

7. 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, as per the instant application, 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 the time applicant filed all documents before the proper officer, including the letters fixing Brand rate issued by the Commissioner of Central Excise for claiming drawback.

8. 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 years 2008 leading to the jurisdictional Commissioner of Central Excise fixing the Drawback rate during the period 2008 to 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 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 years 2008 to 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 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 or thereafter. 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 after the issuance of the brand rate letters during the period 2008 to 2013. 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 years 2008 to 2013. In view of the above, Government does not find any infirmity in the findings and order of the Commissioner (Appeals) on this count.

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.

10. 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.

11. 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. Government finds that the decision cited by the applicant in support of their case will not be applicable here, as clarified by the above discussed decisions. In view of the above, Government does not find any infirmity in the impugned Order-in-Appeal on this count either.

12. 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 25.10.2017 and does not find the need to modify or annul the same.

13. The subject Revision Application is rejected.


(SHRAWAN KUMAR)

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

ORDER No. 191/2023-^{CUS} (WZ) /ASRA/Mumbai dated 08.02.2023

To,

M/s Fabco Exports,
130, 6/A, Sanjay Building, Mittal Industrial Estate,
Andheri - Kurla Road, Andheri (E), Mumbai - 400 059.

Copy to:

1. Commissioner of Customs (Export), 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.