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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.380/35/DBK/WZ/2019-RA | 1089

Date of Issue: 12.02.2023

ORDER NO. 238 /2023-CUS (WZ) /ASRA/Mumbai DATED 14.02.2023
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 (General), Mumbai Zone-I,
New Custom House, Ballard Estate,
Mumbai 400 001.

Respondent : M/s HILDOSE,
Shivam Chambers, 106/108, 1st floor,
S. V. Road, Goregaon (West), Mumbai-400062

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.MUM-
CUS-RN-IMP-218/2018-19 dated 28.02.2019 passed by
Commissioner of Customs (Appeals), Mumbai Customs,
Zone-I

ORDER

This Revision Application has been filed by the Commissioner of Customs (Gen), ICD Mulund (here-in-after referred to as 'the applicant-department') against the Commissioner of Customs (Appeal), Mumbai-I's Order-in-Appeal No: MUM-CUS-RN-IMP-218/2018-19 dated 28.02.2019 passed in respect of M/s Hildose (here-in-after referred to as 'the respondent').

2. The Brief facts of the case are as follows:

- i) M/s Hildose, the Respondent, had exported goods vide 10 shipping bills during the period from 2006 to 2010 and claimed drawback on the same. The claims were processed to zero drawback on account of non-compliance of the queries raised. The Respondent replied to the queries only in the year 2015. After following the proper procedure, the Adjudicating authority vide OIO No. 06/2015-16/ICD(M)(X)DC/UB dated 11.01.2016 sanctioned the drawback in case of 7 shipping bills and dropped the remaining 3 claims as per the request of the Respondent.
- ii) Aggrieved by the aforesaid Order, the Respondent filed appeal with the Commissioner Appeal, limited to the aspect of interest not granted on the drawback sanctioned. Commissioner (Appeals) vide OIA No MUM- CUSTM-SMP-130/2017-18 dated 12.09.2017 directed the Original Authority to decide the matter of interest claim of the appellant within 8 weeks of receiving the Order.
- iii) The Original Adjudicating Authority rejected the claim of interest vide impugned Order-in-Original No. 134/2017-18/1CD/(M)(X)AC/ PKV dated 03.11.2017 on the grounds that the Respondents themselves were responsible for delay in disbursement of their drawback claims on account of failing to

respond to the queries of the department and to the initiatives taken by the department for quick disbursement.

- iv) Aggrieved by the aforesaid Order dated 03.11.2017, the Respondent filed appeal with the Commissioner Appeal who vide his OIA No. MUM-CUS-RN-IMP-218/2018-19 dated 28.02.2019 set aside the OIO and allowed the appeal.

3. Aggrieved by the impugned Order, the applicant-department has preferred the instant Revision Application against the impugned Order-in-Appeal dated 28-02-2019 on the following grounds: -

- i) Commissioner (Appeals) has observed that there is a violation of natural justice in the absence of any communication or evidence of affording personal hearing to the M/s Hildose prior to processing of drawback claims at zero amounts which has the effect of denying the drawback claims. For the said observation the Commissioner (Appeals) has relied upon a copy of Board's letter F. No. 609/71/2013-DBK, dated 12.08.2015 with the Board letter F. No. 605/30/2010-DBK dated 08.03.2010 wherein it was informed that notices/letters should be issued to the exporters to submit requisite documents and exporters should be given reasonable time of 30 days to submit documents /reply to the query and an opportunity for personal hearing. If reply is not received from the exporter despite above efforts, the claim should be categorized as "not pursued" instead of sanctioning Zero drawback and the case may be reopened on receipt of the required documents /information without the exporter having to file a supplementary claim. Subsequently, Board gave decision that this shall result in permanent pendency in the Departments EDI System and to take all out efforts to contact the exporters and in case material information having bearing on the validity of the claims is not forthcoming from the exporters, the claims may be decided formally by following the normal procedure. M/s Hildose failed to file any replies to queries raised, the same were processed to zero

drawback with an option kept open for M/s Hildose to file a supplementary claim with the requisite documents. The processing to Zero drawback has not been done arbitrarily but after following a due procedure. The information regarding the pending drawback cases had been circulated to CHA Associations, Mumbai on 24.03.2010, during the Drawback pendency liquidation drive from 17.04.2010 to 16.06.2010, first a local notice thereto was issued by AC/ICD Mulund which was displayed on the notice board also and secondly, a Public Notice No.17/2010 dated 18.05.2010 was issued. In the impugned 07 shipping bills, after following the due procedure, the drawback were processed to zero but an option was given to them to file a supplementary claim along with requisite documents. M/s Hildose had first communicated in relation to impugned shipping bills on 12.09.2013 well after 4 to 7 years after the queries raised and after 2 and a half to 3 years after the processing the drawback to Zero. An inaction on their part is clearly evident. The department relied in the case of *Cheer Sagar Vs Commissioner of Customs in DB Civil Writ Petition No.5305 of 2013, [2014(308) ELT38 (Raj.)]*. Hon'ble High Court of Rajasthan

- ii) It is an accepted fact by the judicial forum that the directions issued under any public notice are binding on all the concerned entities that have to comply with those directions and for the delay to comply these directions and consequences thereof, the concerned entities are only responsible and nobody can be blamed for their inaction. The measures taken by the department to process the drawback claimed but held up due to non-reply to the queries raised were in compliance with the principle of natural justice. M/s Hildose cannot take recourse to non-issuance of deficiency memo or Show Cause Notice for their inaction and delay when the suitable Public Notice was issued and other remedial measures thereto were taken by the department. The department had processed the drawback claim to Zero but same were not rejected out

rightly as even after such measures, an option was always kept to revive the claim by way of supplementary claim.

- iv) M/s Hildose had submitted the requisite documents last on 23.12.2015 and the original Adjudicating authority sanctioned the admissible drawback by passing the Order-in-Original No. 06/2015-16 ICD (M) (X) DCUB on 11.01.2016. Thus the admissible drawback was sanctioned within a month of the submission of the requisite documents in spirit of the Section 75A of Customs Act, 1962 but the scroll could not be generated due to system error in relation to the IEC of M/s Hildose and the same was resolved in liaison with Commissioner (System) on 11.02.2016. M/s Hildose had submitted requisite documents in compliance to the queries on 23.12.2015 and the admissible drawback was sanctioned on 11.01.2016. Therefore the date of claim under Rule 13(1) of Drawback Rules, 1995 in this case is 23.12.2015 and not the date of Let Export Order of impugned 07 shipping bills. Therefore the observations of the Commissioner (Appeals) about the queries raised as non-relevant and invalid and conclusion by relying thereupon that the date of let export order is the date of claim of drawback, are not just and proper.
- v) In view of the above, it was requested to set aside the impugned OIA No. MUM-CUS-RN-IMP-218/2018-19 dated 28.02.2019 and to restore OIO No.134/2017-18/ICD/(M)(X)AC/PKV dated 03.11.2017.

5. Personal hearing in the matter was granted on 06.12.2022. Shri Rajiv Gupta, Consultant appeared on behalf of the Respondent. He appeared online and submitted that interest is inbuilt under Section 75A of Customs act. He requested to maintain Commissioner (A)'s Order and allow payment of interest. The Respondent submitted Additional Submissions dated 5th December, 2022.

5.1 The Respondent made Additional submissions vide their letter dated 05.12.2022, wherein, it was submitted that:-

a) CBEC, Drawback Division vide F.No. 605/30/2010-DBK dated 8.03.2010 informed that Drawback claims are to be decided formally by following the normal procedure ie by adhering to the principles of natural justice and if the officer intends to reject the claims a SCN has to be issued giving the details of the legal grounds followed by personal hearing.

b) The department has delayed the interest payment wrongly and therefore interest needs to be paid on interest due from the date of duty Drawback claim amount.

6. Government has carefully gone through the relevant case records, the written submissions and also perused the said Orders-in-Original, the impugned Orders-in-Appeal and the Revision Application.

7. Government finds that the issue involved in this case is regarding the eligibility for interest from the expiry of one month from the date of filing the drawback claim with the Customs to the date of payment of drawback.

8. On going through the case Government notes the following points:

i) There is no dispute in respect of the Drawback sanctioned by the applicant department and the Respondent and the dispute is only in respect of the eligibility of interest.

ii) In respect of the interest on the drawback sanctioned, the department is of the view that there is no delay in sanction of the Rebate since the queries raised by the department during the year from 2006 to 2009 has been replied in the year 2015-16.

iii) The Respondent is of the view that their drawback claim was sanctioned at zero rate without compliance of natural justice ie no SCN was issued, etc.

8.1 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:....”

8.2 A reading of the above, clearly indicates that Rule 13(3)(a) of the DBK Rules, 1995 stipulates that a 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 the instant case the applicant department has nowhere submitted that they had returned the claim to the Respondent within 10 days. In fact the impugned file through which the claims were sanctioned at zero amount was not traceable. Government notes that the queries raised i.e TPR report, Bank Realisation Certificate etc are not the documents stipulated to be accompanied with the claim as stipulated under Rule 13(2) of the DBK Rules, 1995. Government finds that these documents are not essential for sanctioning the Drawback. The department have just reiterated that they had raised queries and the same were not complied to and hence the claims were sanctioned at zero amount with the option to file supplementary claim. The applicant department could not produce any evidence of following the natural justice.

8.3 As per Section 27A of the Customs Act, 1962 which provides for payment of interest on Drawback, interest in this case would be payable after completion of one month from the submission of a complete claim for Drawback by the applicant. Given these set of facts, Government finds that the Commissioner (Appeals) has discussed this aspect in detail and correctly held that the Respondent is eligible for the interest from the date of filing of applications as given below:

“6.3On the issue of queries raised in the system by the concerned officers, the appellant by quoting above rule 13(3)(a) of the DBK Rules, 1995 has contended that the legal obligation of returning drawback claims with deficiency memo cannot be dealt with lightly

because no exporter can take appropriate action without being informed.....I find that in respect two claims the concerned officials had raised query to "put up PTR". In this regard, I agree with the contention of the appellant that the exporter cannot be held responsible for putting up the PTR because the aspects of testing of samples and obtaining corresponding test reports fall within domain of the Customs officials. I further find that in respect of four claims, query is to 'put up BRC which is also not justifiable for the reason that Bank Realization Certificates (BRC) is not a requirement for initial sanction of drawback. It is a requirement subsequent to disbursement of drawback for initiation of recovery proceedings of Drawback under Rule 16 A in the cases where export proceeds are not realised within permissible time limit. In remaining one claim, the query is that "Pl. submit S/B, Inv., P/L, ARE, Annex-I & II, literature, catalogue, TR, PTR etc." I find that Documents like Invoice, P/L, ARE, Annex-I & II, literature and catalogue are the documents on the basis of which a Shipping Bill under Duty Drawback Scheme is assessed and examined and subsequent to let export order as per the Rule 13 of the DBK Rules, these documents are retained for the purpose of processing of drawback. Therefore, asking the same again in system without issuing a proper deficiency memo as provided under Rule 13(3)(a) cannot be held valid. Similarly T/R (Test Report) and PTR (Previous Test Report) always remain in the control of the Department and therefore, the same should not be expected from the exporter. In view of the above discussions, the queries raised in the present matter in the system cannot be held as reasonable grounds for not processing the drawback claims. Therefore, the date of let export order in these cases as provided under Rule 13 can be taken as date of filing of drawback claims.

6.4 Admittedly, in the present case, Drawback for the exports which were held during the years 2006 to 2009 was paid

vide Order dated 11.01.2016 which is clearly beyond one month from the date of filing of the drawback claim. Under such circumstances, the appellant is eligible for interest from the expiry of one month from the date of its filing with the Customs to the date of payment of drawback. I further find that the Central Govt. vide Notification No. 75/2003-Cus (NT) dated 12.09.2003 issued under Section 27A has fixed the rate of interest at six per cent per annum. Hence the rejection of interest claim on delayed payment of drawback in the present case by the adjudicating authority for the period starting one month after receiving the claim till the date of payment is not justifiable.”

In view of the above, Government does not find any infirmity in the impugned Order-in-Appeal on this count.

09. Government notes that the Respondent has also made a request for being granted interest on the interest payable in their submission dated 05.12.2022. Government finds that the Respondent had not made this plea before either of the lower authorities and hence the said plea deserves to be rejected for this reason alone. 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. Government finds that there is no legal provision to support the claim of the respondent for payment of interest on interest and rejects the same.

10. In view of the above Government does not find any infirmity in the impugned OIA No. MUM-CUS-RN-IMP-218/2018-19 dated 28.02.2019 and does not find the need to modify or annul the same.

11. The subject Revision Application filed by the Applicant-department is rejected.


(SHRAWAN KUMAR)

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

ORDER No 238/2023-CUS (WZ) /ASRA/Mumbai dated 14.02.2023

To,

1. M/s Hildose, Shiva Chambers, 106/108, 1st floor, S. V. Road, Goregaon West, Mumbai – 400 062.
2. The Commissioner of Customs (General), 2nd Floor, New Custom House, Ballard Estate, Mumbai 400 001.

Copy to:

3. Commissioner of Customs (Appeals), Mumbai Zone – I, 2nd floor, New Custom House, Ballard Estate, Mumbai – 400 001.
4. AC/DC of Customs (Export), ICD, Mulund East, Mumbai-400081
5. Sr. P.S. to AS (RA), Mumbai.
6. Notice Board.