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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. 371/76/DBK/15-RA /uou5

Date of issue: 22.09.2022

ORDER NO. 269 /2022-CUS (WZ)/ASRA/MUMBAI DATED 19.09.2022  
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. Adani Ports & Special Economic Zone Ltd.

Respondent : Commissioner of Customs, Mundra.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962, against the Order-in-Appeal No.MUN-  
CUSTM-000-APP-160-15-16 dated 03.09.2015 passed by  
the Commissioner of Customs (Appeals), Ahmedabad.

ORDER

1. This Revision Application is filed by M/s. Adani Ports & Special Economic Zone Ltd., Adani House, Near Mithakhali Cross Roads, Navrangpura, Ahmedabad - 380 009 (hereinafter referred to as "the Applicant") against Order-in-Appeal No. MUN-CUSTOM-000-APP-160-15-16 dated 03.09.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2.1 Brief facts of the case are that the Applicant was engaged in business of import of goods and providing port services. While providing the port services, the applicant entered into an agreement with M/s. Valentine Maritime (Mauritius) Ltd. for laying, erection and commissioning of off-shore crude oil handling terminal at Mundra Port. To execute this project, M/s. Valentine Maritime (Mauritius) Ltd. imported various types of equipments falling under Chapters 89 for carrying out the project. Since, M/s. Valentine Maritime (Mauritius) Ltd. was not an Indian entity; the Applicant filed all the Bills of Entries for import and other documents for re-export with the Customs Department for claiming drawback of the Customs Duty paid.

2.2 The Applicant had filed totally 3 drawbacks claims in respect of the goods imported by them under 3 different Bills of Entries. However, the adjudicating authority partially sanctioned the claims vide Order-in-Original (OIO) No. MPSEZ/1510/RN/DC/DBK/14-15 dated 16.01.2015 as detailed hereunder:

Shipping Bill No./Date	Bill of Entry No. /Date	Claim Amount (in Rs.)	Order as per impugned OIO
159/16.04.05	1436/02.11.04	73,40,487/-	Sanctioned Rs.62,05,577/- and allowed re-credit of Rs.10,95,101/-
211/23.04.05	1028/27.09.04	6,13,150/-	Sanctioned Rs.6,13,151/-
420/25.05.05	1435/02.11.04	6,05,050/-	Rejected the claim

2.3 Aggrieved, the Applicant filed an appeal with the Commissioner (Appeals) who vide impugned Order-in-Appeal(OIA) set aside the impugned OIO dated 16.01.2015—as regards rejection of drawback claim and directed the lower authority for consideration of all facts and documents available in this regard and to re-adjudicate the same and pass an order afresh in adherence to principles of natural justice.

3. However, being aggrieved and dissatisfied with the impugned OIA, to the extent of upholding the OIO by allowing re-credit of Rs. 10,95,101/- and not allowing interest, the Applicant has filed the instant Revision Application mainly on the following grounds:

- a) The Ld. Commissioner (Appeals) had not dealt with the issue on sanctioning the drawback in cash instead of allowing re-credit in Advance Licence 1090042703 dated 12.10.2004 on the premise that the Applicant did not press for the said point during the course of hearing, The Applicant submits that they never gave up the point of allowing admissibility of drawback through cash instead of allowing re-credit in Advance (supra).
- b) The Commissioner ought to have appreciated that the Applicant specifically stated in ground (J) of the Memo of Appeal that they could not get re-credit of drawback in Licence No. 0810042703 dated 12.10.2004 since said Licence was surrendered on account of fulfillment of export. As the Licence is not in existence, the impugned order allowing re-credit of drawback in No. 0810042703 dated 12.10.2004 is no use to the Applicant.
- c) The Commissioner (Appeal) ought to have appreciated that, the Applicant specifically prayed in prayer clause in appeal to direct the Customs Authority to sanction the drawback in cash instead of re-credit of

drawback in Licence No. 0810042703 dated 12.10.2004. Had the intention of the Applicant been not to contest the point, they would not have raised this issue in Memo of Appeal. It shows that the Applicant always cased the issue before the appropriate authority to sanction drawback in cash instead of allowing re-credit in Licence No. 0810042703 dated 12.10.2004.

- d) The impugned order is silent to the extent of granting interest on drawback amount which was belatedly sanctioned to the Applicant. Section 75A of the said Act provides to sanction the drawback within a period of one month from the date of filing the claim and belatedly to which, interest is payable at the rate specified by the Central Government from time to time. In the present case the amount of drawback was not sanctioned within the stipulated time and therefore, the Applicant was entitled to get interest on the drawback which has been sanctioned belatedly. Since the impugned order is silent, the same cannot be sustained in the eyes of law.

On the above grounds, the Applicant prayed to set aside the impugned Order-in-Appeal with all consequential benefits and to grant any other further relief as deemed fit.

5. A Personal hearing was held in this case on 21.07.2022. Shri Chirag Shetty, Advocate appeared online on behalf of the Applicant for the hearing and reiterated the earlier submissions. He submitted that on both issues, payment of drawback in cash instead of credit in Licence and interest on delayed payment, Commissioner (Appeals) has given no findings. On interest, he said that even Original Adjudicating Authority has not given any findings. He requested for remanding the matter to OAA for appropriate findings on both issues.

6. 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.

7. Government observes that the first grievance in the instant Revision Application is sanctioning drawback by way of re-credit in Advance Licence. The Applicant has claimed that the Advance Licence No. 0810042703 dated 12.10.2004, in which ~~partial drawback~~ amounting to Rs.10,95,101/- was ordered to be re-credited by the Original authority, had been surrendered on account of fulfillment of export obligation. Government notes that there is no mention regarding validity of the said Advance Licence in the impugned OIO/OIA, therefore this aspect is required to be verified, and the amount sanctioned needs to be accordingly dealt with.

8. The second grievance in the instant Revision Application is that the amount of drawback was not sanctioned within the stipulated time and therefore, the Applicant has contended that they were entitled to get interest under Section 75A of the Customs Act, 1962. Government observes that as per said Section, interest is required to be paid if drawback payable is not paid within a period of one month from the date of filing the complete claim. Since Original authority has not recorded its findings as to when claims complete in all respects, were received; whether any deficiency memo was issued, when the same was complied; whether during pendency of claim, any correspondences were made by the applicant and on all other relevant documenting; therefore, the Original adjudicating authority is required to record its decision on this aspect.

9.1 Government observes that in the case of Nestle India Ltd. Versus Commissioner of Central Excise, Chandigarh [2009 (235) E.L.T. 577 (S.C.)], Hon'ble Apex Court had passed an Order on similar lines when it observed that the decision of the Tribunal does not deal with the points raised by the appellant. The relevant paras are reproduced hereunder:

12. *At the outset, it may be stated that the decision of the Tribunal impugned by the assessee is cryptic. It does not deal with the points which are specifically raised by the assessee in its appeals filed before the Tribunal. Therefore, we need to categorise each of these points:*

15. *Since the above questions have not been decided by the Tribunal in proper perspective, we set aside the impugned judgment of the Tribunal and we remit the matter to the Tribunal for de novo disposal in accordance with law.*

9.2 In the case of Jay Engineering Works Ltd. Versus Commissioner of C. Ex., Kolkata-V [2008 (223) E.L.T. 181 (Tri. - Kolkata)], the Hon'ble Tribunal held that each and every issue raised is to be decided for the order to be considered as speaking/reasoned. The relevant paras of this Order are reproduced hereunder:

*5.7 The ld. Counsel appearing for the Appellant raised legal and factual issues before this forum elaborately as stated herein before. The impugned order except relying on the previous appeal order dated 22-11-99 has no specific finding nor any discussion on the Board Circular relied upon by the Appellant was made. We are of the view that both the Authorities below should have considered all the issues that was raised before them and decided each and every issue or submission to characterize the order to be speaking and reasoned. The impugned order appears to be unreasoned and not self speaking. Both on technicalities and legality we are of opinion that both sides should get a fair opportunity to prove their won stand and tested by examination or cross-examination as may be required. If required laboratory analysis or export report may be desirable.*

6. On the light of the aforesaid observation and findings we may hold that the Id. Adjudicating Authority should consider the entire issue afresh which relates to the period from 1-3-92 to 30-6-96 on the basis of evidence, governing facts, attendant, circumstances, legal/technical submissions, circulars relied by both sides as well as citations to do justice to both sides. We expect the order should be reasoned and speaking affording reasonable opportunity of hearing to the Appellant so that the matter can be resolved without repetitive litigation or further controversy. Appeals are allowed by way of remand.

10. In view of the above discussion and findings, the Government modifies the Order-in-Appeal No. MUN-CUSTOM-000-APP-160-15-16 dated 03.09.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad and remands the case back to original adjudicating authority for deciding on the aforementioned two issues on merits and pass appropriate orders. Applicant should be given reasonable opportunity before deciding the matter.

11. The Revision Application is disposed of on the above terms.

  
19/9/22

(SHRAWAN KUMAR)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

ORDER No. 269 /2022-CUSTOMS/ASRA/Mumbai dated 19.9.22

To,

M/s. Adani Ports & Special Economic Zone Ltd.,  
Adani House, Near Mithakhali Cross-Roads,  
Navrangpura, Ahmedabad - 380 009.

Copy to:

1. Pr. Commissioner of Customs,  
Custom House, Mundra,  
Kutch - 370 421. \_\_\_\_\_
2. M/s. Economic Law Practice  
801, Abhijeet-III,  
Nr. Mithakhali Six Roads,  
Ahmedabad - 380 006
3. Sr. P.S. to AS (RA), Mumbai
- ~~4. Guard file~~
5. Notice Board.