



**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. 371/83/DBK/13-RA /7069

Date of Issue: 07.12.2021

ORDER NO. 306 /2021-CUS (WZ) /ASRA/MUMBAI DATED 03.12.2021
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 Ambuja Cements Ltd.,
Cement House, 121,
Maharshi Karve Road,
Mumbai - 400 020.

Respondent : Commissioner of Customs (Export),
Air Cargo Complex, Sahar,
Andheri (E), Mumbai - 400 099.

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal
No.MUM-CUSTOM-AXP-APP-72/13-14 dated 18.06.2013
passed by the Commissioner of Customs (Appeals),
Zone - III, Mumbai.

ORDER

This Revision Application has been filed by M/s Ambuja Cements Limited (here-in-after referred to as 'the applicant') against the Order-in-Appeal No.MUM-CUSTOM-AXP-APP-72/13-14 dated 18.06.2013 passed by the Commissioner of Customs (Appeals) Zone-III, Mumbai. The said Order-in-Appeal decided an appeal against the letter F.No.S/3-502/2010-11/DBK (M) ACC dated 29.06.2012 issued by the Deputy Commissioner of Customs, Drawback (Manual), ACC, Mumbai.

2. Brief facts of the case are that the applicant had filed a Drawback claim under Section 74 of the Customs Act, 1962 in respect of goods exported by them vide Shipping Bill no.001101 dated 18.12.2010. The Department issued Deficiency Memo dated 21.03.2012 directing the appellant to submit a certificate from the Central Excise authorities indicating non-availment of Cenvat benefit. The appellant did not submit the same and hence they were informed by the Deputy Commissioner, Drawback, vide letter dated 29.06.2012 that in terms of para (9) of the Facility Notice no.19/2012 dated 26.05.2012 their claim was being treated as time barred and was hence closed administratively for non-compliance of sub rule 2 of Rule 5 of the Re-export of imported Goods (Drawback of Customs) Rules, 1995.

3. Aggrieved, the applicant preferred an appeal against the said decision of the Deputy Commissioner before the Commissioner of Customs (Appeals), Mumbai - III, wherein, apart from the other pleas, they also submitted the required certificate, which they stated had been procured by them on 05.07.2012. The Commissioner (Appeals) found that as per sub rule (1) of Rule 5 of the Customs (Appeals) Rules, 1982, an appellant was not entitled to produce any evidence, whether oral or documentary before the Commissioner (Appeals), other than the evidence produced by them during the course of proceedings before the adjudicating authority with certain exceptions. The Commissioner (Appeals) found that the applicant was not faced with any such exceptional circumstance and hence held that the

submissions/ documents produced by the applicant could not be considered at that stage. In light of the above findings, the Commissioner (Appeals) rejected the appeal as being devoid of merit.

4. Aggrieved, the applicant has filed the present Revision Application against the Order-in-Appeal dated 18.06.2013 on the following grounds:-

- (a) The Deputy Commissioner had erred in holding that the Drawback claim was barred by limitation by relying on the Facility Notice dated 26.05.2012, as the said Notice would not have an overriding effect over the statutory provisions; that the Deputy Commissioner as well as the Commissioner (Appeals) should have appreciated that their claim as 'incomplete' and hence not filed under Rule 5(4) of the Re-export of Imported goods (Drawback of Customs Duties) Rules, 1995 (DBK Rules).
- (b) The Deputy Commissioner and the Commissioner (Appeals) should have appreciated that they could not submit the said certificate for reasons beyond their control; that the time taken by the Central Excise authorities to issue the 'non-availment certificate' should be excluded from the 30 days period prescribed by Rules 5(4) of the DBK Rules; that since the said certificate was issued only on 05.07.2012, their claim could not be rejected on limitation as the circumstances were beyond their control;
- (c) The Commissioner (Appeals) had erred in relying on the provisions of Rule 5(1) of the Customs (Appeals) Rules, 1982 to not consider the 'Certificate of non-availment of Cenvat' submitted by them as the same was received by them only after the administrative closure of the Drawback claim by the Deputy Commissioner;
- (d) Their case was covered under the exception clauses (b) (c) & (d) of sub-rule (1) of Rule 5 of Customs (Appeals) Rules, 1982 inasmuch as they had taken all possible steps to produce documentary evidence showing that no cenvat credit was availed by them in respect of the subject Bill of Entry, however, the adjudicating authority closed the Drawback claim by passing ex-parte order without hearing their

stand and hence the Commissioner (Appeals) should have considered the evidence submitted by them.

In light of the above submissions, they prayed for the impugned Order-in-Appeal to be set aside with consequential relief.

5. Personal hearing in the matter was granted to the applicant on 20.04.2021 which was attended by Shri Prashant Patankar, Advocate on behalf of the applicant. He appeared online and reiterated the written submissions. He stated that the Commissioner (A) did not consider the non-availment of Cenvat certificate produced before her, though this was the only ground of rejection in the Order-in-Original. He requested that the claim of the applicant be allowed.

6. Government has carefully gone through the relevant case records available in the case file, the written and oral submissions and also perused the impugned letter dated 29.06.2012 and the Order-in-Appeal dated 18.06.2013.

7. Government finds that the issue involved lies in a narrow compass. The drawback claim filed by the applicant was rejected by the Deputy Commissioner, Customs for the reason that they could not produce the 'Certificate of non-availment of Cenvat benefit' by 29.06.2012 and was hence time barred. Government finds that original authority erred in solely relying on the Facility Notice dated 26.05.2012 in concluding that the drawback claim was time barred, as the said Notice is in the nature of a guideline and will not prevail over the provisions of Section 74 of the Customs Act, 1962 or the Rules made thereunder, wherein no provision exists to treat the present claim as time barred.

8. Government has examined the Deficiency Memo dated 21.03.2012 issued by the Assistant Commissioner, DBK and notes that the only deficiency pointed out therein is the non-submission of the above said certificate. The applicant procured the same and produced it before the Commissioner (Appeals), however, the same was not taken cognizance of on

the grounds that evidence not produced before the original authority could not be produced before the appellate authority in terms of Rule 5(1) of the Customs (Appeals) Rules, 1982.

9. In this connection, Government finds that the applicant had requested the jurisdictional Central Excise authorities to issue the 'non-availment of Cenvat certificate' vide their letters dated 24.01.2012 and 13.06.2012. The Central Excise authorities had, after due verification, issued the said certificate on 05.07.2012. Government also finds that the applicant had kept the Deputy Commissioner, Customs, dealing with their Drawback claim, informed about their correspondence with the Central Excise authorities, despite which the Deputy Commissioner, Customs rejected the drawback claim of the applicant vide letter dated 29.06.2012.

10. Government finds that Rule 5(1)(b) of the Customs (Appeals) Rules, 1982, reads as under :-

" (1) The appellant shall not be entitled to produce before the Commissioner (Appeals) any evidence, whether oral or documentary, other than the evidence produced by him during the proceedings before the adjudicating authority, except in following circumstances, namely

....

(b) Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by that authority; or "

Government finds that the applicant had requested the jurisdictional authorities for the said 'non-availment certificate' on 24.01.2012, however, the same was issued only on 05.07.2012, which was subsequent to their claim being rejected by the original authority on 29.06.2012. Thus, Government finds that in the instant case, there was sufficient cause which prevented the applicant from producing the evidence which was called upon before the original authority. In such circumstance, the applicant was

entitled to produce the said 'non-availment of Cenvat credit certificate' before the Commissioner (Appeals) in terms of Rule 5(1)(b) of the Customs (Appeals) Rules, 1982, which provided for such exception. Thus, Government finds the decision of the Commissioner (Appeals) to not take cognizance of the certificate produced by the applicant to be incorrect.

11. Further, Government finds that the jurisdictional Central Excise authorities have, vide Certificate dated 05.07.2012, certified that the applicant has not availed Cenvat Credit of the CVD on the exported consignment. In view of the above, the Government sets aside the impugned Order-in-Appeal dated 18.06.2013, and allows the drawback claim filed by the applicant.

12. The Revision Application stands disposed of in the above terms.

Shrawan
3/12/21
(SHRAWAN KUMAR)

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

ORDER No. ³⁰⁶/2021-CUS (WZ) /ASRA/Mumbai dated 03.12.2021

To,

M/s Ambuja Cements Ltd.,
Cement House, 121,
Maharshi Karve Road,
Mumbai - 400 020.

Copy to:

1. The Commissioner of Customs (Export), Air Cargo Complex, Sahar, Andheri (E), Mumbai 400 099.
2. The Commissioner (Appeals), Mumbai Customs, Zone - III, Awas Corporate Point, 5th floor, Makwana Lane, Mumbai - 400 059.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.