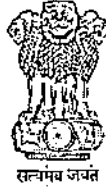


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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**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.371/42/DBK/2021-RA /16w Date of Issue: 16.03.2023
F. No.371/439/DBK/2022-RA

357-358

ORDER NO. /2023-CUS (WZ) /ASRA/Mumbai DATED 16.03.2023 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 Ritex Overseas,
155, Mittal Industrial Estate,
Building No.6, 84/85, M.V. Road,
Andheri (East), Mumbai - 400 059.

Respondent : Commissioner of Customs, NS II, JNCH,
Mumbai - II

Subject : Revision Applications filed under Section 129DD of the
Customs Act, 1962 against the Orders-in-Appeal No.05
(DBK) / 2021 (JNCH) / Appeals and No.1038 (Drawback)
/2022 (JNCH) / Appeals dated 09.02.2021 and
29.09.2022, respectively, both passed by the
Commissioner of Customs (Appeals), Mumbai - II.

ORDER

The subject Revision Applications have been filed M/s Ritex Overseas, Mumbai (here-in-after referred to as 'the applicant') against the Orders-in-Appeal No.05 (DBK) / 2021 (JNCH) / Appeals and No.1038 (Drawback) /2022 (JNCH) / Appeals dated 09.02.2021 and 29.09.2022, respectively, passed by the Commissioner of Customs (Appeals), Mumbai – II. The Order-in-Appeal dated 09.02.2021 decided an appeal filed by the applicant against Order-in-Original dated 31.01.2020 and the Order-in-Appeal dated 29.09.2022 decided an appeal filed against Order-in-Original dated 05.07.2021, both passed by Deputy/Assistant Commissioner of Customs, Drawback, NS-II, JNCH, Nhava Sheva. Government finds the issue involved in both the subject Orders-in-Appeal to be the same and hence takes them up for being decided together.

2. Brief facts of the case are that the applicant exported Mixed Garments vide three Shipping Bills all dated 25.07.2009 filed under the Duty Drawback Scheme. Due to an investigation being carried out by the SIIB (X), JNCH, the Drawback claims of the applicant were kept pending till the completion of the said investigation. The said claims amounting to Rs.10,55,845/- were subsequently disbursed to the applicant on 03.07.2018. The applicant was denied interest by the original authority on the delayed payment of drawback. Aggrieved, the applicant preferred appeal before the Commissioner (Appeals) resulting in Order-in-Appeal dated 10.10.2019 wherein the Commissioner (Appeals) ordered for payment of interest from the expiry of one month of the filing of the drawback claim. The original authority, in compliance of the said Order-in-Appeal, sanctioned interest of Rs.5,03,855/- for the period 22.07.2010 to 03.07.2018 @ 6% as per notification no.75/2003-CUS(NT) dated 12.09.2003. The applicant once again filed appeal before the Commissioner (Appeals) against the said order of the original authority on the following grounds:-

- Though they were eligible for interest from 25.08.2009 till the date of payment, they were paid interest only from 22.07.2010;

- Interest was paid @ 6 % p.a., however, the same should have been paid @ 18% p.a.;
- Interest amount was due to them on 03.07.2018, however, the same was paid only on 20.01.2020 and hence they should be paid interest on the delayed payment of interest;

The Commissioner (Appeals) vide the impugned Order-in-Appeal dated 09.02.2021 rejected the claims of the applicant for interest @ 18% p.a. and that of interest on delayed payment of interest and remanded the case back to the original authority for examining the plea of the applicant for interest from 25.08.2009. Thereafter, the original authority, in compliance of the said Order-in-Appeal, vide Order-in-Original dated 05.07.2021 sanctioned Rs.57,264/- interest for the period 24.08.2009 to 21.07.2010. The claim of interest @ 18% p.a. and interest on delayed payment of interest once again made by the applicant before the original authority was rejected. Aggrieved the applicant preferred appeal before the Commissioner (Appeals) against the Order-in-Original dated 05.07.2021 seeking interest @ 18% p.a. and interest on the delayed payment of interest. The same was rejected by the Commissioner (Appeals) vide the impugned Order-in-Appeal dated 29.09.2022.

3.1 Aggrieved, the applicant has filed the subject Revision Applications against the above-mentioned Orders-in-Appeal dated 09.02.2021 and 29.09.2022. The Application against the Order-in-Appeal dated 09.02.2021 has been filed on the following grounds:-

(a) The Commissioner (Appeals) view that interest on interest was not admissible was not sustainable in light of the decision of the Hon'ble CESTAT, New Delhi Principal Bench in their final Order No.50699/2019 dated 17.05.2019 in the case of M/s BSL Ltd. Vs. Commissioner of C. Ex. & CGST, Udaipur had allowed interest on delayed payment of interest and that the same was squarely applicable to the present issue too;

(b) That the interest amount became due on 03.07.2018 and since the same was received by them on 17.01.2020, revenue had withheld the refund of interest without any authority of law due to which they had to incur expenses in an avoidable litigation for not getting their legitimate dues and hence they were eligible for interest on interest. They cited the following

decisions in support of their claim for interest on delayed payment of interest: -

- Kerala Chemicals & Proteins Ltd. Vs. CCE, Cochin [2007(211) ELT 259 Tri-Bang]
- Standard Pencils Pvt. Ltd. Vs. CCE, Chennai, [2010(253) ELT 160 Tri-Chennai]
- D. J. Works Vs. Dy. CIT [(1992) 195 ITR 227 Guj HC]
- Chimanlal S. Patel Vs. CIT & Anr.: [(1994) 210 TTR 419 Guj. HC.]
- CIT Vs. Narendra Doshi; [(2002) 254 ITR 606 (SC)]
- CC, Airport & ACC, Bangalore vs Pfizer Products India P. Ltd. [2015 (324) ELT 259 (Kar)]
- VBC Industries Limited vs CCE & CUS, Vishakapatnam [2008 (225) ELT 375 (Tri.-Bang)]
- Panasonic Energy India Co. Ltd. vs CCE, Cochin [2007 (211) ELT 259 (Tri-Bang)]
- Munch Food Products Ltd vs S.K. Sheoran [2015 (325) ELT 31 (Del)]

They submitted that the Order-in-Appeal should be modified on this ground.

(c) That the Commissioner (Appeals) had held that the interest @ 18% p.a. was not applicable to them on the basis of the decision of the Hon'ble High Court of Madras in the case of M/s Karur K.C.P. Packagings Limited vs CC in W.P. No.15003 of 2015 dated 27.08.2015 which was in clear violation of Article 14 of the Constitution of India; that the High Court had allowed interest @ 18 % in this case on the delayed payment of drawback; that Article 14 of the Indian Constitution safe guards equality before law and by denying @12% interest on delayed refund claims of pre-deposit to them and release of payment to other exporters was clearly discriminatory and ultra-virus to the Indian Constitution; that they may therefore be allowed their due interest amount immediately; that there cannot be any disparity between exporters; therefore, the impugned order passed by the Commissioner (Appeals) should be modified;

(d) That the delay was on the part of departmental mishandling of the issue and on this count alone they were eligible for interest @18% and also interest on the delayed payment of interest; that when there is delay on the part of the exporters to pay any amount to the Government, they have to pay interest @ 18% and hence on this ground of equity and natural justice they should also be granted interest @ 18% p.a.;

In view of the above, they requested that their Revision Application be allowed and instructions be issued to the lower authorities for release of the balance interest on delayed payment of drawback and interest on delayed payment interest.

3.2 The grounds on which the Revision Application has been preferred by the applicant against the impugned Order-in-Appeal dated 29.09.2022 are similar to that in their Application against Order-in-Appeal dated 09.02.2021 mentioned above, except for the following: -

(a) They submitted that the Hon'ble High Court of Gujarat in the case of *Afriq Tradelinks P Limited vs UOI* [2004 (61) RLT 726 (Guj)] interpreted the provisions of the Customs Act, 1962 which are in pari materia to similar provisions of the Central Excise Act, 1944. In this case too, they made prayers similar to that made in their above- mentioned Application.

4. Further, the applicants in both the subject Revision Application vide their letters dated 02.11.2022 and 15.02.2023 requested that formalities like personal hearing be avoided and that the cases may be decided on merits as submitted by them in the Revision Application.

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

6. Government finds that issues involved in both the impugned Orders-in-Appeal are the same and pertain to the delayed payment of drawback on goods exported by the applicant vide three Shipping Bills. Government finds that there was a delay in paying drawback to the applicant and the interest on such delayed payment which was denied to them initially was later granted for the entire period claimed by them on the basis of the Orders of the Commissioner (Appeals) detailed above. The applicant, vide both the subject Revision Applications has now claimed that they should be paid interest @ 18% p.a. instead of @ 6% p.a. at which they have been paid and also that since there was a delay in the payment of interest, they should be paid interest on such delayed payment of interest. Government now proceeds to examine the above two claims of the applicant.

7. 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.

8. Government has examined the decisions of various authorities in support of their argument that they were eligible for interest at a higher rate than the rate prescribed by the notification cited above. 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 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 Commissioner (Appeals) in both the impugned Orders-in-Appeal and accordingly holds so.

9. As regards, the second issue as to whether interest on interest is payable to the applicant for delayed payment of interest, Government finds that the Commissioner (Appeals) in both the cases have relied on the decision of the Hon'ble Tribunal in the case of Hindustan Photo Films Mfg. Co. vs CCE, Salem [2018 (364) ELT 471 (Tri-Chennai)] to reject the claim of the applicant. Government finds that the Hon'ble Tribunal in this case has referred to the decision of the Hon'ble Supreme Court in the case of CIT, Gujarat vs Gujarat Fluoro Chemicals [2013 (296) ELT 433]. The Hon'ble Apex Court in the said decision, while distinguishing its judgment in the case of Sandvik Asia Ltd vs CIT, [2006 (196) ELT 257] had held that "*only that interest provided for under the statute which may be claimed by an assessee from the Revenue and no other interest on such statutory interest.*" Government finds that there is no legal provision under the Central Excise Act, 1944 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 Hon'ble High Court of Kerala in the case of Commissioner vs Kerala Chemicals & Proteins Limited [2016 (42) STR J315 (Ker)] while deciding a similar case had held as follows: -

"The only one issue raised by the Revenue in this appeal against the decision of the CESTAT is as to whether the assessee is entitled to interest on interest due on eligible refund. This issue is covered against the assessee by the Larger Bench decision of the CESTAT in Sun Pharmaceuticals Industries Ltd. v. Commr. of C.Ex., Chennai [2005 (185) E.L.T. 253]. We have gone through that judgment and are in agreement with the ratio thereof. Following the said decision, this appeal is eligible to succeed to that extent."

Given the above, Government finds that there is no legal provision to support the claim of the applicant for interest on delayed payment of interest and upholds the decision of the Commissioner (Appeals) to reject the same in both the subject Orders-in-Appeal.

10. In view of the above, Government does not find any infirmity in the impugned Orders-in-Appeal dated 09.02.2021 and 29.09.2022 and does not find the need to modify or annul the same.

11. The subject Revision Applications are rejected.

Shrawan
14/3/23
(SHRAWAN KUMAR)

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

357-358
ORDER No. /2023-CUS (WZ) /ASRA/Mumbai dated 14.03.2023

To,

M/s Ritex Overseas,
155, Mittal Industrial Estate,
Building No.6, 84/85, M.V. Road,
Andheri (East), Mumbai - 400 059.

Copy to:

1. Commissioner of Customs, NS II, JNCH, Nhava Sheva, Taruka - Uran, Dist- Raigad, Maharashtra - 400 707.
2. Commissioner of Customs (Appeals) Mumbai - II, JNCH, Nhava Sheva, Taruka - Uran, Dist- Raigad, Maharashtra - 400 707.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.