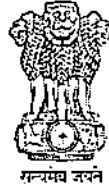


SPEED POST
REGISTERED POST



**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.371/27/DBK/2019

11535

Date of Issue: 16.03.2023

ORDER NO. 361 /2023-CJ5(WZ) /ASRA/Mumbai DATED 15.03.2023
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 Gokul Refoils & Solvents Limited,
State Highway No.41,
Sujanpur Patia, Sidhpur,
Dist. Patan - 384 151.

Respondents : Commissioner of Customs, Jamnagar.

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.JMN-
CUSTM-000-APP-035-18-19 dated 27.11.2018 passed by
Commissioner of Customs (Appeals), Ahmedabad.

ORDER

The subject Revision Application has been filed by M/s Gokul Refoils & Solvents Limited, Ahmedabad (here-in-after referred to as 'the applicant') against the subject Order-in-Appeal dated 27.11.2018. The said Order-in-Appeal decided appeal by the applicant against the Order-in-Original dated 08.11.2017 passed by the A.C., Custom House, GPPL, Pipavav, which in turn had rejected the supplementary drawback claims filed by the applicant.

2. Brief facts of the case are that the applicant exported Castor Oil during the period from 04.03.2014 to 28.04.2014 under the Drawback Scheme and filed 13 Shipping Bills towards the same. They claimed drawback of Rs.2,17,788/- which was paid to them on 18.12.2014. Thereafter, the applicant filed supplementary drawback claims on 02.09.2016 with respect to the same 13 Shipping Bills claiming drawback of Rs.18,14,897/- on the grounds that there was a change in the number of the Drawback Schedule from Sl.No.9801 to 1515A. The original authority vide Order-in-Original dated 08.11.2017 rejected the said supplementary claims on the grounds of limitation without going into the merits of the case. Aggrieved, the applicant filed appeal before the Commissioner (Appeals) against the said Order-in-Original. The Commissioner (Appeals) vide the impugned Order-in-Appeal rejected the appeal and upheld the order of the original authority.

3. Aggrieved by the impugned Order-in-Appeal the applicant has filed the subject Revision Applications on the following grounds:-

(a) That in an identical case in their own case the Commissioner (Appeals) had allowed the amendment of the Shipping Bills and consequently the original authority had allowed the supplementary claims vide Order-in-Original dated 05.05.2016;

(b) That they had mentioned the incorrect Drawback serial number in the Shipping Bills leading them to get lesser drawback; that they had filed the supplementary claim on 08.12.2014 and hence the decision of the lower authorities to treat the same as time barred was incorrect;

(c) That the correspondence related to fixation of brand rate was going on and that the same was referred to the jurisdictional Central Excise authorities and that in response to a query from Mundhra Customs they had submitted a letter dated 08.12.2014 informing that they had utilized the advance licence for export of material in flexi bags through Mundhra port and since both exports were made of identical item in flexi bags, they also requested for allowing drawback before the Pipapav Customs and hence the date of making application before Pipapav Customs had to be taken as 08.12.2014 and not 02.09.2016 and 29.09.2016 as alleged by the lower authorities;

(d) That a request for amendment was made only after it was found that in the scroll dated 18.12.2014 only the refund of service tax was made which was less than what they were entitled to, based on the drawback determined by the Government and that because of non-payment of the original claims in full proviso (iii) to Rule 15(1) should be applied for settling their supplementary claims; that the decision in announcing the brand rate was meaningless and nullified; hence supplementary claims should be decided on the basis of date of payment of the original drawback claims;

(e) That the original date of submitting the shipping bill should be treated as application for drawback as they had made an application for amendment of the shipping bill therefore the application for claim of drawback could not be treated as time barred as the same fell within three months from the date of previous settlement i.e. 18.12.2014.

In view of the above, the requested that the impugned Order-in-Appeal may be set aside with consequential relief.

4. Personal hearing in the matter was held on 16.01.2022 and Shri R. Subramanya, Advocate appeared online on behalf of the applicant and submitted that their supplementary claim was rejected as time barred. He submitted that their claim was correct on merits and may be remanded for reconsideration.

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

6. Given finds that the issue for decision is whether the supplementary claim filed by the applicant would be hit by the time limit prescribed by the Customs and Central Excise Duties Drawback Rules, 1995 (DBK Rules, 1995). Government notes that it is not in dispute that the Drawback in respect of the 13 Shipping Bills for which supplementary claims for Drawback have been filed was disbursed for the first time on 18.12.2014 and that thereafter, the applicant filed supplementary claims on 02.09.2016 with respect to the said 13 Shipping Bills and submitted certain documents in connection with the same on 29.09.2016. Government finds that Rule 15 of the DBK Rules, 1995 prescribes the procedures, conditions and limitations with respect to supplementary claims of drawback. Relevant portion of the same is reproduced below: -

" 15. Supplementary claim. – (1) Where any exporter finds that the amount of drawback paid to him is less than what he is entitled to on the basis of the amount of rate of drawback determined by the Commissioner of Central Excise or the Commissioner of Customs and Central Excise or the Commissioner of Customs and Central Excise, as the case may be, he may prefer a supplementary claim in the form at Annexure III:

Provided that the exporter shall prefer such supplementary claim within a period of three months. –

(i) Where the rate of drawback is determined or revised under Rule 3 or Rule 4, from the date of publication of such rate in the Official Gazette;

(ii) Where the rate of drawback is determined or revised upward under Rule 6 or Rule 7, from the date communicating the said rate to the person concerned;

(iii) In all other cases, from the date of payment or settlement of the original drawback claim by the proper officer.

Provided further that the aforesaid period of three months may be extended by-

(a) The Assistant Commissioner of Customs and Central Excise or Assistant Commissioner of Central Excise, as the case may be, by a further period of three months; and

(b) The Commissioner of Customs and Central Excise or Commissioner of Central Excise, as the case may be, by a further period of 9 months, on being satisfied that the exporter was prevented by sufficient cause from filing his supplementary claim within the aforesaid period of three months.

(2) Save as otherwise provided in this rule, no supplementary claim for drawback shall be entertained."

A reading of the above extract makes it clear that the Rule 15(1)(iii) of the DBK Rules, 1995 lays down that an exporter shall prefer a supplementary claim within a period of three months from the date of payment or settlement of the original drawback claim by the proper officer. Government finds that it is not in doubt that in the present case the original drawback claims were settled by the competent authority on 18.12.2014 and that the supplementary claims for drawback were filed on 02.09.2016. Thus, Government finds that it is clear that the supplementary claims were filed much after the expiry of the time of limit of three months laid down in Rule (1) of the DBK Rules, 1995. Further, Government finds that the second proviso to Rule 1 of the DBK Rules, 1995 provides for the competent authorities to extend the said time limit by three/nine months. In the present case Government finds that the supplementary claims have been filed almost 21 months after the settlement of the original claim and as found above, the legal provisions do not provide for any authority to condone such delay. Thus, Government finds that the supplementary claims are time barred in terms of the limitation prescribed by Rule 15 of the DBK Rules, 1995 and accordingly holds so.

7. Government finds that the applicant has cited a case in which their supplementary claim for drawback was allowed even though the same was filed after the expiry of the limitation period. Government finds that the

same has been discussed by the Commissioner (Appeals) wherein he found that in that particular case the applicant had applied for amendment of the Shipping Bills concerned which is not true in the present case. Government finds that no evidence to that effect has been adduced by the applicant during the course of these proceedings either and hence upholds the findings of the Commissioner (Appeals) in this context. Thus, Government finds the submission of the applicant that the date of submission of the claims of the drawback for the first time should be held as the date of submission of their supplementary claims for drawback to be without any legal basis and rejects the same.

8. In view of the above, Government does not find any infirmity in the impugned Order-in-Appeal and upholds the same. The subject Revision Application is rejected.

Shrawan
15/03/23
(SHRAWAN KUMAR)

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

ORDER No. 361/2023-CUS(WZ) /ASRA/Mumbai dated 15.03.2022

To,

M/s Gokul Refoils & Solvents Limited,
State Highway No.41,
Sujanpur Patia, Sidhpur,
Dist. Patan - 384 151.

Copy to

1. Commissioner of Customs, Customs House, Ahmedabad.
2. M/s Subramanya Law Company, 509, Venus Amadeus, Jodhpur Char Rasta, Satellite Road, Ahmedabad - 380 015.
3. Commissioner of Customs (Appeals), Ahmedabad, 7th floor, Mridul Tower, Behind Time of India, Ashram Road, Ahmedabad - 380 009.
4. Sr. P.S. to AS (RA), Mumbai.
5. Notice Board.