



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.371/183/DBK/2018-RA

Date of issue:

ORDER NO. 492/2023-CUS (WZ)/ASRA/MUMBAI DATED 26.6.2023
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. Vimal Oil & Foods Ltd.

Respondent : Commissioner of Customs, Kandla.

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. KDL-
CUSTM-000-APP-005-18-19 dated 02.05.2018 passed by
the Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This Revision Application has been filed by M/s. Vimal Oil & Foods Ltd. (hereinafter referred to as 'the applicant') against Order-in-Appeal No. KDL-CUSTM-000-APP-005-18-19 dated 02.05.2018 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Brief facts of the case are that the applicant had filed 8 shipping bills for the export of 'Rapeseed Extraction Meal' from Kandla port under drawback scheme during the period 29.05.2009 to 03.10.2010. The shipping bills were assessed provisionally and while processing drawback, queries were raised to the exporter to produce documents regarding final assessment of the said export goods and non-availment of Cenvat benefits, but the exporter failed to submit reply. The said shipping bills were therefore processed at zero drawback on 14.12.2009 and 08.01.2010 as they were pending since long. Therefore, the applicant had filed supplementary claims. The adjudicating authority, vide Order-in-Original No. (OIO) KDL/AC/SCS/45/DBK/2017 dated 06.06.2017, rejected the supplementary claims in respect of said 8 shipping bills, finding them time barred in terms of Rule 15 of Customs & Central Excise duties and Service Tax Drawback Rules, 1995. Aggrieved, the applicant filed an appeal with Commissioner of Customs (Appeals), Ahmedabad, who rejected it, while upholding the impugned OIO.

3. Hence the Applicant has filed the impugned Revision Application mainly on the following grounds:

- i. The Applicant has submitted the required documents and declarations but the claim was not sanctioned and paid. When the Applicant pressed upon to the Authority to sanction and pay the drawback claim, the authority informed to the Applicant that since the claim is already sanctioned as zero claim, hence the supplementary claim is required to be filed. The Applicant as directed by the department, filed the supplementary claim on 24.02.14. It is

submitted that the original claim was filed in the year 2009 under section 75 of the customs Act. It is an admitted and undisputed fact that the original claim was filed within the time prescribed under the provision of section 75 of Customs Act and Draw back rules and continuous follow up was made with the department.

- ii. Therefore, the date of claim to be treated as when originally filed with the department. A Supplementary claim can be filed Rule 15 of the Drawback Rules, where the claimant finds that the amount of drawback paid to him is less than what he is entitled to. Therefore, the supplementary claim is required to be filed when the part claim is sanctioned and part claim is retained or rejected, in the present case, the drawback claim is processed at zero rate that too due to the deficiency in documents and is subject to retrieval of the claim when the documents are filed or the deficiency is removed. Therefore, in fact of the present case, it cannot be said that part refund claim was sanctioned and therefore, under these circumstances, there is no requirement of filing the supplementary claim under Rule 15, and therefore, the time limit provided under Rule 15(1) of drawback Rules could not be made applicable for filing the supplementary claim. In fact, when the original claim was pending there is no requirement for filing the supplementary claim. The Supplementary claim was only filed as suggested by the department, as could be seen that original claim was not sanctioned and paid initially. Therefore, the department cannot at a later date say that the supplementary claim is time barred. Moreover, when the original claim is pending for disposal, it is further submitted that the original claim was filed well on time and was kept in abeyance by the department for want of further documents or to remove any deficiency in the original claim therefore, a reminder for non-credit of exporter's account under the EDI system and subsequent submission of required documents and removal of deficiency cannot be treated as supplementary claim under rule 15 of the drawback rules and hence on this ground the legitimate claim cannot be rejected by treating it as time barred. These views are

supported by the decision in case of Tharam Exports reported in 2001 (127) ELT 801 (T-Chennai) and in case of Sakthi footwear reported in 2007 (213) ELT 698 (T-Chennai) wherein it has been held that supplementary claim after 5 years for rectification of error/mistake, in such cases the time limit is inapplicable. In the present case since the original claim is pending with the department, the same cannot be rejected as time barred.

- v
- iii. The ratio of the above decisions is squarely applicable in the present case. The cited decision was produced before the learned Commissioner (Appeals) in para 12 of the impugned OIA, he has only mentioned that the relied upon decision are not identical to the instant case. From this it clearly shows that the learned Commissioner has not given any findings as to how the relied upon decision and the ratio thereon is not applicable in the facts of the present case and simply brushed aside the decision which is not proper and legal in the eyes of law. The learned Commissioner is supposed to follow the precedent of the higher appellate authorities, which he grossly failed to do so and therefore, the impugned OIA is not only illegal and incorrect and violative of principals of natural justice, but also without authority and jurisdiction and so such orders are required to be set aside by allowing the Applicant's appeal in the interest of fair justice.
- iv. Trade notices and facility notice were issued to clear the long pending back log of drawback claim and under these instructions, it has been clarified that for speedy disposal of the claim, the queries are raised on EDI systems and all trade and exporter are requested to check the queries and resolve the same. This was a new system and many exporters were not aware of these instructions and Applicant was one of them. Therefore, the applicant though not resolve the queries initially but immediately knowing the fact submitted the required documents and declaration to the Customs department. On perusal of these executive instructions, your honor will find that these instruction were issued for speedy disposal of pending claim and it

was instructed to the departmental officer also that where the supporting documents and declaration in respect of claim are received the same shall be processed expediently and nowhere these instructions say or suggest that once the drawback claim once process at zero amount cannot be processed again on submission of required documents and declarations. Otherwise also the executive orders are issued for smoothing of the procedural and technical requirement and cannot curtail the legitimate claim which is otherwise admissible, as per the provisions of section 75 of the Customs Act and Drawback Rules. In any case, the required documents were submitted to department and your honor will appreciate the fact that order rejecting the drawback claim nowhere speaks that drawback claim was not admissible to the Applicant on merits.

- v. In fact, in spite of the continuous follow up with the customs authorities, the claim was not sanctioned and kept in abeyance, and when the RTI Application was filed, the hearing was fixed, and without issuance of Show cause notice and following the procedure of natural justice, the OIO was passed rejecting the claim as time barred. This is nothing but a cover up tactics by the learned Adjudicating officer for justifying the delay in not sanctioning the original claim, this is nothing but decision taken without authority and jurisdiction and such order could not be upheld in the eyes of law.
- vi. All the above facts were brought to the knowledge of the learned Commissioner (Appeals). However, instead of considering the fact on merits, the learned Commissioner (Appeals) held that "the appellant was sanctioned zero drawback on 14.12.2009 and 08.01.2010 for eight shipping bills and hence, they were required to file the supplementary claim on or before 13.03.2010 and 07.04.2010 respectively" This is totally incorrect and illegal. This is not the case of filing of supplementary claim belatedly and therefore, the time limit prescribed under rule 15 does not come into play and therefore, the appellate authority should have considered the merits and allowed the

- Appeal. However, he took incorrect and illegal decision and held that the Drawback claim is time barred. Therefore, the Hon'ble revisionary authority is requested to set aside the impugned OIA and allow the claim of Drawback by considering all the facts on merits.
- vii. Without prejudice to the submission made above, it is further submitted that the Scheme of "drawback" is mainly intended to encourage exports and to make the export goods free from incidence of local taxes, in other word, the drawback is to be paid to neutralized the effect of local taxes suffered on goof which are exported. Therefore, having regard to its object there is no justification in taking a narrow and procedural views and the substantial benefit which is otherwise due and accrued could not have been denied on procedural and minor infirmities.
- viii. These views are supported by the decisions of Primal Exports reported under 1986 (25) ELT 723 (Tribunal). In case of Mafatlal Fine Spg. & Mfg. reported in 1988 (33) ELT 540 (Tribunal), it has been held that draw back not deniable for procedural breaches or omission to make declaration in time or properly, if the declaration was required to be made at the time of shipment of the goods, the purpose is served if such declaration is made by the claimant with supplementary claim and the drawback claim is not rejectable for this technical omission. Same view is expressed by the tribunal in case of Subash Woollen Mills reported in 1985 (21) ELT 850 (tribunal) as maintained in 1997 (96) ELT A226 (SC). Appellant submits that the drawback claim cannot be denied for procedural irregularities of hyper technical nature. In support of this we rely of the decisions of Terai Overseas Ltd reported in 2001 (137) ELT 683 9T-Kol) this order is affirmed in 2003 (156) ELT 841 (Cal.)
- ix. All the above cited decisions were produced before the learned Commissioner (Appeals) neither he has considered nor given any finding contrary to the facts of the present case, and simply brushed aside by stating that the fact in the present case is not identical, these views of the learned Commissioner could not be upheld in the law and

therefore, the impugned order is not sustainable in law and required to be set aside

In the light of the above submissions, the applicant prayed to set aside the impugned order with consequential relief.

4.1 Personal hearing in the case was fixed for 15.11.2022/29.11.2022, 04.01.2023/18.01.2023, 09.02.2023/16.02.2023. The applicant or the respondent did not attend on any date. However, the applicant, vide letter dated 14.02.2023, informed that they waive the personal hearing fixed on 16.02.2023 and requested to take the decision by considering the grounds in the Revision Application and the additional submissions. From the respondent's side an email dated 16.02.2023 was received from the Assistant Commissioner (DBK), Custom House, Kandla submitting that they reiterate the impugned OIA and requested to uphold it.

4.2 In the additional submissions dated 16.02.2023, the applicant inter-alia submitted that:

- i. There is no dispute by the Customs authorities about the eligibility of the draw back claim u/s 75 of the Customs Act. The draw back claim was filed within the time period prescribed under the Act and the Drawback shipping bills were filed with the customs. The date on which the Drawback shipping bills were filed is within the time limit prescribed u/s 75 read with draw back rules
- ii. The only ground taken in the impugned OIO is that the Supplementary claims were not filed in prescribed format and within the time limit as per the provisions of Rule 15 of the Drawback rules.
- iii. Applicant submits that the Drawback claim were filed in the year 2009 and same were processed with remark "NIL DBK" drawback claim electronically and no communication was sent to the Applicant. The Supplementary drawback were filed only after continuous follow up with the department and as informed and guided by the department to file the supplementary claim. Therefore, in the facts of present case, the original claims were filed in the year 2009 and well

- within the time limit prescribed u/s 75 read with the draw back claim. Therefore, it is incorrect to say that the claims were time barred.
- iv. Applicant submits that in case of Tharam Exports reported in 2001(127)ELT 801 (T-Chennai) and in case of Sakthi Footwear reported in 2007 (213) ELT 698 (T-Chennai), wherein it has been held that supplementary claim after 5 years for rectification of error/mistake, in such cases the time limit is inapplicable. In the present case, since, the original claim is pending with the department, the same cannot be rejected as time barred.
 - v. In case of Priyanka India Pvt. Ltd reported in 2013 (190) ECR 0081 (T-Del) it has been clearly held that authority cannot take shelter of rule 15 of drawback rules to deny the draw back claim, it is held that on the ground of no reply for deficiency memo, Revenue rejected the claim of the appellant, Commissioner without looking into the gravity of the matter under Rule 13 and also to the violation of natural justice, proceeded to decide the issue under rule 15 of drawback rules, 1995 hurriedly bring justice.
 - vi. On this issue, the Applicant on following case laws:- Steel authority of India Ltd 2017 (354) ELT 465 (Cal.), Stovec Industries Ltd. 2008 (221) ELT 328 (Guj.), Surana Textiles mills Ltd. 2001 (136) ELT 978 (G.O.I.) and Angel Overseas Corporation 2018 (362) ELT 877(Mad.) and submitted that the ratio of all the above cases are squarely applicable in the present case and so drawback claim cannot be denied on limitation moreover, when the original claim was filed well within the prescribed time framed.
 - vii. Applicant submits that Scheme of 'drawback' is mainly intended to encourage export and to make the export goods free from incidence of local taxes, in other words, the drawback is to be paid to neutralized the effect of local taxes. Therefore, having regard to its objects there is no justification in taking narrow views by both the lower authorities in rejecting the claim on limitation, more so when the original draw back claims were filed well within the time prescribed. In this regard, the Applicant relied upon case laws of Mafatlal Fine Spg. & Mfg. 1988 (33)

ELT 540 (Tribunal) and Subash Woollen Mills reported in 1985 (21)
ELT 850 (Tribunal) and maintained by supreme court in 1997 (96)
ELT A226 (SC).

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

6. Government observes that the main issue involved in the instant case is whether the supplementary claims in respect of 8 Shipping bills were time barred?

7. Government observes that a Supplementary claim is governed by the provisions of Rule 15 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, (henceforth referred to as 'the Drawback Rules') as per which where the exporter finds that the amount of drawback paid to him is lesser than what he is entitled to, he may prefer a supplementary claim within a period of three months. As per Rule 15(1)(iii) of Rules, the three months period is counted from the date of payment/settlement of the original drawback claim by the proper officer. However, the time period of three months can be extended by the Assistant/Deputy Commissioner of Customs for a further period of nine months on being satisfied that the exporter was prevented by sufficient cause from filing his supplementary claim within the aforesaid period of three months. However, in the instant case as mentioned in Commissioner (Appeals)'s order, the applicant was sanctioned zero drawback on 14.12.2009 and 08.01.2010 but the applicant's Supplementary claim was filed on 24.02.2014 i.e. after more than four years from the date of initial rejection. Thus, it has been filed much beyond the specified period of three months. The applicant has also not made out a case that the Assistant/Deputy Commissioner of Customs was approached to condone the delay beyond three months. Above all, irrespective of the fact whether they requested the Assistant/Deputy Commissioner or not, the delay involved in filing their Supplementary claim is more than four years for

which even the Commissioner of Customs or Principal Commissioner of Customs, as the case may be, is not competent authority to condone. Therefore, the Government finds that the original authority and appellate authority have correctly rejected the applicant's claim.

8. Government finds the case laws relied upon by the applicant as non-relevant in the instant case for the reasons detailed hereunder:

8.1 In Sakthi Footwear, the Tribunal had observed that – *'In the present case, it is the definite case of the appellant that there was no communication of any determination or revision or settlement to them. This case of the appellant has not been successfully rebutted by the respondent.'*

In Tharam Exports, the Department failed to comply with the queries raised by the Tribunal viz. *'we directed the ld. DR to produce original claim documents for ascertaining true picture and the position of the claims whether a supplementary claim was lodged or whether the letters of intimation of claims not having been received were being considered as supplementary claims However, he submits that in spite of these letters, the customs authorities have not submitted any original files to his office for submitting before this Bench and seeks an adjournment for the same.'*

In Surana Textiles Mills Ltd., it was observed by the Revisionary Authority that no intimation of short sanction was given by the Department to the Claimant.

Thus, the common factor in all these cases was that the Department could not substantiate communication of short comings in the duty drawback claim to the claimant. However, in the instant case queries were raised electronically by the Department to the exporter to produce documents regarding final assessment of the said export goods and non-availment of Cenvat benefits, but the applicant failed to reply.

8.2 Government observes that in other case laws relied upon by the applicant, viz. Stovec Industries Ltd., Angel Overseas Corporation, the

decision went in favour of the claimant of duty drawback in view of the provisions under Rule 17 of Drawback Rules to condone the delay in filing of supplementary claim. However, in the instant case, Government observes that applicant has not produced any such condonation of delay approval from the competent designated authority.

8.3 The applicant has cited case laws of Mafatlal Fine Spg. & Mfg. Mills, Subash Woollen Mills, Terai Overseas Ltd. contended that '*the drawback claim cannot be denied for procedural irregularities of hyper technical nature*'. In this regard, Government disagrees with the applicant. They were required to furnish the required information in time, to enable processing of their drawback claim, which they failed to do, resulting in the shipping bills getting processed at zero drawback. As EDI system was in force, it is responsibility of an exporter to refer it to ascertain status of its drawback claims and comply with the queries raised within stipulated time.

9. Government finds support in this regard in the judgment passed by the Hon^{ble} Rajasthan High Court while dismissing the petition and upholding the Order passed by Revisionary Authority in the matter of M/s. Cheer Sagar v. Commissioner of Customs [2014 (308) E.L.T. 38 (Raj.)] [07-05-2014]. The head note of this judgment reads as follows:

Drawback - Supplementary claims therefor, disallowed due to being time-barred - Condonation of delay sought, same disallowed holding that no justifiable explanation given for non-submission of bills within 3 months from date of payment of original drawback - Challenge to, on ground that bank statement received late such that amount of drawback could not be ascertained - Ground rejected - HELD : Once goods are exported, status of drawback claim whether signed or under any query/deficiency, is always available in EDI system and can be ascertained by exporter or its authorized person from the counter at the service centre - Also, designated bank credits the drawback amount in account of exporter on the next day and informs exporter by sending a fortnightly statement about the payment of drawback claims - Thus, onus of ascertaining status of drawback claim, whether sanctioned short or under any query/deficiency, so as to avoid delay in filing subsequent supplementary drawback claim, lies on the exporter itself - On facts, ground that bank delayed the supplementary claim, cannot be

accepted as there was no evidence to support the same and even otherwise, bank being an agent of exporter, respondents cannot be faulted for delay, if any, caused by bank - Order disallowing condonation of delay, thus, proper when there was no justifiable explanation given for the delay - More so, when instant petition filed more than 3 years after passing of impugned order - Rule 15 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 - Section 5 of Limitation Act, 1963 - Article 226 of Constitution of India. [paras 9, 10, 11, 14, 16]

10. In view of the above discussion and findings, the Government upholds the Order-in-Appeal No. KDL-CUSTOM-000-APP-005-18-19 dated 02.05.2018 passed by the Commissioner of Customs (Appeals), Ahmedabad and rejects the instant Revision Application.


(SHRAWAN KUMAR)

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

ORDER No. **H92/2023-CUS (WZ)/ASRA/Mumbai dated 26.6.23**

To,
M/s. Vimal Oil & Foods Ltd.,
4th Floor, "HERITAGE",
Nr. Grand Bhagwati, S.G. Highway,
Bodakdev, Ahmedabad - 380 054.

Copy to:

1. Pr. Commissioner of Customs,
5B, Port User Building,
Adani Port, Mundra, Kutch,
Gujarat - 370 421.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.