

REGISTERED
SPEED 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. 371/193/DBK/2022-RA / 6859 Date of issue: 13.09.2023

ORDER NO. 660 /2023-CUS (WZ)/ASRA/MUMBAI DATED 13.09.2023
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicants : M/s. Gulabdas International Trading LLP

Respondent: Pr. Commissioner of Customs, JNCH, Mumbai

Subject : Revision Applications filed, under Section 129DD of the Customs
Act, 1962, against the Order-in-Appeal No.
242(Drawback)/2022(JNCH)/Appeals dated 31.03.2022 passed by
Commissioner of Customs (Appeals), Mumbai-II.

ORDER

This Revision Application has been filed by M/s. Gulabdas International Trading LLP (hereinafter referred as 'applicant') against the Order-in-Appeal No. 242(Drawback)/2022(JNCH)/Appeals dated 31.03.2022 passed by Commissioner of Customs (Appeals), Mumbai-II.

2. Briefly stated, facts of the case are that Applicant had filed 119 Shipping Bills during the period 13.06.2019 to 21.08.2020 for claim of drawback for Rs.1,24,79,155/- and 131 Shipping Bills during the period 01.04.2019 to 29.06.2020 for claim of IGST refund for Rs.4,70,30,761/-. The refund scrolls were kept in abeyance pending verification of the details/bonafides of exporter in terms of Board's Circular No.16/2019-Cus dated 17.06.2019 read with Circular No.131/1/2020-GST dtd.23.01.2020. On due verification, the exporter was not found to be risky exporter. Hence, the pending Drawback payments were released by the department vide Scroll no.44281 dated 09.09.2020 and IGST payments under Scroll no.25917/2020 dated 09.09.2020. Thereafter, applicant approached the concerned department for payment of interest on delayed payment of Duty Drawback and IGST refund. The Original Authority vide OIO dated 01.12.2020 rejected the request of the Applicant for payment of interest as the generation of refund scrolls were kept in abeyance for verification report about details of exporter which did not violate any statutory provisions. Aggrieved, the applicant filed appeal, however, the Appellate authority vide impugned OIA rejected the appeal and upheld the OIO.

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

- i. Department hold the Applicant's legitimate Duty Drawback and IGST Refund for quite long time then sanctioned and paid the Applicant only the principal amount which is totally injustice, illegal and gross violation of natural justice. Therefore, the Impugned Orders should be set aside on this ground.
- ii. The Applicant followed all procedures in proper way and exported consignments of 119 Shipping Bills under Duty Drawback and 131 Shipping Bills under IGST Refund Scheme and the department was

not took any objection against the said exported goods. Please note that the consignment dates from 13.06.2019 to 21.08.2020 & 01.04.2019 to 29.06.2020 but various authorities detected the availment of IGST refund using fraudulent ITC claims by some exporters in terms of Board's Circular No.16/2019-Cus, dated 17.06.2019 read with Circular No.131/1/2020-GST dated 23.01.2020 due to which the department hold the Applicant's legitimate drawback total amounting of Rs.1,24,79,155/-and IGST Refund total amounting of Rs. 4,70,30,761/- for quite long time. Instead of disposing the claim within the stipulated time as per law, the Department sat on the claim for a long time to sanction and paid the Applicant only the principal amount and simply rejected the claims of interest on the ground that as the generation of refund scrolls were kept in abeyance for verification report about details of exporter which did not violate any statutory provisions, which is totally unjust, illegal and gross violation of natural justice. All the delays came from the department and they are trying to shift the blame on the Applicant for the purpose of denying the genuine claims of the Applicant.

- iii. The Applicants states that Section 75A(1) of the Customs Act stipulates that in case of delayed payment of drawback under section 74 and 75 of the Act, interest as prescribed under Section 27A read with Notification 75/2003 Cus. (NT) dated 12.09.2003 will be payable. Similarly, Section 56 of Central Goods and Services Tax Act, 2017 read with Rule 94 of Central Goods and Services Tax Rules, 2017 and Notification 13/2017 C.T. dated 28.06.2017 requires payment of interest for delay in refund of IGST.
- iv. The Learned Adjudicating Authority and Ld. Commissioner of Customs (Appeals) have also deliberately ignored the clear instructions issued from the Board by denying substantial financial benefits to the exporter by denying their interest claim. The Impugned orders are therefore manifestly bad in law and required to be set aside.

- v. The Applicant states that they are a regular exporter and fulfilled all requirements in proper way and their name is not listed in department as availed ITC fraudulently or on the basis of ineligible documents and utilized the said ITC for payment of IGST claimed as refund, i.e. all exports are proper and genuine. But the department kept the genuine claims for a long time arising the reason of verification. It was wrong. the sole responsibility of the Assistant Commissioner of Customs to ascertain the same from the concerned department and if any delay on this account, the Applicant can't be blamed for the purpose of denying the legitimate claims. Therefore, the Impugned Order is unreasonable, arbitrary and required to be set aside.
- vi. The Applicant states that findings of the Ld. Adjudicating Authority and Ld. Appellate Authority in their Impugned Orders that the Applicant was not sanctioned Duty Drawback and IGST Refund as the refund scrolls were kept in abeyance pending verification of the details/bona fides of exporter in terms of the Board's Circular No.16/2019-Cus., dated 17.06.2019 read with Circular No.131/1/2020-GST dated 23.01.2020. But said Circulars doesn't provide for any delay in payment of the legitimate dues of exporters, who didn't indulge in any wrong doing/fraud. It was further clarified in the said Circulars that the verification should be made within the stipulated period. On this ground also the Applicant is eligible for interest on delayed payment of Duty Drawback and IGST Refund. Therefore, the Impugned Orders should be set aside.
- vii. The Appellant state that they have never a defaulter and have complied all the requirement under Customs act for export of goods.
- viii. As the process of Drawback and IGST claims were delayed, the Applicant had approached to board level to get the justice. In this regards the department sanctioned pending payments. The Applicant further states that department cannot indefinitely delay or suspend consideration of the drawback and IGST claims on the pretext of pending investigation into mis-declaration of weight /

classification irregularities without even giving show cause notice and/or stating the stage of proceedings against alleged irregularities.

- ix. Department must process the said claims according to due process of law if investigation is not completed within stipulated time. During the period of 01.04.2019 to 09.09.2020 the Applicant has never received a communication nor any deficiency memo or any SCN for the reason for not processing the application for Drawback and IGST claims in view of the Circular No.16/2019-Cus., dated 17.06.2019 read with Circular No.131/1/2020-GST dated 23.01.2020.
- x. The Applicant states that in the view of the Ld. Adjudicating Authority and Ld. Appellate Authority is totally wrong. Because they have deliberately ignored earlier the same Customs Commissionerate kept/hold the Duty Drawback claims of M/s. Ritex Overseas due to investigations, related alerts and denied interest under OIO No.720/2018-19/AC/CAC/INCH dated 18.02.2019. But the Hon'ble Commissioner of Customs (Appeals), Mumbai-II set aside the OIO dated 18.02.2019 under his Order-in-Appeal No. 178 (Drawback)/2019 (JNCH)/Appeal-I dated 14.10.2019 and allowed interest on delayed payment of Duty Drawback Claims, which has already been accepted by the department and paid the interest amount, which is squarely applicable to the present issue also. Therefore, the Impugned orders are required to be set aside on this ground.
- xi. In view of above Applicants requested to:
 - i. set aside the impugned Order-in-Appeal.
 - ii. release of eligible interest on the sanctioned Drawback and IGST refund.

4. Personal hearing in this case was scheduled on 27.06.2023, and 11.07.2023. Applicant has made additional submissions vide their letters dated 27.06.2023 and 11.07.2023. The applicant, in their letter dated

27.06.2023, has requested to forgo a personal hearing and to decide case on merits of the case as explained in the Revision application. Therefore, Government proceeds to decide the case on merits on the basis of available records.

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

6. Government notes that issue to be decided in this case is whether the applicant is entitled for interest on the delayed payment of drawback and IGST refund.

7. With respect to the interest on the delayed payment of drawback, the Government notes that it is an undisputed fact that the applicant filed 119 drawback shipping bills between 13.06.2019 and 21.08.2020, and a drawback amount of Rs. 1,24,79,155/- was sanctioned for these 119 shipping bills under Scroll No. 44281 dated 09.09.2020. The applicant contends that, since the drawback was not released within one month of filing the drawback claim, they are entitled to interest as prescribed under Section 75A of the Customs Act, 1962. On the other hand, the Department argues that they had held the refund scrolls in abeyance for the verification of information related to the exporter, as stipulated by Rule 10 of the Customs and Central Excise Duties Drawback Rules, 2017.

7.1 Government find that the said claim of interest was rejected by the Original Authority on the ground that there was no delay in disbursement of drawback on part of the department. Relevant Para 10.4 of the OIO is reproduced hereunder for ease of reference:

"10.4. Perusal of the above facts show that Duty Drawback was pending for verification of information related to exporter the power of which is given to the department in Rule 10 of the Customs and Central Excise Duties Drawback Rules, 2017. In these circumstances, the delay cannot be attributed to department as it was carrying out verification statutorily allowed."

Government also reproduces Rule 10 of the Customs and Central Excise Duties Drawback Rules, 2017:

“ Rule 10 of the Customs and Central Excise Duties Drawback Rules, 2017. Power to require submission of information and documents. For the purpose of-

(a) determining the class or description of materials or components used in the production or manufacture of goods or for determining the amount of duty paid on such materials or components; or

(b) verifying the correctness or otherwise of any information furnished by any manufacturer or exporter or other persons in connection with the determination of the amount or rate of drawback; or

(c) verifying the correctness or otherwise of any claim for drawback; or

(d) obtaining any other information considered by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, to be relevant or useful, any officer of the Central Government specially authorized in this behalf by an Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, may require any manufacturer or exporter of goods or any other person likely to be in possession of the same to furnish such information and to produce such books of account and other documents as are considered necessary by such officer.”

From the above, Government acknowledges that as per Rule 10 of the Customs and Central Excise Duties Drawback Rules, 2017, there exists power to require submission of information and documents for the purpose of verifying correction of information, claim of drawback etc. by the exporter. However, it does not prohibit exporters from being entitled to interest in case of delays during that verification process.

7.2 Furthermore, Government notes that sub-section (1) of Section 75A of the Customs Act, 1902 provides for interest on delayed payment of drawback and it reads as under:

“ Where any drawback payable to a claimant under section 74 or section 75 is not paid within a period of one month from the date of filing a claim for payment of such drawback, there shall be paid to that claimant in addition to the amount of drawback, interest at the rate fixed under section 27A from the date after the expiry of the said period of one month till the date of payment of such drawback.”

The said provision makes it clear that interest on delayed payment of drawback amount is to be paid after expiry of one month from the date filling a claim for payment of such drawback. It does not provide for any exception where interest is not payable in case of delay in payment of drawback.

7.3 Furthermore, Government notes that the Department does not assert that the drawback claims filed were deficient in any way, thus causing the delay. The Original Authority has also not stated that the drawback was disbursed within one month of the complete drawback claim being filed. Instead, the delay has been attributed to the verification of exporter-related information, as outlined in Rule 10 of the Customs and Central Excise Duties Drawback Rules 2017. It's important to note that there is no provision that condones delays in payment of drawback due to these reasons and mandates the payment of the outstanding drawback without interest. In the context of the verification of exporter-related information, neither Rule 10 of the Customs and Central Excise Duties Drawback Rules 2017 nor Section 75A prohibits exporters from being entitled to interest in cases of delayed drawback payments. Furthermore, the government confirms that the applicant in the present case was not identified as a risky exporter during the verification process. It is worth mentioning that this verification did not result in the denial of the drawback claim, as evident from the department's payment of the drawback. This implies that the drawback was payable to the applicant within one month from the respective dates of filing the claim, which, in the case of EDI shipping bills, means within one month from the respective dates of LEO. However, the payment was made on 09.09.2020, which was after the expiry of the said one-month period. Therefore, the applicant is entitled to interest as per the provisions of Section 75A of the Customs Act, 1962, in relation to these 119 shipping bills.

8. As regards to the issue of interest on IGST refund, Government notes that present proceedings are in exercise of the powers vested in terms of Section 35EE of the Central Excise Act, 1944 and must be exercised within the framework of the Central Excise Act, 1944. The Provisions of the CGST Act, 2017 are not exercisable in revision proceedings. In the result, the revision applications filed by the Applicant to the extent of the issue of interest on IGST refund are not maintainable under Section 35EE of the Central Excise Act, 1944.

9. In view of the above, the Government is amending the Order-in-Appeal No. 242(Drawback)/2022(JNCH)/Appeals dated 31.03.2022 with regard to

the payment of interest to the Applicant for the delayed drawback payment. The Original Authority is directed to process and disburse the applicable interest accordingly.

10. The Revision Application/s are disposed of on the above terms.

Shrawan
13/9/23
(SHRAWAN KUMAR)

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

ORDER No. *660*/2023-CUS (WZ)/ASRA/Mumbai dated *13.9.2023*

To,

1. M/s. Gulabdas International Trading LLP, 3C Benefice Business House, 126, Mathuradas Mill Compound, NM Joshi Marg, Lower Parel(West), Mumbai- 400013.
2. The Pr. Commissioner of Customs, Jawaharlal Nehru Custom House, Nhava Sheva, Taluka-Uran, Dist.-Raigad, Maharashtra- 400707.

Copy to:-

1. The Commissioner of Customs (Appeals), Mumbai-II, Jawaharlal Nehru Custom House, Nhava Sheva, Taluka-Uran, Dist.-Raigad, Maharashtra- 400707.
2. Sr. P.S. to AS(RA), Mumbai.
3. Guard file.

