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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. 371/297/DBK/2021-RA / 7300 Date of issue: 12.10.2023

ORDER NO. 725 /2023-CUS (WZ)/ASRA/MUMBAI DATED 12.10.2023
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. Parsons Overseas

Respondent: Pr. Commissioner of Customs (General), Mumbai

Subject : Revision Applications filed, under Section 129DD of the Customs
Act, 1962, against the Order-in-Appeal No. Mum-Cus-Pk-Exp-36/2021-22
dated 19.07.2021 passed by Commissioner of Customs (Appeals), Mumbai-I.

ORDER

This Revision Application has been filed by M/s. Parsons Overseas Trading LLP (hereinafter referred as 'applicant') against the *Order-in-Appeal* No. Mum-Cus-Pk-Exp-36/2021-22 dated 19.07.2021 passed by Commissioner of Customs (Appeals), Mumbai-1.

2. Briefly stated, facts of the case are that

- i. Applicant had filed 3 Shipping Bills for export of readymade garments. In all three shipments, the shirts have been invoiced at US \$ 12.51 per pc i.e. Rs. 530.42 per pc FOB. The Applicant claimed a total drawback of Rs. 24,78,450/- on a total FOB value of Rs. 1,58,75,590/-. The consignment exported vide S/B No1000020361 dated 03.02.1999 was cleared and subsequently drawback amount of Rs 8,25,330/- was sanctioned but was not released to the applicant. In other two S/Bs, investigations were taken up by SIIB (Export) as the declared invoice value of USD 12.51 i.e. Rs 531- per shirt was found to be very high. The case was investigated and on the basis of market inquiry, a SCN was issued. In the meantime, all the shipments had been allowed provisional release.
- ii. The case was adjudicated by the Commissioner of Customs (Export Promotion) who vide *Order-in-Original* No. 61/2004/CAC/CC/CMN dated 11.06.2004, held the impugned said shipments liable for confiscation of the goods under section 113(d) & 113(j) of the Customs Act, 1962, but since the same were not available for confiscation fine of Rs. 75,00,000/- was imposed on the exporters in lieu of confiscation. Further, the adjudicating authority imposed penalty of Rs. 25,00,000/- each on the five partners of the exporting firm and also held the market price of the export goods at Rs. 241.70 per shirt and ordered release of drawback, if any based on the said market price.
- iii. Being aggrieved by the OIO dated 11.06.2004, the Applicant preferred an appeal before Hon'ble CESTAT, Mumbai, the said appeal was decided in favour of Applicant vide Order No. A/94670-94675/16/CB dated 21.12.2016. Vide the said order Hon'ble CESTAT, Mumbai set

- aside OIO dated 11.06.2004 and the value declared by the Applicant in the said Shipping Bills i.e. Rs. 530.42 per piece was held to be correct.
- iv. Pursuant to the CESTAT Final Order dated 21.12.2016, the Applicant *vide letter dated 16.01.2017 requested the Commissioner of Customs (Export), SIIB to release the drawback at the originally declared value of the said goods along with interest under Section 75A of the Act.*
 - v. Accordingly, the Applicant *vide letter dated 24.03.2017* approached the Deputy Commissioner of Customs Drawback Section for release the drawback claim along with interest.
 - vi. After due follow up, Deputy Commissioner of Customs, Drawback Section issued Order-in-Original No. 483/AC/DBK/17-18 dated 11.01.2018 granting drawback of Rs. 24,54,260/-. Although, the said drawback claims for the exports, as made in February 1999, was sanctioned for the first time in the year 2018, applicable statutory interest as provided under Section 75A of the Act for delay in sanctioning the drawback claim was not granted to the Applicant.
 - vii. Being aggrieved by the OIO dated 11.01.2018, to the extent of non-sanction of interest in terms of Section 75A of the Act, the Applicant filed an appeal before the Commissioner (Appeals) which was decided by the Ld. Commissioner (Appeals) *vide Order-in-Appeal No. MUM-CUS-RN-EXP. 161/2018-19 dated 28.11.2018* wherein the Ld. Commissioner (Appeals) remanded the matter to adjudicating authority/original authority by directing to examine the interest aspect of the drawback already sanctioned and issue a fresh order.
 - viii. Pursuant to the said order and after granting an opportunity of hearing. Order-in-Original No. 31/AC/DBK/RR/DBK/2019-20 dated 13.08.2019 was passed by adjudicating authority granting 6% interest for the period starting from one month of CESTAT Final Order dated 21.12.2016 till the date of 11.01.2018 (date of order when the drawback was granted).
 - ix. Once again being aggrieved by the said decision to the extent of non-sanctioning of interest from the period of one month of filing of drawback claim, the Applicant filed an appeal before the Commissioner

of Customs (Appeals), Mumbai Customs Zone-I (Ld. Commissioner (A)) for modifying OIO and allowing interest in terms of Section 75A of the Act read with Rule 14 of the Drawback Rules, commencing from one month of the date of filing the drawback claim. Appellate Authority vide impugned OIA upheld the OIO and dismissed the appeal.

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

- i. the Impugned Order is non-speaking and cryptic in nature and in violation of principle of natural justice as the same is vague, devoid of particulars, not specific and on the contrary vague, lack details and/or unintelligible.
- ii. Ld. Commissioner (A) has made contradictory observations. In one sentence he has held that interest on delayed refund is to be paid from three months from filing refund claim and in another sentence has held that Applicant is eligible for interest on drawback from one month of the CESTAT Final Order. The Applicant failed to understand the reasoning behind such contradictory observations. It clearly shows that the Impugned Order has been passed without an application of mind and without understanding the issue at hand
- iii. the Ld. Commissioner (A) although accepted the position of law that the Applicant is eligible for interest on delay in sanctioning the drawback claim, he has erred in not appreciating the fact that Section 75A of the Act provides for grant of interest in addition to the claim of drawback in a case where the drawback amount claimed has not been paid within one month from the date of filing the claim for drawback and that the interest should be paid from the date commencing from one month of filing of the drawback claim till the date of payment of such drawback.
- iv. Section 75A of the Act stipulates for the time period from when the interest is to be paid and Section 27A prescribes for the rate of interest.
- v. the principle laid down in Section 27A of the Act is identical to the principle laid down in Section 75A. Section 27A mandates that

interest is to be payable upon expiry of period three months from the date of receipt of application for refund whereas Section 75A mandates that the interest is to be payable upon expiry of one month from the date of drawback claim. The rate of interest for delay in sanction of refund as well as delay in sanction of drawback claim is provided at Section 27A of the Act.

- vi. In view of above Applicants requested to:
 - i. set aside the impugned Order-in-Appeal.
 - ii. grant interest as stipulated in Section 75A of the Act read with Rule 13 of the Drawback Rules, commencing from one month of the date of filing the drawback claim at prescribed rate.

4. A Personal hearing in this case was fixed on 07.06.2023, Kirti Bhoite, Advocate appeared online on behalf of the applicant and reiterated earlier submissions. She submitted that issue here is only of interest payment as per Section 75 A of Customs Act, 1962. She requested to allow the application. She also submitted additional written submissions.

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 interest should be calculated from the date of filing the drawback claim or from the date of the order issued by CESTAT in favor of the Applicant.

7. Government observes that the instant matter involves multiple OIOs and OIAs. Therefore, to comprehend the matter in a lucid manner, the summary of content in OIOs/OIAs is given hereunder:

- i. In 1999, the Applicant supplied goods with Shipping Bill Nos. 1000020808 dated 03.02.1999, 1000020804 dated 04.02.1999, and 1000020361 dated 03.02.1999, with a total FOB value of Rs. 1,58,75,590/-. The Applicant filed a drawback claim of Rs. 24,78,450/- for these Shipping Bills.

- ii. Shipping Bill No. 1000020361 dated 03.02.1999 was cleared by the Department, but the drawback amount of Rs. 8,25,330/- was *not released* to the Applicant. An investigation was initiated regarding the valuation of the garments exported under Shipping Bill Nos. 1000020808 and 1000020804.
- iii. The original copies of the Shipping Bills and other documents were *seized during the investigation* and a Show cause notice was issued to the Applicant based on the findings of the investigation.
- iv. The Adjudicating Authority confirmed the Show Cause Notice (SCN) against the Applicant through an Order-in-Original dated 11.06.2004. This order resulted in the confiscation of the goods and the imposition of a redemption fine amounting to Rs. 75,00,000/- based on the redetermined value of Rs. 241.70/- per piece. Drawback was ordered to be released based on the re-determined value, but it was *never released to the Applicant*.
- v. The Applicant appealed to the Hon'ble CESTAT, Mumbai, and in 2016, the CESTAT allowed the appeal, setting aside the Order-in-Original and upholding the Applicant's declared value of Rs. 530.42 per piece.
- vi. After the CESTAT's decision, the Applicant requested the release of the drawback at the originally declared value along with interest under Section 75A of the Act.
- vii. Accordingly, the Deputy Commissioner of Customs (Export), Drawback, granted a drawback amount of Rs. 24,54,260/- to the Applicant but did not grant interest.
- viii. The Applicant appealed this decision, arguing that interest should have been granted under Section 75A of the Act.
- ix. In November 2018, the Commissioner of Customs (Appeal) remanded the matter back to the Assistant Commissioner of Customs, Drawback Section, to examine the interest aspect of the drawback claim and issue a fresh order.
- x. In August 2019, the Assistant Commissioner of Customs, Drawback Section, issued an Order-in-Original sanctioning interest of Rs.

1,43,220/- from one month after the CESTAT's Final Order in December 2016.

- xi. The Applicant filed an appeal to the Commissioner of Customs (Appeals), seeking interest from one month after filing the drawback claim.
- xii. In July 2021, the Commissioner of Customs (Appeals) upheld the previous order and dismissed the Applicant's appeal.

From the above, Government notes that the applicant submitted shipping bills and subsequently claimed a drawback. Upon investigation, the Department observed that the declared values in the shipping bills were inflated and exceeded the actual market values of the exported goods. Subsequently, a Show Cause Notice (SCN) was issued to the applicant. The Adjudicating Authority decided the case and confirmed the SCN against the Applicant. They determined the market price of the exported goods to be Rs. 241.70 per shirt and ordered the release of any applicable drawback based on this market price. However, the case was subsequently taken to the CESTAT, which ruled in favor of the applicant. The CESTAT found that the declared values provided by the applicant were accurate and appropriate. Following the CESTAT's decision, the Department released the drawback amount. However, the interest on the drawback was calculated from the date of the CESTAT's order. The Applicant argued that interest should be calculated from the date of filing the claim rather than from the date of the CESTAT's order.

8.1 Government observes, the issue at hand, originates from the investigation into the inflated declared value of goods exported by the Applicant. This matter was ultimately resolved in favor of the Applicant by the CESTAT. Finally, following the CESTAT order, Drawback was released but the interest was given from the date of issuance of order and not from the date of filing of the drawback claim as per section 75 A of the customs Act 1962. 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 on account of any investigation.

8.2 Further, Government notes that Appellate Authority has relied on Section 27A of the Customs Act, 1962, before upholding the OIO granting interest from the date of the CESTAT order. Regarding this matter, the government finds that interest on drawback is governed by Section 75A of the Act. Section 27A is only referenced within Section 75A for the specific purpose of determining the interest rate. Section 27A requires that interest be paid after three months from the date of **receiving an application for a refund**, while Section 75A requires interest to be paid after one month from **the date of a drawback claim**. The interest rates for delays in approving refunds and drawback claims are both specified in Section 27A of the Act. Therefore, government finds relying on Section 27A by the Appellate Authority as misplaced.

8.3 In the case of JINDAL DRUGS LTD. Versus UNION OF INDIA reported at 2019 (367) E.L.T. 591 (Bom.), the Hon'ble High Court of Bombay addressed the question of whether interest on delayed refund under Section 27A of the Customs Act, 1962, is payable upon the expiry of a three-month period from the date of receipt of the refund application or from the date of the order for refund. They held that interest becomes payable on the expiry of a three-month period from the date of receipt of the application under sub-section (1) of Section 11B of the Central Excise Act, 1944. The explanation added to this section does not have any bearing or connection with the date from which interest under Section 11BB of the same Act becomes payable. The court

further noted that the provisions under Section 11BB of the Central Excise Act, 1944, and Section 27A of the Customs Act, 1962, are *pari materia*. Therefore, the interpretation applied to the provisions of Section 11BB of the Central Excise Act, 1944, equally applies to the interpretation of provisions of Section 27A of the Customs Act, 1962. The relevant extract of the aforesaid judgment is reproduced as:

8. *According to us, the issue involved in this petition is entirely covered by the decision of Apex Court in Ranbaxy Laboratories Ltd. (supra). In the context of provisions of Section 11BB of the Central Excise Act, the Apex Court has held that manifestly, interest under Section 11BB of the Central Excise Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB of the Central Excise Act that can be arrived at is that interest under the said section becomes payable on the expiry of period of three months from the date of receipt of application under sub-section (1) of Section 11B of the Central Excise Act and further, the explanation added to the said section does not have any bearing or connection with the date from which interest under Section 11BB of the Central Excise Act becomes payable.*

9. *From the perusal of the provisions under Section 11BB of the Central Excise Act and Section 27A of the said Act, with which we are concerned, it is apparent that the provisions are *pari materia*. Therefore, interpretation put on the provisions of Section 11BB of the Central Excise Act will equally apply to the interpretation of provisions of Section 27A of the said Act.*

10. *In fact, in Shelf Drilling International Inc (supra), the Division Bench of this Court has in fact applied the ruling of the Apex Court in Ranbaxy Laboratories Ltd. (supra) to a case of refund arising under Section 27A of the said Act by expressly holding that the provisions in Section 11B and 11BB of the Central Excise Act are almost identical and *pari materia* to Section 27 and Section 27AA of the said Act. In paragraph 24, the Division Bench, in fact, issued strictures on the department delaying the process of refund application made by the assessee.*

11. *In the facts of the present case, we find no justification whatsoever on the part of the respondents for denying the petitioners interest on delayed refund amount for the period between 11th January, 2008, i.e., three months after the expiry of receipt of refund applications dated 10th October, 2007 till the date of actual refund, i.e., 16th August, 2017. Accordingly, writ of mandamus as prayed for by the petitioners is liable to issue.*

12. *Mr. Waive's contention that this was a case of deposit the duty by the petitioners and therefore, the principles in case of ITC Ltd. (supra), Abdulla Gani (supra), Prempreet Textile Industries Ltd. (supra) will apply, cannot be accepted. In all the said decisions the issue involved related to refund of pre-deposit made before the appellate Tribunal during pendency of an appeal. In the present case, we are not at all concerned with any issue of refund of pre-deposit. In the present case, the petitioners made deposits in pursuance of express directions issued by the DGFT simply because there was some delay on the part of the petitioners in complying with the export obligation. Thereafter, such amounts were appropriated by the respondents on basis of orders that the petitioners had breached the terms and conditions of the Advance Licenses under Notification No. 204 of 1992. Such orders were ultimately set aside after it was found that the petitioners had committed no breaches. Accordingly, the respondents were duty bound to refund the amounts deposited by the petitioners and sanction for such refund has already been granted.*

13. *There is no dispute that the petitioners had filed two separate applications dated 10th October, 2007 for refund, which was ultimately found to be due and payable to the petitioners. Accordingly, in terms of Section 27 and 27A of the said Act, the petitioners are entitled to interest on delayed refund on an expiry of period of three months from the date of receipt of applications dated 10th October, 2007 till the date of actual refund. Since the impugned order has failed to grant such interest, the same warrants interference.*

14. Although, in this matter, the issue of alternate remedy was not raised by the respondents, we clarify in brief, reasons which prompted us to entertain the present petition without relegating the petitioners to avail alternate remedies under the Customs Act, 1962. In the first place, taking into consideration the chequered history of the matter and the fact that the petitioners were required to take out several proceedings in order to secure the refunds which were admittedly due to it, we did not deem it appropriate to relegate the petitioners to avail the alternate remedy under the Statute. Secondly, and most importantly, the impugned orders/action of the respondents is in flagrant breach of the decision of the Apex Court in *Ranbaxy Laboratories Ltd (supra)* as also the decision of this Court in *Shelf Drilling International Inc. (supra)*. If the petitioners were to be relegated to avail alternate remedy, then, serious prejudice would ensue to the petitioners, since the Customs Act, 1962 does not contemplate award of any interest on the interest component due and payable to the petitioners. Thirdly, in quite similar circumstances, this Court, in the case of *Shroff United Chemicals Limited v. Union of India - 2011 (24) S.T.R. 17 (Bom.)* rejected the plea of alternate remedy and entertained a petition where facts were not in dispute and the Authorities had failed to apply the correct principles in matters of refund.

15. Accordingly, we allow this petition and make Rule absolute in terms of prayer clause (b) and direct the respondents to pay interest to the petitioner on refund amount for the period between 11th January, 2008 to 4th December, 2016, since, the interest on refund amount for the later period has already been awarded by the impugned orders. The impugned orders are modified accordingly."

8.4 Furthermore, Supreme Court in the case of *Ranbaxy Laboratories Ltd. Vs. Union of India*, reported in 2011 (273) E.L.T. 3 (S.C.) wherein while dealing with similar issue under Section 11BB of the Central Excise Act, 1944 held that interest becomes payable on the expiry of a period of three months from the date of receipt of the application. Relevant extract of the said judgment is reproduced hereunder:

"In view of the above analysis, our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made."

8.5 In addition to that, Government finds that Rule 13 of the Customs and Central Excise Duties & Service Tax(Drawback Rules, 1995) provides for manner and time for claiming drawback on goods exported other than by post and the same is reproduced hereunder for reference:

[Rule 13. Manner and time for claiming drawback on goods exported other than by post. -

(1) Triplicate copy of the Shipping Bill for export of goods under a claim for drawback shall be deemed to be a claim for drawback filed on the date on which the proper officer of Customs makes an order permitting clearance and loading of goods for exportation under section 51 and said claim for drawback shall be retained by the proper officer making such order.

(2) The said claim for drawback should be accompanied by the following documents, namely :-

- (i) copy of export contract or letter of credit, as the case may be,
- (ii) copy of Packing list,
- (iii) copy of 2[ARE-1], wherever applicable,
- (iv) insurance certificate, wherever necessary, and
- (v) copy of communication regarding rate of drawback where the drawback claim is for a rate determined by the 3[Principal Commissioner of Central Excise or Commissioner of Central Excise, as the case may be] or the 4[Principal Commissioner or Commissioner] of Customs and Central Excise, as the case may be, under rule 6 or rule 7 of these rules.

(3) (a) If the said claim for drawback is incomplete in any material particulars or is without the documents specified in sub-rule (2), shall be returned to the claimant with a deficiency memo in the form prescribed by the 4[Principal Commissioner of Customs or Commissioner of Customs, as the case may be] within 10 days and shall be deemed not to have been filed for the purpose of section 75A.

(b) where the exporter resubmits the claim for drawback after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed under sub-rule (1) for the purpose of section 75A.

(4) For computing the 5[period of 6[one month]] prescribed under section 75A for payment of drawback to the claimant, the time taken in testing of the export goods, not more than one month, shall be excluded.]

(5) Subject to the provisions of sub-rules (2), (3) and (4), where the exporter has exported the goods under electronic shipping bill in Electronic Data Interchange (EDI) under the claim of drawback, the electronic shipping bill itself shall be treated as the claim for drawback.]

Thus, Government observes that rule 13 of the drawback rule doesn't bar the assesses for the entitlement of interest in case of any delay on account of investigation. Aforesaid rule states that deficient claim should not be treated as the complete claim and interest is only be given when the claims are complete. Government finds that it is not the case of the Department that the drawback claims filed were deficient in any manner and hence the delay. The entire case stems from the investigation into the overvaluation of goods, which was eventually resolved in favor of the Applicant. Consequently, since the very basis for denying/delaying the drawback claim at the time of filing the claim was later invalidated by the CESTAT, the Applicant is entitled to interest from the date of filing the drawback claim.

9 In view of the above, the Government sets aside the Order-in-Appeal No. Mum-Cus-Pk-Exp-36/2021-22 dated 19.07.2021 passed by Commissioner of Customs (Appeals), Mumbai-I. The Adjudicating Authority

is directed to process and disburse the applicable interest from one month of the filing of the drawback claim.

10 The Revision Application is allowed and disposed off in the above terms.

Shrawan
12/10/23
(SHRAWAN KUMAR)

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

ORDER No. *725* /2023-CUS (WZ)/ASRA/Mumbai dated *12.10.23*

To,

1. M/s. Parsons Overseas, 212/213/214, Kalyandas, Udyog Bhawan Near Century Bazaar Prabhadevi, Mumbai-400025.
2. The Pr. Commissioner of Customs(General), 2nd Floor New Custom House, Ballard Estate Mumbai- 400001.

Copy to:-

1. The Commissioner of Customs (Appeals), Mumbai-1, 2nd Floor New Custom House, Ballard Estate Mumbai- 400001.
2. Economic Laws Practice, 9th Floor Mafatlal Centre, Vidhan Bhavan Marg, Nariman Point Mumbai-400021.
3. Sr. P.S. to AS(RA), Mumbai.
4. Guard file.