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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

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F.No. 371/445/DBK/2022-RA / 2400 Date of issue: 10.10.2023

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ORDER NO. 770/2023-CUS (WZ)/ASRA/MUMBAI DATED 10.10.2023  
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.

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Applicants : M/s. Gulabdas & Company

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. 985(Dbk)/2022(JNCH)/Appeals  
dated 21.09.2022 passed by Commissioner of Customs (Appeals), Mumbai-II.

## ORDER

This Revision Application has been filed by M/s. Gulabdas & Company (hereinafter referred as 'applicant') against the Order-in-Appeal No. 985(Dbk)/2022(JNCH)/Appeals dated 21.09.2022 passed by Commissioner of Customs (Appeals), Mumbai-II.

2. Briefly stated, the applicant filed a claim for sanction of drawback in respect of 136 Shipping Bills on 06.12.2019. The claim was accepted by the Department and an amount of Rs. 3,81,03,662/- was sanctioned to the applicant vide OIO No. 646/2019-20/AC/CAC/JNCH dated 18.12.2019. Being aggrieved that only drawback amount has been sanctioned and no interest has been granted, filed an appeal before Commissioner (Appeals) on the grounds that drawback has been released after a gap of 6 years from the date of shipment and that there was inordinate delay in issuance of amendment certificate. Further, that they are eligible for interest as per Section 75A of the Customs Act, 1962. The Appellate Authority vide Order-in-Appeal No.24(DBK)2021(JNCH)/Appeals dated 25.03.2021 has remanded the matter back to re-examine the case afresh after taking into consideration the facts and pass appropriate speaking order. The Original Authority vide Order-in-Original No.547/2021-22/DC/CAC/JNCH dated 16.08.2021 sanctioned the interest amount of Rs.1,35,79,850/- at the rate of 6% under the provisions of Section 75A of the Customs Act, 1962 read with Section 27A of the Customs Act, 1962. The applicant, dissatisfied with the interest rate offered to them, filed an 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. the Deputy Commissioner of Customs (Drawback) has sanctioned only the rate of interest @ 6% of the delayed payment and did not allowed the interest on delayed payment of interest and passed impugned order, which is totally unsustainable. And Learned Commissioner of Customs (Appeals) also failed to rectify the mistake as well. Therefore, the impugned Orders should be modified.



- ii. Learned Commissioner of Customs (Appeals) has totally failed to appreciate the fact of the entire case and they didn't apply his mind in arriving at the findings. His observations are casual and out of context. The Impugned Order is therefore, manifestly bad in law and required to be modified.
- iii. The applicant states that interest rate of @ 18% was allowed for the delayed payment on the judgment of Hon'ble High Court in the case of M/s. Karur K.C.P. Packagings Limited Vs. Commissioner of Customs W.P.(MD).No.15003 of 2015 dated 27.08.2015 (Copy attached marked as Exhibit C), the Ld Commissioner of Customs (Appeals) observed under Para No.7 of her impugned OIA that the facts of applicant case are not similar hence, not applicable, which is totally wrong. Since the applicant case and above-mentioned case are for the interest on delayed payment of drawback. So the applicant is also eligible for the interest @ 18% for the delayed payment. Kindly note that Article 14 of the Indian Constitution safe guards equality before law and by denying @18% interest on delayed payment of Drawback to the appellant company and release of payment to other exporters is clearly discriminatory and ultra virus to the Indian Constitution. The applicants may therefore be allowed their due interest amount immediately without falling into any contrary to the practice followed in respect of other exporters. It is an established fact of our democratic system to ensure that LAW IS SEEN TO BE DELIVERED. There cannot be any disparity between one exporter and another. The Impugned order is therefore manifestly bad in law and required to be modified.
- iv. The applicant submit that the interest on delayed payment of interest are allowed by various higher appellate forums on the following decisions:
  - a. The Hon'ble CESTAT, New Delhi Principal Bench in the case of M/s. BSL Ltd. Vs. Commissioner of Central Excise & Central Goods & Service Tax, Udaipur
  - b. Kerala Chemicals & Proteins Ltd.Vs.CCE,Cochin;2007(211) ELT 259 Tri-Bang.

- c. Standard Pencils Pvt. Ltd. Vs. CCE, Chennai; 2010(253) ELT 160(Tri.-Chennai)
  - d. Hon'ble High Court of Gujarat at Ahmedabad in the case of Shri Jagdamba Polymers Ltd. Vs. Union of India SCA.No.3163 of 2008 judgment dated 23.08.2012
  - e. D. J. Works Vs. Dy. CIT; (1992) 195 ITR 227 Guj. HC
  - f. Chimanlal S. Patel Vs. CIT & Anr.; (1994) 210 ITR 419 Guj. HC
  - g. CIT Vs. Narendra Doshi; (2002) 254 ITR 606 (SC)
  - h. Hon'ble Supreme Court in the case of Sandvik Asia Ltd. Vs. Commissioner of Income Tax- 1, Pune reported in 2006 (196) E.L.T.257.
- v. In view of above Applicant has requested to modify the impugned Order-in-Appeal by allowing rate of interest @18% on delayed payment of drawback.
4. Personal hearing in this case was scheduled on 27.06.2023, and 11.07.2023,05.09.2023,12.09.2023. Applicant has made additional submissions vide their letters dated 27.06.2023 and 11.07.2023. The applicant, in their letter dated 26.08.2023, 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 Original Authority has sanctioned 6% interest on delayed payment of Drawback. The applicant claims that they are eligible for the higher rate of interest @18% on delayed payment of drawback. So, the issue to be decided is whether the Original Authority has rightly sanctioned 6% interest on delayed payment of Drawback vide the impugned Order-in-Original.
7. Government finds that the applicant had filed 136 shipping bills for conversion/amendment from DFIA scheme to Drawback Scheme during the



year 2013-14. The amendment certificate was issued on 29.11.2019. Subsequently, the Drawback of amount Rs. 3,81,03,662/- was disbursed to the applicant vide cheque no. 610351 dated 23.12.2019. Further, interest amount of Rs.1,35,79,850/- was disbursed to the applicant vide OIO dated 16.08.2021 under the provisions of Section 75A of the Customs Act, 1962 read with Section 27A of the Customs Act, 1962.

8. Government notes that Section 27A of the Customs Act stipulates that if any duty, as ordered for a refund under sub-section (2) of section 16, is not refunded to an applicant within three months from the date of receipt of their application as per sub-section (1) of that section, the applicant is entitled to interest. This interest rate is determined by the Central Government through the issuance of a notification and falls within a range not lower than 5% and not exceeding 30% per annum. In this case, Notification No. 75/2003(NT) dated 12.09.2003 sets the interest rate at 6% per annum for delayed drawback refunds, and this rate was correctly applied by the Original Authority. Further, Government observes that interest issue has been dealt by the Appellate Authority in detail and Government concurs with it. The relevant para 7 and para 8 of impugned Order-in-Appeal are reproduced hereunder:

*"7. The appellant have also submitted that they are eligible for interest @18% for the delayed payment. In this regard they have relied on the judgement of Hon'ble High Court in the case of M/s. Karur KCP Packagings Limited Vs. Commissioner of Customs WP.(MD)No 15003 of 2015 dated 27.08.2015. It is observed that the facts of this case are not similar hence, not applicable.*

*8 The appellant have also claimed interest on the delayed payment of interest on the ground that Revenue had withheld the refund of interest due to which the appellant had to incur expenses in an avoidable litigation for not getting its legitimate dues. I am of the firm opinion that any claim of amount from the Revenue can be disbursed only based on a statutory provision. It is clear that interest as indicated under the Customs Act, 1962 only can be paid to the appellant and no other amount which is not covered by the statutory provision can be paid. Hence, the*

*contention regarding eligibility of the appellant for payment of interest on the delayed payment of interest is not sustainable. In this context reliance is placed on the decision of the Tribunal in the case of Hindustan Photo Films Mfg. Co. Ltd Vs. CCE Salem [2018(364)ELT 471 (Tri.Chennai)] whereby in a similar case it was held "..... interest as indicated under the Customs Act, 1962 only can be paid to the appellant and no other amount which is not covered by the statutory provision can be paid"*

9. In view of the above, the Government upholds the Order-in-Appeal No. 985(Dbk)/2022(JNCH)/Appeals dated 21.09.2022 and rejects the impugned Revision Application.

  
18/10/23  
(SHRAWAN KUMAR)

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

ORDER No. 770 /2023-CUS (WZ)/ASRA/Mumbai dated 18.10.23

To,

1. M/s. Gulabdas & Company, 3C Benefice Business House, 126, Mathuradas Mill Compound, NM Joshi Marg, Lower Parel(West), Mumbai- 400013.
2. The Pr. Commissioner of Customs(NS-II), 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.