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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 371/23/DBK/2017-RA/2103 Date of Issue 29.11.2018

ORDER NO. 822 /2018-CUS (WZ)/ASRA/MUMBAI/DATED 18-10-18 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : M/s.Fabco Exports,202 Status House,2 nd Floor,Lathiya Rubber Gully,Andheri-Kurla Road,Sakinaka,Mumbai-400005.

Respondent: Assistant Commissioner of Custom (Drawback), ACC, Mumbai-III.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-AXP-APP-20/17-18 DATED 21.04.2017 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This Revision Application is filed by M/s Fabco Exports Mumbai (hereinafter referred to as the applicant") against Order-in-Appeal No. MUM-CUSTM-AXP-APP-20/17-18 dated 21.04.2017 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. The brief facts of the case are that during the period 1999-2001, the applicant exported 'Dyed Fabrics' under DEPB cum Drawback Scheme. As per Board Circular 68/97 dated 02.12.1997, products exported under DEPB Scheme, and not eligible to avail MODVAT of additional duty of customs (CVD) paid in cash on imported inputs, or excise duty paid on indigenous inputs, since no excise duty was payable on the export goods, would be eligible for Brand Rate of Drawback. Although subsequent Board Circular 39/2001 dated 06.07.2001 limited the facility of availing both DEPB as well as Brand Rate of Drawback to only for inputs covered by SION or inputs not permitted under Advance License to avoid unintended benefit, the Hon'ble Bombay High Court vide Order dated 15th March 2004 held that the said circular cannot be applied retrospectively and directed the department to dispose all the pending applications within Twelve Weeks from the date of the Order.

3. Accordingly, M/S.Fabco Exports applications for fixation of rate for Brand Rate of drawback was decided by the Central Excise Authorities and on the strength of the Brand rate fixation letter, drawback was disbursed to the applicants. Subsequent to the drawback disbursal, the applicants made a demand for interest on brand rate of drawback, so disbursed, on the assertion that the relevant date for sanctioning drawback should be the date of filing applications for brand rate fixation of drawback before the Central

Excise authorities. The said claims were rejected by the AC drawback, ACC, Mumbai-III being devoid of merit.

4. The Order-in-Original was contested before Commissioner (Appeals), who, in turn, rejected the claim for interest as not maintainable.

5. Aggrieved by the Commissioner (Appeals) Order, the applicants preferred the instant revision application on the following grounds that:

- The liability to pay interest on the delayed refund is a statutory obligation and the same cannot be washed off by passing bucks.
- The relevant date for sanctioning of brand rate drawback shall be from the date of export and not from the from the date of issue of Brand rate letter and therefore, the departments stand that "the Brand rate letter received along with the party's application letter are treated as fresh claims" is far from the provisions of section 75A read with section 27A of the customs act 1962. Sub rule 3(a) and 3(b) of rule 13 of Drawback rule only refers to the documents required to the submitted and it has nothing, what so ever, to do with the date from which interest is applicable.
- The "Filing date "as far as Brand rate of duty Drawback is the date on which the exporter had filed his application with the Central Excise department and not the date on which application is submitted to the Customs for sanctioning of drawback.
- Cited various case laws such as, Hon'ble Supreme Court of India in case of Ranbaxy Laboratories Ltd Vs UOI (2011-TIOL-105-SC-CX,), Swaraj Mazda Ltd Vs. UOI

reported at 2009 (235) ELT 788 (Bom), etc., in support of their argument that whenever any refund application is made interest is admissible to the claimant from 3 months of the date of submission till the Date of Payment.

6. A Personal hearing was fixed on 08.10.2018 and no one appeared for the personal hearing on behalf of the applicant and applicant vide their letter dated 08.10.2018 requested for deciding the matter on the basis of their submissions. No one appeared from the Department.

7. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal, case laws and submissions.

8. The Government finds that the issue to be examined and decided, in the instant case, is whether the applicants claim of interest from the date of filing application before central excise authorities for brand rate fixation is consistent with the section 75 A of the customs act and the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 or otherwise.

9. Section 75 A of the Custom Act, 1962 provides that where any drawback is payable to a claimant under Section 74 or 75 of the Customs Act, and is not paid within a period of three months, such claimant shall be paid in addition to the drawback, interest at the rate fixed under section 27 A of the customs act 1962, after expiry of the said period till the date of payment.

10. In pursuance of Section 75(2) of the Customs Act, 1962, the Government of India formulated Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Rule 13 of the said Rules prescribes the documents to be accompanied with the drawback claim in respect goods exported other than by post and the requisite documents are:

(i) copy of export contract or letter of credit, as the case may be,

(ii) copy of packing list,

(iii) copy of 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 Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be under rule 6 or rule 7 of these rules.

11. The Government observes that the occasion of "drawback payable" arises when the claim is complete in all respects and is accompanied by all documents mentioned under Rule 13 of drawback rules. In case of all Brand Rate claims, the copy of communication regarding Brand Rate fixation from the Commissioner of Central Excise is an essential document to fulfil the condition of a complete claim in all respects. The date of filing a complete claim is the relevant date for sanctioning drawback under Section 75 or interest under Section 75 A. Therefore, any claim for brand rate of drawback unaccompanied by a brand rate fixation letter is not eligible for drawback.

12. The Government finds that the applicants claim for interest from the date of filing application for brand rate fixation before the central excise authorities is inconsistent with provisions of Section 75 A of the Customs Act,1962 and Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.Therefore, The Government observes that the Applicants claim of seeking interest on drawback, prior to the eligibility date of drawback itself, is without out any legal basis and merits no consideration.

13. The case laws cited by the applicant are not relevant to the facts of the case and therefore, not applicable. The Government finds that there are several judgements which lay down unequivocally that only the refund applications which are complete in all respects are only eligible for refund and interest, if any (JINDAL DRUGS PVT LTD VS UNION OF INDIA 2016(342) E.L.T.17 (Bom).

14. In view of the above discussion and findings, Government dismisses the Revision Application being devoid of merit.

15. So ordered.

(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 832/2018-CUS (WZ) /ASRA/Mumbai Dated 18.10.18

To,

M/s.Fabco Exports,
202, Status House, 2 nd Floor,
Lathiya Rubber Gully,
Andhreri-Kurla Road,
Sakinaka, Mumbai-400 072.

Copy to:

1. The Commissioner of Customs (Export),ACC,Mumbai-III.
2. The Commissioner of Customs (Appeals), Mumbai-III.
3. The Asstt. Commissioner of Customs, Drawback,ACC,Mumbai-III.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)