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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

F.No. 371/53/DBK/2020 / 127

Date of Issue: 08.01.2024

ORDER NO. 968/2023-CUS (WZ)/ASRA/MUMBAI DATED 29.12.2023
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. Intas Pharmaceuticals Ltd.

Respondent: The Pr. Commissioner of Customs, Ahmedabad.

Subject : Revision Applications filed, under Section 129DD of the
Customs Act, 1962, against the Order-in-Appeal No. AHD-
CUSTM-000-APP-321-19-20 dated 21.08.2019 passed by the
Commissioner of Customs(Appeals), Ahmedabad.

ORDER

This Revision Application has been filed by M/s. Intas Pharmaceuticals Ltd. (hereinafter referred to as "the applicant"), against Order-in-Appeal No. AHD-CUSTOM-000-APP-321-19-20 dated 21.08.2019 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Briefly stated, the facts of the case are that the Applicant have been disbursed drawback of Rs.9660/-. It was found from the office records that the applicant had not submitted the evidence of realization of export proceeds for the shipping bills. Thus, the drawback amount paid to the applicant amounting to Rs.9660/-was liable to be recovered along with interest. Accordingly, the applicant was issued a Show cause Notice dated 28.05.2018, which was then adjudicated. The adjudicating authority has observed that the applicant has not informed the department any time regarding non-receipt of such export realization neither within normal time period as provided under Rule 16A (1) & (2) of the Drawback Rules, nor have they sought any extension of such time limit as provided under the Rules. Drawback is the substantial incentive extended by the government and paid in advance in anticipation of realization of foreign exchange, i.e. export proceeds, and hence it is obligatory on their part to intimate the department in case of any deviation in realization of the same. The adjudicating authority has decided the matter vide impugned order and took on record that the amount of Rs.19,085/-, towards the amount of drawback paid back and applicable interest on them paid by the applicant under Section 16A(2) of the Customs, Central Excise Duties & Service Tax Drawback (Amendment) rules, 2006 and imposed the penalty of Rs.2,000/- under Rule 117 of the Customs Act, 1962 on them. Being aggrieved by the aforesaid order-in-original the applicant filed appeal before Commissioner of Customs (Appeals), Ahmedabad, who vide Order-in-Appeal No. AHD-CUSTOM-000-APP-321-19-20 dated 21.08.2019 rejected their appeal and upheld the OIO.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application under Section 129 DD of the Customs Act, 1962 before the Government on the following grounds:

- i. Applicant has fulfilled the condition as laid down under the legal provisions governing the disbursement of drawback in respect of realization of sale proceeds.
 - ii. Applicant is a reputed Company having substantial Export Turnover. In this background it cannot be held that there was a serious omission on the part of the Applicants by not remitting such a small amount of Rs. 9660/- which is the drawback paid to the Applicants against Shipping Bill No: 6249258, dated 15.11.2015.
 - iii. The Applicants have also voluntarily suffered Penal consequences by paying Interest of Rs. 9424/-. It is well known that the demand or payment of interest is in the nature of a penal action, as Interest itself is penal in character.
 - iv. As per Section 75 A (2) of Customs Act, 1962, the Applicants are required to pay back the drawback amount so claimed, within a period of two months from the date of demand i.e. impugned order dated 21.12.2018. Thus, the Applicants paid back the amount of drawback claimed on 16.7.2018 with interest much before the Demand Order dated 21.12.2018 was passed. Therefore, the Applicants have not contravened the provisions of Section 75 A (2) of CA 1962.
 - v. Penalty under Section 117 of Customs Act, 1962 cannot be imposed when the Applicants have not violated the provisions of Rule 16 A (2) of the Customs, Central Excise Duties and Service Tax Drawback (Amendment) Rules, 2006 as well as Section 75 (1) and Section 75 A (2) of Customs Act, 1962.
 - vi. They relied upon the case law in case of Hindustan Steel Limited Versus State Of Orissa reported in 1978(2)ELT (J159) (S.C).
 - vii. In view of above, Applicant requested to set aside the impugned Order-in-Appeal.
4. Personal hearing in the case was held on 05.07.2023, the hearing was attended online by Ms. Kirti Pandey, DC on behalf of the Respondent and submitted that Commissioner Appeal has taken all relevant factors into

account and passed a correct order. She requested to maintain the same. While, Applicant, vide email dated 12.07.2023, requested to waive off the personal hearing and to decide the matter based on their written submissions.

5. Government has carefully gone through the relevant case records available in case files, perused the impugned Order-in-Original, Order-in-Appeal. The applicant has contended that they have also voluntarily suffered penal consequences by paying interest of Rs.9424/-. It is well known that the demand or payment of Interest is in the nature of penal action, as interest itself a penal in character. They have also contended that penalty under Section 117 of Customs Act, 1962 cannot be imposed, when they have not violated the provisions of Rule 16 A (2) of the Customs, Central Excise Duties and Service Tax Drawback (Amendment) Rules, 2006 as well as Section 75 (1) and Section 75 A (2) of Customs Act, 1962.

6. In the present case, Applicant received a drawback of Rs.9660/-, but failed to submit evidence of export proceeds realization for the corresponding shipping bills. Consequently, the Department issued a Show Cause Notice, and after adjudication, it was determined that the Applicant had not informed the Department about the non-receipt of export realization within the specified timeframes. The adjudicating authority ordered the recovery of the said amount along with interest and penalty. However, Applicant argued that they have voluntarily made the payment along with interest and therefore the penalty was not necessary. In this context, Government notes the following documented factual positions by the lower authorities :

- i. Show cause notice was issued to the Applicant on 28.05.2018.
- ii. In a letter dated 12.12.2018, the Applicant admitted to not realizing the export proceeds related to Shipping Bill No. 6249258 and wrote off the said amount.
- iii. Order in Original was issued on 21.12.2018

Government notes that the Applicant has accepted these facts, and there is no disagreement about them. It is evident from the sequence of events that the Applicant failed to inform the Department about the realization of export proceeds, even after the issuance of Show cause notice. However, Government notes that the Applicant had voluntarily paid the amount with interest before the issuance of the original order. Considering the relatively minimal quantum of the amount involved and the reputable standing of the company, imposing a penalty seems unwarranted.

7. In view of above, Government sets aside the order in appeal No. AHD-CUSTM-000-APP-321-19-20 dated 21.08.2019 passed by the Commissioner of Customs (Appeals), Ahmedabad.

8. The Revision Application is allowed.


(SHRAWAN KUMAR)

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

ORDER No. 968/2023-CUS (WZ)/ASRA/Mumbai DATED 29.12.2023

To,

1. M/s. Intas Pharmaceuticals Ltd., Corporate House, Near Sola Bridge, S.G. Highway, Thaltej, Ahmedabad-380054.
2. The Pr. Commissioner of Customs, 1st floor, Customs House, Near All India Radio, Income Tax Circle Navarangpura, Ahmedabad-380009.

Copy to:

1. The Commissioner of Customs(Appeals), 7th Floor, Mrudul Tower, B/H Times of India, Ashram Road, Ahmedabad-380009.
2. M/s. Willingdon & Associates Tident, C, Block, 3rd Floor, Opp Geri Compound, Race Course, Vadodara-390007.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file.

