

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. 371/57/DBK/2013-RA / 2698

Date of Issue:- ~~03.2021~~
09.04.2021

ORDER NO. 99 /2021-CUS(WZ)/ASRA/MUMBAI DATED 31.03.2021
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 Hariprabha Chemicals Pvt. Ltd.
Plot No. C-12, MIDC Lote,
Taluka- Khed, Dist. Ratnagiri- 415722.

Respondents : Commissioner of CGST, Kolhapur.

Subject : Revision applications filed under Section 129DD of the
Customs Act, 1962, against the Order in Appeal No.
V2PII (Duty DBK)33/2013/313 dated 02.05.2013
passed by the Commissioner (Appeals), Central Excise
& Customs, Pune-II.

ORDER

This Revision application is filed by M/s Hariprabha Chemicals Pvt. Ltd., Plot No. C-12, MIDC Lote, Taluka- Khed, Dist. Ratnagiri- 415722. (hereinafter referred to as the 'applicant') against the Orders-In-Appeal V2PII (Duty DBK)33/2013/313 dated 02.05.2013 passed by the Commissioner (Appeals), Central Excise & Customs, Pune-II.

2. The Brief facts of the case are that the appellant are the manufacturer-cum-exporter of finished excisable goods viz -'Various Grades of Octoate' falling under the scope of Chapter 32 of the Schedule to the Central Excise Tariff Act, 1985. The said exported goods were manufactured by utilizing both imported inputs on which appropriate /applicable import custom duties were paid and indigenous procured inputs on which applicable central excise duties were paid. The 'All Industry Rate (AIR)' @ 1 % of the FOB Value has already been fixed in respect of the above exported / manufactured goods. Since, the actual duty suffered on inputs used in the manufacture of exported goods is much higher than the 'All Industry Rate' already fixed/declared by the Govt. of India, the Appellant had applied for fixation of duty in terms of Rule 7 of the Customs, central excise and Service Tax Drawback Rules, 1995. The Applicant had filed an Application dated 05.12.2012 (acknowledged by department on 11.12.2012) for fixation of brand rate in respect of the duly suffered on all inputs used in the manufactured exported goods "Octoate of various grades" based on the first export Shipping Bill No.9222376 dated 04.06.2012 for the period from 04.06.2012 to 04.06.2013, together with an application for condonation of delay in filing the application by more than 3 months but within 5 months and delay application fee of Rs.2000/- for getting condoned from the Jurisdictional Commissioner.

3. The Deputy Commissioner, Central Excise & Customs, Kolhapur had rejected the applicant's application vide Order No. KOP/BRU/12/RTN/2012 dated 15.12.2012 on the ground that the request for condonation of delay was rejected by the Commissioner.

4. Aggrieved by the Order in Original, the applicant filed an appeal before the Commissioner of Central Excise (Appeals), Pune-II with a request to set -aside the said impugned Order and allow the Appeal of the Appellant. The Appellate Authority observed that the impugned order dated 15.12.2012 was the order of the Commissioner denying the condonation of delay, but communicated under the signature of the Deputy Commissioner (Tech.) and hence Appeal against the said order of the Commissioner would lie either before CESTAT or before the Under Secretary to the Govt. of India, as the case may be, and therefore rejected the Appeal of the applicant vide Order in Appeal No. V2PII (Duty DBK)33/2013 dated 02.05.2013 on the ground of jurisdiction.

5. Aggrieved by the said OIA-cum-order dated 02.05.2013, the Appellants preferred this Revision Application on the following grounds: -

5.1 Whether the Brand Rate Sanctioning Authority was correct in denying / rejecting the condonation of delay on the ground that since the applicant had not applied for condonation of delay of 3 months to the jurisdiction AC/DC and accordingly 3 month's delay is not condoned by AC/DC and therefore, any further period for condonation of delay cannot be entertained, considered and granted by the jurisdictional Commissioner.

5.2 The Board by Circular NO.13/2010-Customs dated 24th June, 2010 has clarified the provisions of the Customs, Central Excise & Service Tax Duties Drawback Rules, 1995 and held that the procedure for filing the drawback application for fixation of Brand Rate has been simplified. The normal period for filing the application for fixation of brand rate has been extended from 60 days to

three (3) months from the date of Let Export Order of the Shipping Bill and in case of delay in filing the said application beyond the normal permissible period of 3 months, the same can be condoned and extended by 3 months by the AC / DC and any further delay (beyond the 3 months of delay period) the same can be condoned / extended by another 6 months again by the Jurisdictional Commissioner. It means as in the present case; the let export order is of dated 06.06.2012 in respect of first shipping Bill No. 9222376 dated 04.06.2012. The normal / permissible period within which an application for fixation of Duty Drawback Brand Rate can be filed is 3 months i.e. up to 05.09.2012. If there was a delay for filing this Brand Rate Fixation Application to the Authority by 3 months (from 06.09.2012 to 05.12.2012) then same can be condoned by the AC/DC after making an application in writing along with payment of application fee of Rs. 1,000/-. If there is a further delay in filing the Brand Rate Fixation Application to the Authority beyond delay period of three months (i.e. beyond 05.12.2012), then the same can be condoned only by the jurisdictional Commissioner that too for the maximum further period upto 6 months there from, i.e. upto 05.06.2013, after making application for condonation of delay together with payment of application fee of Rs.2000/-.

5.3 Since the Application for fixation of Brand Rate was acknowledged by department on 11.12.2012, there is a delay by 3 months and 6 days. Therefore, the same had to be condoned by the jurisdictional Commissioner only. The applicant had filed an application for condonation of delay along with the application fees of Rs. 2,000/-, which according to the Circular No.14/2003-Cus. Dated 06.03.2003, the delay should have been condoned by the Commissioner on receipt of the application. The denial of the request for the condonation of delay was against the law and hence the same may be quashed and set-aside and the Lower Adjudicating Authority/Respondent may be directed to fix the Brand Rate and grant the drawback refund.

5.4 The interpretation of the Lower Authority including the Jurisdictional Commissioner/Respondent that the commissioner cannot condone the delay beyond the delay period of 3 months unless and until the jurisdictional AC/DC should have been condoned the first 3 months' delay, is totally wrong and incorrect in view of Para 3 of the Board Circular NO.13/2010-Customs dated 24.06.2010.

5.5 If an exporter is making application for fixation of brand rate for Duty Drawback after 9 months from the date of Let Export Order, which is within the permissible period of 1 year, permitted in terms of the Para 3 of the Board Circular No.13/2010-Customs dated 24th June, 2010, then he is not required to approach to two authorities for obtaining two condonation letter one for 3 months and another for 6 months. The circular makes it very clear that if delay is of 3 months then the same can be condoned by AC/DC. But if delay is for more than 3 months, then the same can be condoned only by the Jurisdictional Commissioner for the maximum or total delay period of 9 months including the initial three months' delay which was empowered to condone by AC/DC.

5.6 The Para No.6 of the Board Circular (No.13/2010-Customs) Dated 24th June, 2010 clearly states that if the delay in making application to AC / DC is by maximum three months then the same can be condoned by AC/DC up to three months only and if the delay is for more than 3 months the extension can be granted only by the jurisdictional Commissioner. The application fee is also accordingly prescribed / fixed for condonation by AC/DC Rs.1000/- and for condonation by the Commissioner Rs.2000/-. Therefore, the Lower Authority had erred in law in rejecting the Appellant's condonation application on wrong footing and wrong interpretation.

5.7 The Commissioner (Appeals), had gone one step ahead by misinterpreting the impugned Order-cum-Letter dated 15.12.2012 itself stating that the said Order is the order of Commissioner himself denying the condonation of delay, but communicated through and under the signature of the Deputy

Commissioner (Tech.) and therefore contended that the Appeal against the said order is lying before CESTAT or the Joint Secretary to the GOI, and hence, the Appellant's Appeal is rejected on the ground of 'jurisdiction'. This kind of approach of Appellate Authority based on wrongful interpretation leads to unnecessary hardship to the genuine exporters. When authority for fixation of Brand Rate is vested upon the Jurisdictional Additional Commissioner and accordingly the Application for fixation of Brand Rate is filed to the said authority along with letter for condonation of delay and delay fee of Rs.2000/-, the order for rejection, if any and on any ground, has to be passed by the Additional Commissioner and not by the Commissioner. Even if the condonation of delay is rejected by the Jurisdictional Commissioner, it should be in writing and duly signed by him and besides this an order for rejection of the main Application for fixation of Brand Rate has to be passed giving therein reasons for rejection, including reasons for denial of condonation of delay. Therefore, Order-cum-Letter dated 20.12.2012, issued by the Dy. Commissioner (Tech.) cannot be the order of the Commissioner, as the Application for fixation of Brand Rate has to be dealt with by the Additional Commissioner.

5.8 Since, the Appellant had correctly filed the Appeal before the Commissioner (Appeals) against the impugned order dated 15.12.2012 having jurisdiction to deal with such Appeal, the rejection of Appeal by the Appellate Authority on illegal and wrongful ground with misinterpretation of statute is unsustainable and needs to be set-aside and Appellant be granted drawback refund by fixation of Brand Rate.

6. A Personal Hearing was held in matter on 26.02.2021. Shri Durgesh Nadkarni, Advocate appeared online and submitted that they filed their Drawback claim applications within one year. Further he said that their request for condonation of delay was rejected and same was communicated to them by Assistant Commissioner, that is why they have appealed to the Commissioner (Appeals).

7. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

8. AT the outset, Government observes that though the applicant has filed the instant Revision Application against the Order in Appeal No. V2PII(Duty DDBK)33/2013/313 dated 02.05.2013, the documents enclosed as well as records reveal that the correct Order in Appeal No. is V2PII(Duty DDBK)32/2013/313 dated 02.05.2013 . In view of the same, the Order in Appeal, herein after, is taken as V2PII(Duty DDBK)32/2013/313 dated 02.05.2013 which is correct as per the records.

9. On perusal of records, Government observes that the application for the fixation of drawback under Rule 7 of the Drawback Rules filed by the applicant was rejected by the department vide letter F. No. KOP/BRU/12/RTN/2012 dated 15.12.2012 issued by the Deputy Commissioner (Tech.), Central Excise, Kolhapur Commissionerate. Further, the appellate authority ordered that the appeal so filed by the applicant was not maintainable before him since no order had been passed by an officer of Customs lower in rank than a Commissioner.

10. The Government observes that the core issue in the case is whether the application for fixation of drawback under Rule 7 of the Drawback Rules, 1995 is hit by the time limit stipulated under procedure. The impugned claims were filed by the claimant in the year 2012. The same were returned by the Deputy Commissioner (Tech), Central Excise, Kolhapur vide Nos. KOP/BRU/12/RTN/2012 dated 15.12.2012 as per the directions of the Commissioner. The relevant para of the letter is produced as below:-

"I have been directed by the Commissioner to inform you that the provision of Rule 6(1)(a)(i) indicates that the Commissioner can give further extension of six months after the Assistant Commissioner / Deputy Commissioner has given extension of three months. In your case the admissible period to file application was over on 06.09.2012. After 06.09.2012 and upto 06.12.2012, you should have approached Assistant / Deputy Commissioner for condonation of delay for three months and thereafter as provided in said Rule, Commissioner was vested with power to further extend the period for six months. Since you have not made application to

Assistant Commissioner / Deputy Commissioner for condonation of initial period of three months, this is not a case for extension of condonation period by further six months by Commissioner. Hence application dated 05.12.2012 received on 14.12.2012 for fixation of Brand Rate alongwith D.D. No. 833949 dated 11.12.2012 is time barred and application received on 05.12.2012 sent by FAX on 13.12.2012 to Commissioner for condonation of delay is rejected."

The Government observes that the claims remained unprocessed for more than 8 years pending decision on the issue related to the jurisdiction of condonation orders. The Government finds that the issue related to jurisdiction is now insignificant in the case and any further delay in the matter would amount to denial of justice to the claimant. The Government, therefore, keeping aside all other grounds in the impugned revision, takes up the core issue for decision by virtue of powers conferred by the provisions of Section 35 EE(4) of the Central Excise Act, 1944.

11. The Government finds that the applicant had exported impugned goods on the first export shipping bill No. 9222376 dated 04.06.2012 for the period from 04.06.2012 to 04.06.2013, together with an application for condonation of delay.

11.1 The Government notes that the Customs Circular No-13/2010 dated 24.6.2010 prescribes the time limits for filing applications for fixation of Brand Rate of Drawback, supplementary claims of Drawback and for claiming drawback under section 74 of the Customs Act, 1962. The same are as under :

Type of claim	Previous time limits	Revised time limits
Brand rate claim(Rules 6 and 7 of Customs, Central Excise & Service Tax Drawback Rules, 1995)	The claim was required to be filed within 60 days from the date of Let Export Order. This time limit could be extended by 30 days by the Commissioner if he was satisfied that the exporter was prevented by sufficient cause from filing the application within the aforesaid time period.	The claim may be filed within 3 months from the date of Let Export Order. This time limit may be extended by 3 months by the AC / DC and by another 6 months by the Commissioner.

11.2 In view of above, the Government holds that the applicant should have filed the application for fixation of drawback on or before expiry of three months from the LEO. The LEO in the instant case being 06.06.2012, the applicant should have filed the application on or before 05.09.2012. Further, in case of failure to file the application on 05.09.2012. As per the Circular dated 24.06.2010, the delay in filing the application can be condoned by AC/DC by extension of time limit for further three months i.e. up to 05.12.2012 and by another six months by the Commissioner i.e. up to 05.06.2013. It is pertinent to note that the Circular No. 13/2010 dated 24.06.2010 has omitted the words "***if he was satisfied that the exporter was prevented by sufficient cause from filing the application within the aforesaid time period***" while revising the time period. Drawback, being export incentive, the intention of the Government behind omission of these words is to remove procedural complications and ease the operation of drawback fixation and disbursal thereof.

11.3 In the instant case, the applicant had filed the application for extension of time period on 05.12.2012 (acknowledged by department on 11.12.2012). Further, it is observed that the applicant had submitted the demand draft along with request letter for requisite amount and thus have fulfilled the obligatory requirement in the matter.

11.4 The Government finds that the intention of the Government behind issuing the Circular dated 24.06.201 is to make various applications / claims of drawback under the Rules more exporter friendly, to liberalise granting of extensions in case of delays. It is found that the application of the applicant seeking extension of time limit was rejected by the department vide letter dated 15.12.2012 on the grounds that the applicant had not approached the Assistant Commissioner / Deputy Commissioner for condonation of initial period of three months and the application is not for extension of condonation period by further six months. The

Government finds that the grounds of rejection stated in the order cum letter dated 15.12.2012 are against the spirit of the law especially when the applicant had submitted his application for fixation of brand rate within a period of one year from the date of LEO.

11.5 It is pertinent to note the provisions of Section 5 of the Customs Act. The same are as under :-

"Section 5 in the Customs Act, 1962

5. Powers of officers of customs.—

(1) Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.

(3) Notwithstanding anything contained in this section, 1[a 2[Commissioner (Appeals)]] shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV and section 108."

Similar provisions are available under Section 12E of the Central Excise Act, 1944. The said provisions empower the officers of the Customs and Central Excise Department to exercise the powers and discharge the duties conferred or imposed under this act on any other officer of who is subordinate to him. In view of the above, the Government opines that the Commissioner had powers to process the application for condonation of delay filed by the applicant.

11.6 In view of above, in the interest of justice, the Government condones the delay in filing the application for fixation of drawback and remands the case back to the original authority with directions to process the brand rate application within period of four weeks.

12. Accordingly, Government sets aside Order in Appeal No. V2PII (Duty DBK)32/2013/313 dated 03.05.2013 passed by the Commissioner (Appeals), Central Excise & Customs, Pune-II and remands the case back to the original authority for fresh consideration in the light of above observation after giving reasonable opportunity of hearing to the applicant. The applicant is also directed to furnish the relevant documents for verification.

13. Revision Application is disposed off in above terms.


31/3/21
(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER NO. 99 /2021-CUS(WZ)/ASRA/MUMBAI DATED 3 \ .03.2021

To,
M/s Hariprabha Chemicals Pvt. Ltd.
Plot No. C-12, MIDC Lote,
Taluka- Khed, Dist. Ratnagiri- 415722

Copy to:

1. The Commissioner of GST, Vasant Plaza Commercial Complex, 4th & 5th Floor, C.S. No. 1079/2 K.H., Rajaram Road, Bagal Chowk, Kolhapur-416001.
2. The Commissioner of CGST (Appeals-I), Pune, 'F' wing, 3rd Floor, GST Bhavan, 41/A, Sassoon Road, Pune - 411 001.
3. The Assistant Commissioner, CGST, Division-V Ratnagiri, Central Revenue building, Jail Road, Ratnagiri.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare copy.