

SPEED POST



F.No. 373/249/DBK/2020-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 22/5/23

Order No. 199/23-Cus dated 22.5.2023 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

SUBJECT : Revision Application, filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. AIR C.CUS.I No. 163/2020 dated 29.07.2020, passed by Commissioner of Customs (Appeals-I), Chennai.

APPLICANT : M/s Classic Exports, Chennai.

RESPONDENT : The Commissioner of Customs, Chennai-VII (Air Cargo), Chennai.

ORDER

A Revision Application No. 373/249/DBK/2020-RA dated 03.11.2020 has been filed by M/s Classic Exports, Chennai, (hereinafter referred to as the Applicant) against the Order-in-Appeal AIR C.Cus.I No. 163/2020 dated 29.07.2020, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, allowed the appeal filed by the Applicants herein, against the Order-in-Original No. 301/2020-AIR dated 21.05.2020 passed by the Assistant Commissioner of Customs (Dbk-ACC), Chennai, to the extent of granting interest on delayed payment of drawback from 06.11.2015 instead of from the expiry of one month from the date of filing of drawback/shipping bills.

2. Brief facts leading up to the present revision application are that the Applicants herein filed 10 shipping bills, during the period September, 1996 to November, 1996, and claimed a drawback amount of Rs. 15,72,460/-. The said amount was sanctioned and cheques were kept ready for disbursal. However, before the amount could be disbursed, certain manipulations and interpolations in the shipping bills were noticed and the matter was referred to the Central Bureau of Investigation (CBI). The disbursal of drawback was withheld, pursuant to the matter being referred to the CBI. CBI thereafter prosecuted the Chief Executive of the Applicant as well as an unauthorised agent. The trial court, i.e., the Court of Additional Chief Metropolitan Magistrate, Chennai, vide order in C.C. Nos. 8357/1999 dated 26.02.2010, held the accused guilty and punishment was imposed. The second Court, i.e., the Court of Additional Sessions Court/Fast Track Court-V, Chennai, confirmed the order of the lower Court. However, the Hon'ble High Court of Madras, vide order dated 06.11.2015 in the criminal revision applications, bearing nos. CrI.RC. 1238/2010 and 1263/2010, acquitted the accused persons holding that the endorsements alleged to have been made in the shipping bills are not at all necessary for the purpose of claiming duty drawback since the Applicants herein had actually exported the goods, which were declared on the shipping bills. The Hon'ble High Court also noted that it is not the case of prosecution that the Applicants had exported inferior quality or less percentage of polyester. After the acquittal of the accused persons, the Applicants filed a Writ Petition No. 30759/2016 before the Hon'ble High Court of Madras, praying for a direction to the

department to disburse the drawback amount along with applicable interest. The Hon'ble High Court, vide Order dated 28.09.2016, directed the original authority to inform the petitioner i.e. the Applicant herein the reasonable time that may be required in the matter, and pursuant to which the petitioner shall wait for a reasonable time. In this process, correspondence was exchanged between the department and the CBI for seeking original documents. This correspondence continued till 12.06.2018. Thereafter, the Applicants, vide letter dated 17.10.2018, informed the department that they had approached the court of Additional Chief Metropolitan Magistrate, Chennai and the Court had returned all the relevant documents to them. Accordingly, the Applicants submitted all the relevant documents pertaining to their claim and requested for the release of cheques which were withheld along with interest from the date of sanction till the date of disbursement. Thereafter, the original authority, vide Order-in-Original No. 48/2018-AIR-DBK dated 29.01.2019, sanctioned drawback of Rs. 15,72,460/-. However, no orders were passed in respect of the request for payment of interest. On an appeal filed by the Applicants herein, the Commissioner (Appeals), vide Order-in-Appeal AIR CARGO C.Cus. I No. 150/2019 dated 28.08.2019, remanded the matter to the original authority with a direction to decide the issue of interest by a speaking order within a period of 15 days. The original authority thereafter, vide aforesaid Order-in-Original No. 301/2020-AIR dated 21.05.2020, rejected the claim of interest under Section 75A of the Customs Act, 1962. In the appeal filed by the Applicants herein, the Commissioner (Appeals), vide the impugned Order-in-Appeal dated 27.07.2020, sanctioned interest on delayed payment of drawback from 06.11.2015, i.e., the date on which the Hon'ble Madras High Court had allowed the criminal revision applications, till the date of disbursement of drawback to the Applicants herein. The Applicants, aggrieved by the Order of Commissioner (Appeals) granting interest only from 06.11.2015 onwards instead of from the date of expiry of one month period from filing of claim, have preferred the instant revision application.

3. The revision application has been filed, mainly, on the grounds that the Commissioner (Appeals) had in the impugned Order-in-Appeal stated that the Counsel for the Applicants had admitted that the interest amount had to be paid only from the date of the Hon'ble High Court's order dated 06.11.2015 which is factually incorrect; that the Counsel for the Applicant had while praying for interest to be paid upon expiry of one month of filing of

drawback claim had stated that, in the worst case scenario, the interest should be paid from the date of the Order of the Hon'ble High Court; that the said submission was made only without prejudice to the main prayer claiming interest with reference to the date of filing of the shipping bills; and that in terms of Section 75A *ibid*, interest is to be paid on delayed sanction of drawback upon expiry of a period of one month after filing of the drawback claim till the date of payment of such drawback.

4. Personal hearing in the matter was held in virtual mode, on 26.04.2023. Ms. Yogalakshmi S, Advocate appeared for the Applicants and reiterated the contents of the RA. Shri Karunanidhi, Superintendent, for the department sought two weeks' time to seek instructions in the matter. Accordingly, the personal hearing was rescheduled to 12.05.2023 when only the Id. Advocate for the Applicants appeared. Therefore, last and final opportunity was granted on 19.05.2023. In the hearing held on 19.05.2023, in virtual mode, Ms. Yogalakshmi, Advocate appeared for the Applicant and in continuation of the submissions made in the previous hearings submitted that their prayer before the Commissioner (Appeals) was to grant interest upon expiry of one month from the date of filing of shipping bill. The alternate plea to grant interest from the date of Hon'ble High Court's Order was a plea only if the payment of interest was barred by any other law. Further, a statutory right cannot be conceded away by the Id. Advocate. Shri. A. V. Narsimha, AC appeared for the department and submitted that the Order of Commissioner (Appeals) has been complied with. Upon being asked, he confirmed that :

- (i) The department had not initiated any proceedings under the Customs Act in this case, pursuant to the CBI initiating criminal case.
- (ii) The Order of Hon'ble Madras High Court has not been challenged.

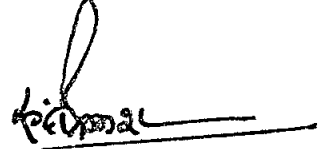
5.1 Government has carefully examined the matter. The issue that arises for consideration in the instant revision application is whether, in the facts and circumstances of the case, the interest is payable with reference to the date of filing of the drawback claim/shipping bills or from the date of acquittal by the Hon'ble High Court i.e., from 06.11.2015.

5.2 The Government observes that subject exports were made during September-November, 1996. As per the provisions of sub-section (1) of Section 75A of the Customs Act, 1962, prevailing at the relevant time, where any drawback payable to a claimant is not paid within a period of three months from the date of filing of claim for payment of such drawback, there shall be paid to the claimant, in addition to the amount of drawback, interest at the rate fixed under Section 27A from the date after the expiry of said period of three months till the date of payment of such drawback. Therefore, there is no doubt that in case the drawback is payable, interest is required to be paid with reference to the date of filing of the claim.

5.3 In the present case, the Commissioner (Appeals) has not recorded any reason for not granting interest with reference to the date of filing of the claim but has granted it only from 06.11.2015 by recording that "*The learned counsel for the appellant during the PH has also admitted that the interest has to be paid from the date of the Hon'ble Madras High Court's order in their criminal revision petition.*" On the other hand, the Applicants herein have submitted that, during the course of personal hearing, their contention before the Commissioner (Appeals) was that "*they are eligible for sanction of interest, since Hon'ble High Court of Madras has over turned the conviction of the Special CBI Court. As per Sec. 75A of C.A., 1962 upon expiry of one month from the date of filing the shipping bill interest should be paid. In the worst scenario atleast from the Hon'ble High Court's order on the appeal of the exporter, it should have been paid.*" It is, therefore, the contention of the Applicants that their main prayer was to grant interest from the date after expiry of one month from the date of filing of the shipping bill and other contention was merely a submission made without prejudice to the main prayer. The Government finds that there is a merit in this contention of the Applicants in as much as there is nothing in the submissions made by the Applicants before the Commissioner (Appeals) to indicate that they had unconditionally and unequivocally waived their claim for interest upon expiry of one month from the date of filing of the shipping bills and had conceded that the interest was to be paid only from the date of the order of the Hon'ble Madras High Court. Therefore, the Government finds that only reason for granting interest from 06.11.2015, as recorded by the Commissioner (Appeals), is without any legal or factual basis.

5.4 At the same time, it would be relevant to observe that the subject claims for drawback were filed in 1996. As already indicated above, at the relevant time, the Section 75A provided for interest on delayed payment of drawback, if drawback was not paid within a period of three months and not one month. In view of the above, the Government holds that, in the present case, the interest on drawback is payable from the date after the expiry of period of three months from the date of filing of the claims. The payment of interest is ordered accordingly.

6. The Revision Application is allowed in above terms and the Order-in-Appeal impugned herein is modified accordingly.



(Sandeep Prakash)

Additional Secretary to the Government of India


M/s Classic Exports,
G-21, 2nd Main Road,
Ambattur Industrial Estate,
Chennai – 600058.

Order No. 199/23-Cus dated 22-5-2023

Copy to:-

1. The Pr. Commissioner of Customs, Chennai-VII (Air Cargo), New Custom House, Air Cargo Complex, Meenambakkam, Chennai – 600016.
2. The Commissioner of Customs (Appeals-I), No. 60, Rajaji Salai, Custom House, Chennai-600 001.
3. M/s AGOL Associates, No. 17, 1st Cross Street, Customs Colony, 4th Avenue, Besant Nagar, Chennai – 600 090.
4. PPS to AS (RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED



पूनाम गुग्गल / Poonam Guggal
अधीक्षक / Superintendent (R.A. Unit)
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue
Room No. 605, 6th Floor, B-Wing
14, Hudco Vishala Building, Bhikaiji Cama
New Delhi-110066