(2025) 01 CESTAT CK 1579

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Customs Appeal No.51977 of 2022

M/s Siddhachalam Exports Pvt. Ltd. @APPELLANT @Hash The Commissioner of Customs (ICDs) @RESPONDENT

Date of Decision : 29-01-2025

Acts Referred:

Customs Act, 1962 — Section 18, 27A, 51, 74, 75, 75A, 75(2), 110A
Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 — Rule 13, 13(2), 13(5)

Citation : (2025) 01 CESTAT CK 1579

Hon'ble Judges : Dilip Gupta, President (J);P. V. Subba Rao, Member (T)

Bench : Division Bench

Advocate : Hari Radha Krishan, M.R. Dhaniya

Final Decision : Allowed

Judgement

Dilip Gupta, J

1. M/s Siddhachalam Exports Pvt. Ltd., the appellant has sought the quashing of the order dated 12.07.2022 passed by the Commissioner of Customs (Appeals), the Commissioner (Appeals), allowing the appeal in part by modifying the order dated 02.04.2022 passed by the Deputy Commissioner of Customs. The Deputy Commissioner of Customs had sanctioned drawback of Rs. 49,75,536/- in favour of the appellant, but the claim of the appellant for grant of interest was rejected. The Commissioner (Appeals), by the impugned order, has directed the adjudicating authority to calculate and sanction interest under section 75A of the Customs Act, 1962, the Customs Act for the period from 01.07.2012 till the date of payment of drawback.

2. This appeal has been filed by the appellant with a prayer that interest should be paid to the appellant from 14.04.2003 at the rate of 18% per annum.

3. It transpires from the records that the appellant had filed seven shipping bills, all dated 24.02.2003, on 24.02.2003 for export of goods declared as “Ladies Top” and “Denim Shirt” valued at Rs. 4,14,63,360/-. The appellant claimed duty drawback of Rs. 49,75,536/- under section 75 of the Customs Act. The “let

export order" was given on 13.03.2003 and the goods were allowed to be exported.

4. A show cause notice dated 11.09.2003 was issued to the appellant proposing to re-determine the value of export goods and consequently, re-determine the eligible drawback due to the appellant.

5. The adjudicating authority dropped the show cause notice by order dated 31.01.2005.

6. Feeling aggrieved, the department filed an appeal before the Tribunal, which appeal was allowed by the Tribunal by order dated 14.09.2006.

7. The appellant challenged the order of the Tribunal by filing an appeal, being Civil Appeal No. 810 of 2007, before the Supreme Court. The Supreme Court, by judgment dated 01.04.2011, set aside the order of the Tribunal and remitted the matter to the adjudicating authority for a fresh adjudication.

8. Pursuant to the aforesaid judgment of the Supreme Court, the adjudicating authority, by order dated 31.05.2012, again dropped the proceedings initiated by the show cause notice dated 11.09.2003.

9. The appeal filed by the department before the Tribunal against the aforesaid order of the adjudicating authority was dismissed on 07.10.2021.

10. It is thereafter that drawback amount of Rs. 49,75,536/- was sanctioned in favour of the appellant by the order dated 24.04.2022 but interest was denied.

11. It is against this order dated 24.04.2022 denying interest to the appellant, that an appeal was filed by the appellant before the Commissioner (Appeals). The Commissioner (Appeals) held that the appellant would be entitled to interest for the period after one month of the order dated 31.05.2012 till the actual date of payment of drawback. The claim of the appellant for granting interest from the date 24.04.2003 was, therefore, denied.

12. The relevant portions of the order dated 12.07.2022 passed by the Commissioner (Appeals) are reproduced below:

"5.4 Evidently, the claim duty drawback is deemed to have been filed on the date on which the proper officer makes an order permitting clearance and loading for exportation under section 51 (i.e. Let export order LEO). However, it is an admitted position that the goods were allowed to be exported provisionally in this case. Thus LEO was only a provisional order. Since there was a dispute on valuation of goods, the claim of duty drawback could not have been deemed to be filed on date of LEO. In absence of firm value of exported goods, the duty drawback claim could not be considered to be a complete claim on the date of LEO. Thus the claim for interest from the date of LEO is clearly inadmissible and cannot be allowed.

5.5 Now the question arises as to what should be the date of claim of duty drawback. The Adjudicating Authority has held that the claim has become admissible consequent to the Hon'ble CESTAT order dated 07.10.2021 and its corrigendum dated 10.01.2022. I find this interpretation erroneous. The Hon'ble CESTAT has upheld the Order-in-Original dated 31.05.2012 and held that the Appellant was entitled for consequential relief arising out of those proceedings. This clearly indicates that the drawback benefit arose put of Order-in-Original dated 31.05.2012 and Hon'ble Tribunal only upheld the same.

5.5.1 The value declared by the Appellant was accepted initially in the Order in Original dated 31.01.2005 passed by the Commissioner of Central Excise Delhi III. However, this order while setting aside by Hon'ble CESTAT vide Final order dated 14.09.2006. The matter was remanded to original Authority by Hon'ble Supreme Court vide order dated 01.04.2011 and set aside Hon’ble Tribunals order dated14.09.2006. The net effect of this rounds of litigations was that exports, Let Export Order and the valuation remained provisional. Thus it still cannot be held that a complete claim stood filed for duty drawback as the valuation remained provisional.

5.5.2 In the second round, the Commissioner, vide order dated 31.05.2012 upheld the valuation done by the Appellant and dropped proceedings against them. This order of the Commissioner has been upheld by the Hon'ble Tribunal vide final order dated 07.10.2021. Thus, the valuation of the export goods stood finalized effectively from the date of order of the Commissioner i.e. 31.05.2012 which was confirmed by the Hon'ble CESTAT. Accordingly, the claim for duty drawback is to be treated complete and final when valuation stood finalized i.e. from date of order-in-original of the Commissioner in second round i.e. 31.05.2012 and interest in terms of section 75A would only accrue from one month after this date.”

(emphasis supplied)

13. The Commissioner (Appeals) placed reliance upon a decision of the Tribunal in Web Knit Exports (P) Ltd. vs. Commissioner Of Customs, Tuticorin, 2012 (295) ELT 612 (Tri.-Chennai) and observed:

“5.6.1 Applying the ratio of this judgment, it can be concluded that value of the export goods stood finalized only when the sustained order of the Commissioner was issued i.e. 31.05.2012 and the complete claim for drawback arose from that date only. Accordingly, interest is to be granted from one month after the date of order-in- original dropping proceedings i.e. one month after 31.05.2012 till date of payment of drawback. The interest shall be payable as per rate prescribed under section 75A of the Customs Act, 1962.”

14. This appeal has, accordingly, been filed to claim interest on the amount of drawback from 24.04.2003, which date is one month after the date on which the “let export order” was issued in favour of the appellant.

15. Shri Hari Radhakrishnan, learned counsel appearing for the appellant made

the following submissions:

(i) Section 75A of the Customs Act provides that where any drawback payable to a claimant is not paid within a period of one month from the date of filing the 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 the said period of one month till the payment of such drawback. Filing of shipping bills itself is a claim for drawback and, therefore, interest would be payable in terms of section 75A of the Customs Act;

(ii) The Commissioner (Appeals) was, therefore, not justified in holding that since the value declared by the appellant was accepted only by order dated 31.05.2012, which order was subsequently affirmed by the Tribunal on 07.10.2021, the appellant would be entitled to interest only from 31.05.2012 till the date of payment of drawback;

(iii) Merely because the department had disputed the declared value in the Bills of Entry, thereby resulting in protracted litigation, the rightful dues of the appellant cannot be denied;

(iv) As the proceedings initiated by the show cause notice dated 11.09.2003 were dropped, it would mean that the appellant was eligible to claim drawback when the let order was issued on 13.03.2003;

(v) The findings recorded by the Commissioner (Appeals) that the goods were allowed to be exported provisionally and, therefore, the duty drawback claim cannot be considered to be a complete claim on the date of grant of "let export order" is factually incorrect. The goods were not provisionally assessed under section 18 of the Customs Act, but were provisionally released in terms of section 110A of the Customs Act; and

(vi) The interest rate provided under notification dated 13.05.2002 when the shipping bills were filed provided interest at the rate of 8%. However, in view of the peculiar facts and circumstances of the case, the appellant would be entitled to claim interest at the rate of 18% per annum.

16. Shri M. R. Dhaniya, learned authorized representative appearing on behalf of the department, however, supported the impugned order and submitted that it does not call for any interference in the appeal.

17. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

18. The facts narrated above would show that the appellant had filed seven shipping bills on 24.02.2003 claiming duty drawback of Rs. 49,75,536/- under section 75 of the Customs Act and the "let export order" was issued on 13.03.2003. A show cause notice was issued to the appellant for re-determining the eligible drawback due to the appellant, but this show cause notice was

initially dropped by the order dated 31.01.2005 and, thereafter again dropped by the order dated 31.05.2012 pursuant to the directions issued by the Supreme Court. This order has attained finality as the appeal filed by the department before the Tribunal was dismissed on 07.10.2021. The drawback was thereafter sanctioned on 24.04.2022 and though interest was initially denied by the Deputy Commissioner, but it was ultimately granted by the Commissioner (Appeals) for the period one month after 31.05.2012 till date of payment of drawback.

19. The issue that arises for consideration in this appeal is whether the appellant should be granted interest from 14.04.2003, which date is one month after the issuance of the "let export order" on 13.03.2003, or from one month after 31.05.2012 on which date the proceedings initiated against the appellant by issuance of show cause notice were dropped for the second time.

20. Section 75 of the Customs Act deals with drawback on imported materials used in the manufacture of goods which are exported. Sub-section (1) provides that drawback should be allowed of the duties of customs chargeable under the Customs Act on any imported material of a class or description used in the manufacture or processing of such goods or carrying out any operation of such goods. It also provides that the Central Government may make rules for the purpose of carrying out the provisions of sub-section (1).

21. Section 75A of the Customs Act provides for interest on drawback. Sub-section (1), which is relevant for the purpose of this appeal, is reproduced below:

"75A. Interest on drawback

(1) Where any drawback payable to a claimant under section 74 or section 75 is not paid within a period of one month from the date of filing a claim for payment of such drawback, there shall be paid to that claimant in addition to the amount of drawback, interest at the rate fixed under section 27A from the date after the expiry of the said period of one month till the date of payment of such drawback:"

22. As noticed above, drawback on imported materials used in the manufacture of goods which are imported is claimed under section 75 of the Customs Act. Section 75A of the Customs Act provides that where any drawback under section 75 is not paid within a period of one month from the date of filing a claim for payment of such drawback, interest has to be paid at rate fixed under section 27A of the Customs Act from the date after the expiry of period of one month till the date of payment of such drawback.

23. In the present case, the appellant had filed seven shipping bills on 24.02.2003 and the "let export order" was given on 13.03.2003. Under rule 13 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, the Drawback Rules that have been framed under section 75(2) of the Customs Act, the submission of the shipping bills is deemed to be a claim for drawback filed on the date on which the proper officer of customs makes an order permitting clearance and loading of goods. Under sub-rule (5) of rule 13 of the Drawback

Rules, where the exporter has exported the goods under electronic shipping bill in Electronic Data Interchange under the claim of drawback, the electronic shipping bill itself shall be treated as the claim for drawback. In the present case, after submission of the shipping bills on 24.02.2003, the "let export order" was issued on 13.03.2003. The drawback should have been given to the appellant within one month of such date, and if not, interest would become payable to the appellant after the expiry of the said period of one month till the date of payment of such drawback.

24. It is the department which questioned the value of the export of goods, on which would depend the eligible drawback, by issuing a show cause notice on 11.09.2003. This show cause notice was dropped by the order dated 31.01.2005, but the department filed an appeal before the Tribunal and the appeal was allowed on 14.09.2006. The appellant challenged this order before the Supreme Court. The Supreme Court remanded the matter to the adjudicating authority and thereafter the show cause notice was again dropped by the adjudicating authority by order dated 11.09.2003. The challenge to this order by the department before the Tribunal failed as the appeal filed by the department was dismissed on 07.10.2021. The amount of drawback should have been sanctioned within a period of one month from the date the "let export order" was issued on 13.03.2003 but it was actually sanctioned on 24.04.2022. Interest has been paid to the appellant by the Commissioner (Appeals) from a date after a period of one month from 31.05.2012 when the show cause notice was dropped by the adjudicating authority for the second time pursuant to the order passed by the Supreme Court and not from 13.03.2003 when the "let export order" was issued.

25. It is on the instance of the department that proceedings were initiated and ultimately the claim of the appellant was found to be correct and the drawback was sanctioned. In such circumstances the issue that would require consideration is whether 31.05.2012 should be the date relevant for the purposes of determining interest payable to the appellant. This date cannot be the relevant date. The appellant cannot be blamed or penalized for the prolonged litigation undertaken by the department. Rule 13 of the Drawback Rules, which has been referred to by the Commissioner (Appeals) in the impugned order, clearly provides that the shipping bills shall be treated as a claim for drawback filed on a date on which the proper officer of customs makes an order permitting clearance. The "let export order" was issued on 13.03.2003. Section 75A of the Customs Act provides that if the drawback is not paid within a period of one month from the date of filing the claim, interest shall be paid, in addition to the amount of drawback, at the rate fixed under section 27A of the Customs Act from the date after the expiry of period of one month of the "let export order" till the date of payment of such drawback. In terms of section 75A of the Customs Act, the appellant is entitled to get interest from a date after the expiry of one month from 13.03.2003 upto the date of payment of the drawback amount. The appellant had, accordingly, claimed interest from 14.04.2003 but the Commissioner (Appeals) allowed interest only from 01.07.2012, which date is

after the expiry of a period of one month from 31.05.2012.

26. The Commissioner (Appeals) has relied upon the decision of a learned member of this Tribunal in Web Knit Exports to hold that the relevant date would be 31.05.2012 because the value of the export goods stood finalized when the adjudicating authority passed the order. The said decision of a learned Member the Tribunal would not be applicable to the facts of the present case. It is seen from a perusal of this decision that initially the Commissioner had rejected grant of drawback but the Tribunal granted the drawback. It was also found as a fact that the required documents as per rule 13(2) of the Drawback Rules had not been produced.

27. In the present case, it is not the case of the department that the documents, as contemplated under rule 13 of the Drawback Rules, had not been filed by the appellant. On the other hand, the show cause notice that was issued to the appellant raising a doubt about the value of the export goods was dropped by order dated 31.01.2005. Thus, the value of the export goods declared by the appellant was found to be correct and the Deputy Commissioner after remand of the matter by the Supreme Court also dropped the show cause notice.

28. It is, therefore, a clear case where drawback should have been given to the appellant within a period of one month from 13.03.2003 when the "let export order" was issued and since it was not given, the appellant would be entitled to interest from a period after month at the rate provided for in section 27A of the Customs Act upto the date of payment of drawback.

29. The order dated 12.07.2022 passed by the Commissioner (Appeals) is, accordingly, modified. Interest from 14.03.2003 upto the date of payment of drawback at the rate provided for at the relevant time under section 27A of the Customs Act shall be paid to the appellant within a period of one month from today, failing which the appellant shall become entitled to also receive interest at the rate specified in section 27A of the Customs Act from 01.03.2025 upto the date of payment of interest. The appeal is, accordingly, allowed to this extent.

(Order Pronounced on 29.01.2025)

