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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 03.08.2026***

\+ CUSAA 79/2026, CM APPL. 50038/2026, CM APPL. 50039/2026, CM APPL. 50040/2026, CM APPL. 50041/2026

THE COMMISSIONER OF CUSTOMS ICD, PATPARGANJ, NEW DELHI .....Appellant

Through: Mr. Gibran Naushad, SSC with Mr. Suraj Shekhar Singh, Mr. Hasan Haider, Mr. Anish Mishra, Advs.

versus

M/S SIDDHACHALAM EXPORTS PVT. LTD. ....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE SHAIL JAIN

ORDER (ORAL)

ANIL KSHETARPAL, J.:

1. By way of the present Appeal filed under Section 130 of the Customs Act, 1962 [‘Customs Act’], the Appellant assails the Final Order No. 50104/2025 dated 29.01.2025 [‘Impugned Order’] passed by the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi [‘CESTAT’], whereby the CESTAT modified the Order-in-Appeal dated 12.07.2022 passed by the Commissioner of Customs (Appeals) and held that the Respondent is entitled to interest under Section 75A of the Customs Act on the sanctioned drawback amount with effect from the expiry of one (01) month from the date of issuance of the ‘Let Export Order’, i.e., 13.03.2003, till the date of actual payment of drawback.

2. The controversy in the present Appeal lies within a narrow compass. The Respondent's entitlement to the drawback amount itself is no longer in dispute, the same having already been sanctioned. The only controversy which survives is the point of time from which interest under Section 75A of the Customs Act becomes payable on the delayed payment of such drawback.

FACTUAL MATRIX:

3. In order to appreciate the controversy involved in the present Appeal, the relevant facts, in brief, are required to be noticed.

4. The Respondent exported consignments of garments described as 'Ladies Tops' and 'Denim Shirts' through seven Shipping Bills, all dated 24.02.2003, claiming duty drawback under Section 75 of the Customs Act amounting to Rs. 49,75,536/-. The goods were permitted to be exported upon issuance of the 'Let Export Order' on 13.03.2003.

5. Subsequently, the Department entertained a doubt regarding the correctness of the declared value of the export goods and issued a Show Cause Notice dated 11.09.2003 proposing re-determination of the value of the exported goods and consequential re-determination of the drawback admissible to the Respondent.

6. The aforesaid Show Cause Notice came to be adjudicated by the competent authority *vide* Order-in-Original dated 31.01.2005, whereby the proceedings initiated against the Respondent were dropped and the drawback claimed by the Respondent was accepted.

7. Aggrieved thereby, the Department preferred an appeal before

the CESTAT, which was allowed *vide* order dated 14.09.2006. However, the said order was challenged by the Respondent before the Hon'ble Supreme Court in Civil Appeal No. 810 of 2007. The Hon'ble Supreme Court, *vide* judgment dated 01.04.2011, set aside the Order-in-Original dated 31.01.2005 as well as the order dated 14.09.2006 passed by the CESTAT and remanded the matter to the adjudicating authority for fresh consideration in accordance with law.

8. Pursuant to the aforesaid remand, the adjudicating authority once again examined the matter and, *vide* Order-in-Original dated 31.05.2012, dropped the proceedings initiated pursuant to the Show Cause Notice dated 11.09.2003. The Department again carried the matter in appeal before the CESTAT. The appeal, however, came to be dismissed *vide* order dated 07.10.2021, thereby affirming the Order-in-Original dated 31.05.2012.

9. Consequent upon the dismissal of the Department's appeal, the drawback amount of Rs. 49,75,536/- was sanctioned in favour of the Respondent *vide* order dated 02.04.2022. However, the Respondent's claim for interest under Section 75A of the Customs Act on account of delayed disbursement of the drawback amount was rejected on the ground that the drawback became admissible only pursuant to the order dated 07.10.2021 passed by the CESTAT and that the sanction order had been issued within the time stipulated thereafter.

10. Aggrieved by the denial of interest, the Respondent preferred an appeal before the Commissioner of Customs (Appeals). *Vide* Order-in-Appeal dated 12.07.2022, the Commissioner (Appeals) partly

accepted the Respondent's claim and held that interest under Section 75A of the Customs Act would be payable only after expiry of one (01) month from the Order-in-Original dated 31.05.2012. Accordingly, the Respondent was held entitled to interest only for the period commencing after one (01) month from 31.05.2012 till the date of actual payment of drawback.

11. Dissatisfied with the aforesaid determination regarding the commencement of interest, the Respondent preferred an appeal before the CESTAT. The CESTAT, by the Impugned Order, modified the Order-in-Appeal dated 12.07.2022 and held that, having regard to Rule 13 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 [‘the Drawback Rules’] and Section 75A of the Customs Act, the drawback claim was deemed to have been filed on the date of issuance of the ‘Let Export Order’, namely 13.03.2003. Consequently, the CESTAT held that the Respondent became entitled to interest upon expiry of one (01) month from the said date till the actual payment of the drawback amount.

12. Aggrieved thereby, the Department has preferred the present Appeal under Section 130 of the Customs Act.

13. <u>SUBMISSIONS ON BEHALF OF THE APPELLANT:</u>

13.1. Learned counsel for the Appellant submitted that the Impugned Order passed by the CESTAT is wholly without jurisdiction and is liable to be set aside on this ground alone. It was contended that the first proviso to Section 129A(1) of the Customs Act expressly excludes from the jurisdiction of the CESTAT all appeals relating to payment of drawback under Chapter X of the Customs Act and the Rules framed thereunder. It was argued that the statutory exclusion is couched in mandatory language by providing that "no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction" in respect of such matters. Therefore, once the dispute relates to payment of drawback or any matter arising therefrom, the CESTAT is denuded of jurisdiction to entertain or decide the appeal.

13.2. It was further submitted that a claim for interest under Section 75A of the Customs Act is merely incidental and consequential to the principal claim for drawback and cannot be divorced therefrom. According to the Appellant, a dispute regarding interest on delayed payment of drawback remains a dispute "relating to payment of drawback" within the meaning of the first proviso to Section 129A(1). Consequently, the appeal preferred by the Respondent before the CESTAT itself was not maintainable and the Impugned Order passed by the CESTAT is a nullity in the eyes of law.

13.3. It was further contended that the CESTAT erred in holding that interest became payable immediately upon expiry of one month from the date of issuance of the 'Let Export Order'. It was submitted that the Respondent's entitlement to drawback itself remained under serious dispute for a considerable period on account of adjudication proceedings initiated by the Department questioning the correctness of the declared value of the export goods. During the pendency of such proceedings, according to the Appellant, neither the admissibility nor the quantum of drawback had crystallized and, therefore, no liability to pay statutory interest could arise.

13.4. It was argued that the adjudication proceedings culminated only upon the passing of the Order-in-Original dated 31.05.2012, which ultimately came to be affirmed by the CESTAT on 07.10.2021. According to the Appellant, until the drawback claim stood finally crystallized through the adjudicatory process, Section 75A could not be invoked for claiming interest.

13.5. It was also submitted that the CESTAT failed to appreciate the legal consequence of the judgment dated 01.04.2011 passed by the Hon'ble Supreme Court whereby both the Order-in-Original dated 31.01.2005 and the earlier order dated 14.09.2006 passed by the CESTAT were set aside and the matter was remanded for fresh adjudication. It was contended that once the earlier orders stood set aside, they ceased to have any legal existence and could not constitute the foundation for fastening any liability upon the Department to pay interest for the intervening period.

13.6. It was further submitted that Rule 13 of the Drawback Rules had to be construed harmoniously with Section 75A of the Customs Act and could not be read in isolation. According to the Appellant, although Rule 13 deems the shipping bill to be a claim for drawback upon issuance of the 'Let Export Order', such deeming fiction cannot operate where the very entitlement to drawback remains the subject matter of adjudication on account of allegations relating to overvaluation of export goods. It was contended that the deeming provision cannot enlarge the scope of Section 75A so as to create liability for payment of interest even before the drawback claim becomes legally admissible.

ISSUES FOR DETERMINATION:

14. The present Appeal raises the following questions for consideration:

i. Whether the appeal preferred by the Respondent before the CESTAT, seeking interest on delayed payment of duty drawback under Section 75A of the Customs Act, was barred by the first proviso to Section 129A(1) of the Customs Act, thereby rendering the Impugned Order without jurisdiction?

ii. If the answer to the aforesaid question is in the negative, whether the CESTAT was justified in holding that interest under Section 75A of the Customs Act became payable upon expiry of one month from the date of issuance of the 'Let Export Order' in terms of Rule 13 of the Drawback Rules, or whether such interest could accrue only after the drawback claim attained finality upon completion of the adjudicatory proceedings?

ANALYSIS & FINDINGS:

15. This Court has given thoughtful consideration to the submissions advanced by the learned Senior Standing Counsel appearing for the Appellant and does not find any merit in the Appeal for the reasons recorded hereinafter.

Re: Whether the CESTAT lacked jurisdiction to entertain the Respondent's appeal?

16. Since the objection raised by the Appellant pertains to the very jurisdiction of the CESTAT to entertain the appeal preferred by the

Respondent, the said issue deserves to be examined at the threshold. If the Appellant's contention regarding lack of jurisdiction were to be accepted, the merits of the controversy concerning the commencement of interest under Section 75A of the Customs Act would not survive for consideration.

17. At this stage, it becomes necessary to examine the language employed by the legislature in Section 129A(1) of the Customs Act, which reads as under:

> *"129A. Appeals to the Appellate Tribunal.—(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—*
>
> *(a) a decision or order passed by the [Principal Commissioner of Customs or Commissioner of Customs] as an adjudicating authority;*
>
> *(b) an order passed by the [Commissioner (Appeals)] under section 128A;*
>
> *(c) an order passed by the Board or the Appellate [Commissioner of Customs] under Section 128, as it stood immediately before the appointed day;*
>
> *(d) an order passed by the Board or the [Principal Commissioner of Customs or Commissioner of Customs], either before or after the appointed day, under section 130, as it stood immediately before that day:*
>
> *[Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to,—*
>
> *(a) any goods imported or exported as baggage;*
>
> *(b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;*
>
> *(c) payment of drawback as provided in Chapter X, and the rules made thereunder:*

Provided further that] the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where—

i. the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125; or

ii. in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

iii. the amount of fine or penalty determined by such order, does not exceed [two lakh rupees].”

18. The aforesaid provision confers a statutory right of appeal to the Appellate Tribunal against, *inter alia*, an order passed by the Commissioner (Appeals) under Section 128A of the Customs Act. However, the first proviso engrafts certain express exceptions to this appellate jurisdiction by providing that no appeal shall lie before the Appellate Tribunal where an order passed under Section 128A relates to any of the three specified categories, namely: (i) goods imported or exported as baggage; (ii) goods loaded in a conveyance but not unloaded at the destination; and (iii) payment of drawback as provided in Chapter X of the Customs Act and the Rules made thereunder.

19. It is a settled principle of statutory interpretation that where the legislature employs clear and unambiguous language while creating an exception to a statutory right of appeal, the Court must give full effect to such legislative mandate. Equally well settled is the principle that a proviso, being in the nature of an exception, cannot ordinarily be construed so as to travel beyond the field expressly carved out by the legislature. The extent of the exclusion must, therefore, be gathered from the words actually employed in the proviso and not by adding

words which the legislature has consciously omitted.

20. The controversy before the Commissioner (Appeals), and thereafter before the CESTAT, did not concern the Respondent's entitlement to duty drawback or the quantum admissible under Section 75 of the Customs Act. Those issues already stood concluded. The sole surviving dispute pertained to the statutory liability of the Department to pay interest under Section 75A on account of the delayed release of the drawback amount.

21. In the aforesaid backdrop, the submission advanced on behalf of the Appellant that every dispute concerning interest on delayed payment of drawback must necessarily be treated as one relating to "payment of drawback" cannot be accepted. Although the right to claim interest under Section 75A arises because drawback is payable, the liability to pay such interest flows from a distinct statutory provision which comes into operation only upon delay in disbursement of the drawback amount. The controversy regarding interest is, therefore, distinct from a dispute relating to the grant or admissibility of drawback itself.

22. The first proviso to Section 129A(1) excludes the jurisdiction of the Appellate Tribunal in relation to a specified class of orders. The legislature has consciously confined the exclusion to disputes concerning payment of drawback and has not employed any wider expression so as to include every consequential or ancillary claim arising therefrom. Had such been the legislative intent, appropriate words expanding the scope of the exclusion could easily have been

incorporated. It is not open to the Court to enlarge the statutory embargo by supplying words which the legislature has deliberately omitted.

23. This conclusion also accords with the settled principle that while a right of appeal is a creature of statute, any provision restricting or excluding such right must receive strict construction. A jurisdictional bar cannot be extended by implication. Consequently, unless the controversy falls squarely within the exception carved out by the legislature, the ordinary appellate remedy provided under Section 129A(1) must remain available.

24. Applying the aforesaid principles to the facts of the present case, it becomes evident that neither the Commissioner (Appeals) nor the CESTAT was required to adjudicate upon the Respondent's entitlement to drawback. Their enquiry was confined to determining the date from which statutory interest became payable under Section 75A after the drawback amount had been sanctioned. Such a controversy, in our considered opinion, does not fall within the limited jurisdictional exclusion contained in the first proviso to Section 129A(1) of the Customs Act.

25. Consequently, this Court finds no merit in the preliminary objection raised by the Appellant. The appeal preferred by the Respondent before the CESTAT was maintainable, and the Impugned Order cannot be assailed on the ground of lack of jurisdiction.

26. Issue No.(i) is answered accordingly against the Appellant.

<u>Re: Whether interest under Section 75A became payable only after culmination of the adjudicatory proceedings?</u>

27. Having answered the preliminary objection relating to jurisdiction, this Court now proceeds to examine the principal controversy, namely, the point of time from which interest under Section 75A of the Customs Act becomes payable where payment of drawback is delayed.

28. The answer to the aforesaid question necessarily depends upon a conjoint reading of Section 75A of the Customs Act and Rule 13 of the Drawback Rules. While Section 75A prescribes the circumstances in which interest becomes payable on delayed payment of drawback, Rule 13 determines the point of time at which a claim for drawback is deemed to have been filed. Since both provisions operate in the same statutory field, neither can be construed in isolation.

29. For convenience, Section 75A of the Customs Act and Rule 13 of the Drawback Rules read as under:

> *"Section 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:*
>
> *(2) Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the rules made thereunder, the claimant shall, within a period of two months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under section 28AA and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback.*
>
> *xxx xxx xxx xxx*

Rule 13. Manner and time for claiming drawback on goods exported other than by post.

(1) Triplicate copy of the Shipping Bill for export of goods under a claim for drawback shall be 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 for exportation under section 51 and said claim for drawback shall be retained by the proper officer making such order.

(2) The said claim for drawback should be accompanied by the following documents, namely :-

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

(ii) copy of Packing list,

(iii) copy of [tax invoice] [Substituted 'ARE-1' by Notification No. G.S.R. 723(E), dated 29.6.2017 (w.e.f. 26.5.1995).], 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 Principal Commissioner of Customs or Commissioner of Customs, as the case may be, under rule 6 or rule 7 of these rules.

(3)(a) If the said claim for drawback is incomplete in any material particulars or is without the documents specified in sub-rule (2), shall be returned to the claimant with a deficiency memo in the form prescribed by the Commissioner of Customs within 10 days and shall be deemed not to have been filed for the purpose of section 75A.

(b) Where the exporter resubmits the claim for drawback after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed under sub-rule (1) for the purpose of section 75A.

(4) For computing the period of one month prescribed under section 75A for payment of drawback to the claimant, the time taken in testing of the export goods, not more than one month, shall be excluded.

(5) Subject to the provisions of sub-rules (2), (3) and (4), where the exporter has exported the goods under electronic shipping bill in Electronic Data Interchange (EDI) under the claim of drawback, the electronic shipping bill itself shall be treated as the claim for drawback.”

30. A plain reading of the aforesaid provisions leaves little room for

doubt. Rule 13 creates a statutory deeming fiction by providing that, where the requisite declaration is made in the shipping bill, the shipping bill itself shall be deemed to be the claim for drawback on the date the proper officer grants the order permitting clearance and loading of the export goods for exportation. Thus, for the purposes of the statutory scheme, the claim does not await any separate application by the exporter but comes into existence by operation of law upon issuance of the 'Let Export Order'.

31. Section 75A, in turn, fastens liability to pay interest where the drawback payable under Section 75 is not disbursed within one month from the date of filing of such claim. Significantly, the provision does not make the commencement of interest dependent upon completion of adjudication proceedings or upon the date on which the claim ultimately attains finality. The legislature has consciously linked the liability to pay interest with the date of filing of the claim and not with the date of its eventual sanction.

32. The principal submission advanced on behalf of the Appellant is that since the Respondent's entitlement to drawback remained under challenge in adjudication proceedings initiated by the Department, the liability to pay interest could arise only after those proceedings attained finality. This submission cannot be accepted.

33. Neither Section 75A nor Rule 13 incorporates any provision postponing the commencement of interest merely because adjudication proceedings are pending. Had the legislature intended that interest would become payable only after adjudication of disputed

claims, it could have expressly so provided. No such qualification finds place in the statutory scheme. It is a settled principle that while interpreting a fiscal statute, the Court must give effect to the language actually employed by the legislature and cannot introduce words which are conspicuous by their absence.

34. In the present case, it is not disputed that the 'Let Export Order' was issued on 13.03.2003. By virtue of Rule 13, the shipping bills were deemed to constitute the Respondent's drawback claim on that very date. The subsequent Show Cause Notice dated 11.09.2003 did not obliterate or postpone the statutory consequence flowing from Rule 13. It merely resulted in withholding of payment pending adjudication.

35. Significantly, the adjudication proceedings ultimately concluded in favour of the Respondent. The allegations of overvaluation levelled by the Department were not sustained, and the drawback claimed by the Respondent was held to be admissible. The eventual sanction of the drawback amount did not create a fresh statutory entitlement in favour of the Respondent; it merely gave effect to the entitlement which was ultimately adjudicated in its favour.

36. Acceptance of the Appellant's interpretation would lead to consequences which the statute does not contemplate. It would enable the Department, by initiating adjudication proceedings and carrying the matter through successive appellate stages, to postpone its statutory liability to pay interest for an indefinite period, even where

the proceedings ultimately culminate in favour of the exporter. Such an interpretation would substantially dilute the object underlying Section 75A, namely, compensating the exporter for delayed disbursement of the drawback amount.

37. The CESTAT, therefore, rightly held that once the shipping bills stood treated as the drawback claim by virtue of Rule 13, the period prescribed under Section 75A commenced from the date of issuance of the 'Let Export Order'. Consequently, the Respondent is entitled to interest upon expiry of one month therefrom till the date on which the drawback amount was actually paid.

38. This Court, therefore, finds no infirmity in the view adopted by the CESTAT. Issue No.(ii) is answered accordingly against the Appellant.

CONCLUSION:

39. In view of the foregoing discussion, this Court finds no merit in the present Appeal. No substantial question of law arises for consideration in the present Appeal under Section 130 of the Customs Act.

40. Accordingly, the present Appeal, along with pending applications, is dismissed.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

AUGUST 03, 2026
jai/pal