

### **Interest of 15% is allowed on delayed refund of deemed-export duty-drawback**

The Hon'ble Supreme Court in the case of *Union of India and Ors. v. M/s. B.T. Patil and Sons Belgaum (Construction) Pvt. Ltd. [Civil Appeal No. 7238 of 2009 dated February 05, 2024]* upheld the decision of the Hon'ble Division Bench of High Court of Karnataka where the Respondent was awarded 15% interest on the delayed refund of deemed export duty drawback on construction of civil work. Therefore, the interest was to be calculated from the date on which the application for refund was filed.

#### **Facts:**

M/s. B.T. Patil and Sons Belgaum (Construction) Pvt. Ltd. (**"the Respondent"**) was a class-I contractor specializing in the field of civil contract works, especially tunneling and hydroelectric power projects. The Central Government had approved funding for the Koyna Hydro Electric Power Project from the International Bank for Reconstruction and Development. The Respondent was awarded a sub-contract to execute civil works from Lake Intake to the Emergency Valve Tunnel.

The Respondent completed the construction work in the month of March 1996 and claimed a refund of duty drawback under the deemed export scheme announced under Exim Policy, 1992-1997 by the Ministry of Commerce, Government of India, and the Director General of Foreign Trade (**"the DGFT"**).

The DGFT denied the refund application on the grounds that civil construction works were not eligible for the deemed export benefit announced in the Exim Policy, 1992-1997. Thereafter, the DGFT issued a circular on August 20, 1998, under the successor Exim Policy, 1997-2002 to Exim Policy, 1992-1997, clarifying that the supply of goods under paragraph 10(2)(d) of the Exim Policy, 1997-2002 would be entitled to 'deemed export' benefit. Following this, on December 5, 2000, the DGFT issued another circular that stated that the drawback was to be paid with respect to excise duty on the supply of goods to projects funded by multilateral

agencies. Thereafter, a Policy Interpretation Committee was constituted for the Respondent and decided to give the benefit of duty drawback. Thus, the DGFT issued an order and permitted duty drawback for INR 2,25,79,470 Crores. It was held that the said order was not considered to be as a precedent. Thereafter, the Respondent claimed interest on the delayed refund vide a writ petition before the Single Bench of the High Court. The Single Judge Bench of the High Court held that the interest on delay from December 5, 2000 till payment of refund on November 25, 2002 was payable at 15% as per the Customs Act, 1962 (**“the Customs Act”**) provides that interest has to be paid in such a case in the range of 5% to 30%. Further, the Respondent filed an appeal before the Division bench and contended that a notification in 1998 was available to the Department. Subsequently, a clarificatory notification was issued on December 12, 2000. Therefore, the interest should be calculated from August 20, 1998. After referring to Sections 27A and 75A of the Customs Act, the Division Bench vide Order dated August 22, 2008 (**“the Impugned Order”**) held that the Respondent is entitled to interest on delayed refund of duty drawback from the date of expiry of 3 months after submitting the application for refund in the year 1996 at 15%.

Hence, aggrieved by the Impugned Order, the present appeal was filed by the Appellant.

**Issue:**

Whether interest of 15% should be allowed on delayed refund of deemed-export duty-drawback?

**Held:**

The Hon’ble Supreme Court in ***Civil Appeal No. 7238 of 2009*** held as under:

- Observed that, on a conjoint reading of the provisions of the Exim Policy, 1992-1997, in conjunction with the Central Excise Act, 1944 (**“the Central Excise Act”**) and the Customs Act, it is evident that the supply of goods to the project in question by the

Respondent was a case of 'deemed export.' Thus, the Respondent was rightly entitled to the benefit under the Duty Drawback Scheme.

- Observed that, the applications for refund were made in 1996, and the decision to grant a refund of duty drawback was taken belatedly on October 7, 2002, whereafter the payments were made by way of cheques. Therefore, there was a considerable delay in refunding the duty drawback.
- Noted that, Rule 3 of the Customs, Central Excise Duties and the Service Tax Drawback Rules, 1995 ("**the Drawback Rules**") makes it clear that a drawback may be allowed on the export of goods at such amount or at such rates as may be determined by the Central Government. Further, Rule 14 of the Drawback Rules provides for payment of drawback and interest.
- Noted that, the Explanation to sub-section (1) of Section 27 of the Customs Act clarifies that the expression 'the date of payment of duty or interest' in relation to a person other than an importer shall be construed as 'the date of purchase of goods' by such person.
- Noted that, as per Section 75A (1) of the Customs Act, if duty drawback is not paid within a period of three months from the date of filing of claim, the Claimant would be entitled to interest in addition to the amount of drawback. This interest rate is prescribed to be between 10% and 30% as per Section 27A of the Customs Act. The High Court erred in referring to Notification No. 32/1995 (N.T.)-Customs dated May 26, 1995, where the rate of interest was fixed at 15%.
- Observed that, the refund of duty drawback in civil construction work treating it as deemed export was clarified in an earlier Circular dated August 20, 1998. Thus, according to the Division Bench, by the year 1998 itself, the DGFT had clarified that civil construction work was entitled to the benefit of duty drawback as deemed export.
- Relied on ***Zile Singh v. State of Haryana ((2004) 8 SCC 1)***, ***S. S. Grewal v. State of Punjab (1993 Supplementary (3) SCC 234)*** and ***Rajagopal Reddy (dead) by Lrs. Vs. Padmini Chandrasekharan (dead) by Lrs. ((1995) 2 SCC 630)*** where the Division Bench opined

that the minute the Exim Policy came into force, the benefit of duty drawback automatically became available to the Respondents and that the clarification was only with regard to the doubts expressed in some quarters as to whether civil construction works were also entitled to such benefit.

- Held that, the Respondent was entitled to refund of duty draw back and directed the Appellant to provide interest at the rate of 15%. Hence, the appeal was dismissed.

### **Our Comments:**

Section 27A of the Customs Act talks about “Interest on delayed refunds” where if any duty ordered to be refunded under Section 27(2) of the Customs Act to an applicant is not refunded within three months from the date of receipt of application under Section 27(1) of the Customs Act, there shall be paid to that applicant interest at such rate, [not below five percent.] and not exceeding thirty percent per annum as is for the time being fixed, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty.

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