IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5007 OF 2022

Premium Polyesters Pvt. Ltd. … Petitioner

versus

Union of India & Ors. … Respondents

……

Mr.Ashok Singh for the Petitioner.
Smt. Shehnaz V. Bharucha with Ms. Genevieve Catherine for the Respondents.

…...

CORAM : NITIN JAMDAR & ABHAY AHUJA, JJ.

DATE : 13 APRIL 2023

P.C.:

Heard the learned Counsel for the parties. Taken up for disposal.

2. The Petitioner has applied for interest on delayed refund of drawback which is rejected by the impugned communications. Hence, the Petitioner is before is.

3. The Petitioner is a private limited company engaged in the business of export of readymade garment. The Petitioner had

exported goods and, according to the Petitioner, the Petitioner was entitled to drawback in respect of the said exports. The exports were made under 17 shipping bills. It is the further case of the Petitioner that even though drawback was admissible to the Petitioner under section 75 of the Customs Act, 1962, the drawback was disbursed with delay and therefore, interest is payable as per section 75A of the Act of 1962. The Petitioner accordingly made an application for interest as per section 75A of the Act of 1962 on 2 November 2020 in a requisite form giving necessary details.

4. The prayer for grant of interest was rejected by the impugned communications dated 2 November 2020 and 13 May 2021. One of the reasons given in the impugned communication dated 2 November 2020 is that the drawback was pending for verification of information/ reply of queries in respect of two shipping bills and there was no delay. According to the Petitioner, even assuming that this reason is to be accepted, which is cannot be, there is no discussion whatsoever regarding delayed payment in respect of other 15 shipping bills and the impugned communication is silent regarding same.

5. Section 75A of the Act of 1962 reads thus:

> *"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.*
>
> *[****]*
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> *(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".*

Therefore, when a drawback payable to the claimant under section 75A of the Act of 1962 is not paid within the stipulated period therein, then interest at the rate fixed under section 27A from the date after the expiry of the said period till the date of payment of such drawback is applicable. Therefore, an enquiry is needed into each of the shipping bill as to when the drawback became due, when it was paid and then accordingly calculate the interest thereafter. This entire enquiry is clearly missing in the impugned order. Therefore, the impugned communications will have to be set aside and the application of the Petitioner for interest needs to be restored to the file.

6. Accordingly, the impugned communications dated 2 November 2020 and 13 May 2021 are quashed and set aside. Application of the Petitioner made for interest under section 75A of the Act of 1962 is restored to the file of the Deputy Commissioner of Customs, NS-II, Drawback Section. The Deputy Commissioner of Customs will carry out exercise as indicated above in light of section 75A of the Act of 1962 and take necessary steps in that regard within a period of twelve weeks from today.

7. The writ petition is accordingly disposed of in above terms.

ABHAY AHUJA, J. **NITIN JAMDAR, J.**