

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75607 of 2022

(Arising out of Order No. Legal/Promising Exports-2/2010/1972 dated 12.12.2017 passed by the Development Commissioner, Falta Special Economic Zone, Nizam Palace, 2nd MSO Building, 4th Floor, 234/4, A.J.C. Bose Road, Kolkata – 700 020)

M/s.Promising Exports Limited

: Appellant

229, A.J.C. Bose Road,
2nd Floor, Suit 2A,
Kolkata – 700 020

VERSUS

**Development Commissioner,
Falta Special Economic Zone,**

: Respondent

Nizam Palace, 2nd MSO Building, 4th Floor,
234/4, A.J.C. Bose Road,
Kolkata – 700 020

AND

Customs Appeal No. 75608 of 2022

(Arising out of Order No. Legal/Promising Exports-2/2010/1973 dated 12/13.12.2017 passed by the Development Commissioner, Falta Special Economic Zone, Nizam Palace, 2nd MSO Building, 4th Floor, 234/4, A.J.C. Bose Road, Kolkata – 700 020)

M/s. Promising Exports Limited

: Appellant

229, A.J.C. Bose Road,
2nd Floor, Suit 2A,
Kolkata – 700 020

VERSUS

**Development Commissioner,
Falta Special Economic Zone,**

: Respondent

Nizam Palace, 2nd MSO Building, 4th Floor,
234/4, A.J.C. Bose Road,
Kolkata – 700 020

APPEARANCE:

Shri Arijit Chakraborty, Advocate, for the Appellant

Shri Ashwini Kr. Choudhary, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 77754-77755 / 2025

DATE OF HEARING / DECISION: 19.11.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The captioned appeals have been filed against the Order No. Legal/Promising Exports-2/2010/1972 dated 12.12.2017 and Order No. Legal/Promising Exports-2/2010/1973 dated 12/13.12.2017 passed by the Development Commissioner, Falta Special Economic Zone, Nizam Palace, 2nd MSO Building, 4th Floor, 234/4, A.J.C. Bose Road, Kolkata – 700 020.

2. Since the issues involved in these two appeals are the same, both are taken up together for decision by a common order.

2.1. As the issue involved in both the appeals are the same, we are taking up the Appeal bearing No. C/75607/2022 for deciding the issue on hand. The findings in this appeal shall thus be equally applicable for Customs Appeal No. 75608 of 2022 also.

3. The facts of the case are that the appellant is a Limited Company duly incorporated under the Companies Act, 1956 and is engaged in the business of export on the strength of valid licence duly issued by the competent authority in that regard. During normal course of business, the appellant had supplied Men's Cotton Knitted Vests to an unit at Falta Special Economic Zone (in short FSEZ) under their Invoice to nos. PEL/PETPL/023/02-03 PEL/PETPL/025/02-03 all dated 12.02.2003 and Gents Cotton Knitted T-Shirts under their Invoice nos. PEL/PETPL/020/02-03 to PEL/PETPL/022/02-03 all dated 12.02.2003 duly endorsed by the Zonal Customs Authorities under Duty Drawback Scheme. In the said invoices, the value of Vests were Rs. 160/- per piece and that of the T-Shirts were Rs. 270/- per piece and the appellant had duly submitted their claim for drawback under their letter dated 18.07.2003, submitted on

21.07.2003, before the Ld. Development Commissioner, Falta Export Processing Zone, Kolkata. The total claim of duty drawback was for Rs.7,48,800/- and 6,02,640/- respectively for the vests and T-Shirts so exported. On 31.03.2004, the appellant were issued with Cheque No.861890 dated-31.03.2004 for an amount of Rs.6,52,464/- towards such duty drawback.

3.1. By way of their letter dated 26.12.2005, the appellant prayed for re-valuation and re-consideration of the drawback amount. Reminders were also given to the concerned authority under letters dated 08.02.2006 and 18.06.2007 since no response from the concerned authorities were received.

3.2. Ultimately, the matter was referred to the Apparel Export Promotion Council (in short 'AEPC') by the FSEZ authority under their letter dated 20.09.2007 for proper valuation of the goods. Accordingly, AEPC vide their letter under reference no. AEPC/KOL/07-08/369 dated 25.09.2007 had intimated that the value of the Men's Cotton Knitted T-Shirts under said invoices of the appellant should be Rs.230/- to Rs.240/- per piece. The said letter was received on 05.10.2007.

3.3. Thus, vide letter dated 17.10.2007 before the Ld. Development Commissioner, the appellant prayed for balance drawback claim in accordance with valuation made by AEPC. Reminder was made on 03.12.2007 by the appellant again. At the instance of the authorities, on 03.01.2008 the appellant filed an application for supplementary drawback under Rule 15 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 claiming the differential

drawback of Rs.3,49,488/- and Rs.3,49,488/- with respect to the said invoices.

3.4. As the drawback claimed by the Appellant has not been sanctioned, the director of the Appellant company had preferred a writ petition being W.P. 769 of 2010 (Promising Export Limited & Anr. -Vs- Union of India & Ors.) before the Hon'ble High Court, Calcutta. The Hon'ble Court vide Order dated 23.06.2010 disposed the writ application by directing the Development Commissioner, FSEZ to dispose of the claim in accordance with law by passing a reasoned order, after giving an opportunity of hearing to the appellant.

3.5. On 15.12.2017, the appellant received a copy of Order No. Legal/Promising Exports-2/2010/1972 dated 12.12.2017 passed by the Development Commissioner, FSEZ, Kolkata, whereby the Adjudicating Authority had rejected the claim as time bared under Rule 15(1) of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995.

3.6. Being aggrieved by and dissatisfied with the said order dated 12.12.2017 passed by the Development Commissioner, FSEZ, the appellant preferred an appeal before the Commissioner of Customs (Appeals). Subsequently, the Order-in-Appeal No. KOL/ CUS(Port)/AA/757-758/2018 dated 23.04.2018 came to be passed by the Commissioner of Customs (Appeals) whereby the Appellate Commissioner disposed the appeal on the ground that the Development Commissioner, FSEZ is not in a rank lower than that of Commissioner and therefore, no appeal can be preferred against the said order before the Commissioner (Appeals) and as such, the appeals are not maintainable, being without jurisdiction.

3.7. Under the belief that there was no other remedy available with them, the appellants challenged the order passed by the Development Commissioner, FSEZ, Kolkata before the Hon'ble High Court at Calcutta by preferring another writ petition being WPO 325 of 2018 [M/s. Promising Exports Ltd. & Anr. Vs. Union of India & Ors]. The Hon'ble High Court disposed of the writ petition being WPO 325 of 2018 by granting liberty to the appellant to file appeal against the order passed by the Development Commissioner, FSEZ, Kolkata dated 12.12.2017 before the Customs Excise and Service Tax Appellate Tribunal.

3.8. In terms of the direction and liberty granted by the Hon'ble High Court, Calcutta vide order dated 09.06.2022 passed in WPO 324 of 2018, the appellant prefers this instant appeal viz. Appeal No. C/75607/2022 against the order dated 12.12.2017 passed by the Ld. Development Commissioner, FSEZ, Kolkata.

4. Under similar set of facts, Appeal No. C/75608/2022 has also been filed by them, against the order dated 12/13.12.2017 passed by the Ld. Development Commissioner, FSEZ, Kolkata.

5. Heard the Ld. Counsel representing the appellant as well as the Ld. Authorized Representative representing the Revenue and perused the records.

5.1. We find that the dispute that arises before us is whether the Supplementary Claim of drawback filed on 03.01.2008 by the appellant herein, was barred by limitation in terms of erstwhile Rule 15 of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 ('the Drawback Rules, 1995').

Appeal No. C/75607/2022:

6. We observe that the appellant has filed the drawback claim, vide their letter dated 18.07.2003, on 21.07.2003 and the said claim was processed and sanctioned on 31.03.2004. As the drawback claimed by the Appellant was not sanctioned, the Appellant prayed for re-valuation and re-consideration of the drawback amount. Reminders were also given to the concerned authority under letters dated 08.02.2006 and 18.06.2007 since no response from the concerned authorities were received. Ultimately, the matter was referred to the Apparel Export Promotion Council (in short 'AEPC') by the FSEZ authority under their letter dated 20.09.2007 for proper valuation of the goods. Accordingly, AEPC vide their letter under reference no. AEPC/KOL/07-08/369 dated 25.09.2007 had intimated that the value of the Men's Cotton Knitted T-Shirts under said invoices of the appellant should be Rs.230/- to Rs.240/- per piece. The said letter was received on 05.10.2007.

6.1. Vide letter dated 17.10.2007 before the Ld. Development Commissioner, the appellant prayed for balance drawback claim in accordance with valuation made by AEPC. Reminder was made on 03.12.2007 by the appellant again. At the instance of the authorities, on 03.01.2008 the appellant filed an application for supplementary drawback under Rule 15 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995. Thus, we observe that the re-valuation done by AEPC communicated to the Appellant by the Falta SEZ authorities through their letter dated 20.09.2007, which was served on the appellant on 05.10.2007.

6.2. Thus, we observe that the cause-of-action for the Supplementary Claim of drawback has arisen only on 05.10.2007 and the appellant has filed their Supplementary Claim on 03.01.2008, which is well within the period of limitation of three months as provided under Rule 15 *ibid*.

6.3. Further, it is also seen that the appellant had reminded the Department vide their letters dated 17.10.2007 and 03.12.2007, for sanction of the differential amount of drawback in terms of the valuation by the AEPC as communicated vide their letter dated 25.09.2007.

7. Thus, we observe that there is no delay on the part of the appellant in claiming the differential amount of duty drawback by filing the Supplementary Claim. In view of the above, we hold that the appellant has filed the Supplementary Claim for Drawback well within the time-limit prescribed under Rule 15 *ibid*. Accordingly, we hold that the Order No. Legal/Promising Exports-2/2010/1972 dated 12.12.2017 passed by the Development Commissioner, FSEZ, Kolkata, rejecting the claim as time bared under Rule 15(1) of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995, is not sustainable and hence we set aside the same.

Appeal No. C/75608/2022:

8. Appeal No. C/75608/2022 has been filed by the appellant in respect of a similar claim for drawback, by way of Supplementary Claim filed on 03.01.2008, under Rule 15 of the said Rules. As the issue involved in this appeal is also as to whether the Supplementary Claim filed by the appellant is barred by limitation in

terms of Rule 15 *ibid.* or not, in view of the findings given *supra* in respect of Appeal No. C/75607/2022, we hold that the Supplementary Claim of the appellant is not barred by limitation under Rule 15 of the Drawback Rules, 1995.

9. In view of the above findings, we set aside the impugned orders dated 12/13.12.2017 and remit the matter back to the Development Commissioner, Falta Special Economic Zone / proper officer for consideration of the Supplementary Claims of drawback filed by the appellant. Thereafter, the proper officer shall examine the said claims filed by the appellant and sanction the eligible amount of drawback, if any, as per the re-valuation of the goods done by AEPC.

10. The appeals are allowed in the above terms, with consequential relief, if any, as per law.

(Operative part of the order was pronounced in open court)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)