CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85356 OF 2020

[Arising out of Order-in-Appeal No. MUM-CUSTM-AXP-APP-750/2019-20 dated 29th November 2019 passed by the Commissioner of Customs (Appeals), Mumbai-III]

Miracalus Pharma Pvt Ltd
Town Center, Andheri-Kurla Road, Andheri €
Mumbai,

… ***Appellant***

versus

Commissioner of Customs
Awas Corporate Point, Makwana Lane,
Behind S M Center, Andheri Kurla Road,
Andheri €,Mumbai

…Respondent

APPEARANCE:

None for the appellant

Shri D S Mann, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: _87147 /2023

DATE OF HEARING:	14/11/2023
DATE OF DECISION:	14/11/2023

None appeared for appellant; however, on the limited issue before the Tribunal, the matter may be disposed off.

2. Learned Authorized Representative submitted that the dispute pertains to ineligibility for sanction of drawback on export of 56 consignments of pharmaceutical products undertaken by the appellant herein and in which the entitlement for retention of drawback had not been demonstrated with evidence of proceeds of export having been repatriated warranting recovery under rule 18 of the Customs and Central Excise Drawback Rules, 2017 for which the appropriate forum to challenge order of first appellate authority is vested in the Government of India in revisionary jurisdiction.

3. On perusal of the records, it appears that the original authority had ordered recovery of drawback already sanctioned on the ground of non-compliance with requirement to evince repatriation of proceeds and in which the noticee had not participated as also before the first appellate authority.

4. The appeal filed before the first appellate authority was disposed off in the impugned order[1] of Commissioner of Customs (Appeals), Mumbai-III upholding the recovery in adjudication proceedings on ground of lack of empowerment to condone delay of more than 90 days in filing of the appeal. It would, therefore, appear that the crux of the issue in dispute is eligibility to retain drawback already sanctioned. The Tribunal in *Varsha Fabexpo LLP vs*

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[1] [order-in-appeal no. MUM-CUSTM-AXP-APP-750/2019-20 dated 29th November 2019]

Commissioner of Customs, ACC, Mumbai by order[2] disposing off appeal[3] challenging order[4] of Commissioner of Customs (Appeals), Mumbai-III in similar circumstances refused to consider the appeal on ground of lack of jurisdiction.

5. In view of the facts and submissions, as well as the decision of the Tribunal in *re Varsha Fabexpo LLP,* the appeal is dismissed as out of jurisdiction.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

**/as*

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2 [final order no. A/85082/2023 dated 30th January 2023]
3 [appeal no. C/88222/2019]
4 [order-in-appeal no. MUM-CUSTOMS-AXP-APP-483/19-20 dated 29th August 2019]