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Mumbai- 400 005

F NO. 371/48-60/DBK/2015-RA Date of Issue: 8th November 2017

ORDER NO. O1-13/2017-CUS/ASRA/Mumbai DATED - 8TH NOVEMBER, 2017 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER&EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : M/s. Honeywell TurboTechnology (India) Pvt. Ltd., Pune

Respondent : Commissioner of Central Excise (Appeals-I), Pune-411 001.

Subject: Thirteen Revision Applications filed, under section 129 DD of the Customs Act, 1962 against the thirteen Orders-in-Appeal No.PUN-EXCUS-001-APP-21-15-16to PUN-EXCUS-001-APP-0033-15-16 dated 08.07.2015 passed by the Commissioner (Appeals-I), Central Excise, Pune.

M/s. Honeywell Turbo Technologies Pvt. Ltd.,Raisoni Industrial Estate, Village Maan, Taluka-Mulshi, Near Hinjewadi Phase-II, Pune 411 057 (hereinafter referred to as "the applicant") have filed the thirteen Revision applications vide applications no. 371/48-60/DBK/15-RO all dated 14th October 2015 against the Orders-in-Appeal No. Pune-EXCUS-001-APP-21 to33 -15-16 all dated 15th July 2015passed by the Commissioner (Appeals-I), Central Excise, Pune. The issues involved are identical in all thirteen applications. Therefore the thirteen impugned applications are being adjudicated together in this impugned order

2. M/s. Honeywell Turbo Technologies Pvt. Limited, are engaged in the business of manufacture and export of turbochargers of various configurations as per the requirement and order of customers. The applicants had filed Applications for fixation of Drawback amounts under Rule 7(1) of Customs & Central Excise Duties & Service Tax Drawback Rules, 1995 (Drawback Rules in short) for fixation of amount of drawback as mentioned above, as various types of turbo chargers were claimed to have been manufactured by the Appellant by use of duty paid imported material and exported.

3. The applicant had filed the following 13(Thirteen) applications for fixation of drawback under Rule 6 and/or Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 for fixation of amount of drawback, as various types of turbo chargers were claimed to have been manufactured by the Appellant using duty paid imported material and exported. Vide 13 letters, as mentioned in the table given below, the Additional Commissioner, (BRU)/ Assistant Commissioner, (BRU), Central Excise, Pune-I fixed the amounts of drawback: -

S.No.	Letter	Drawback fixed by
1	PI/BRU/D.IV/Honeywell/160/2013 dated 27.10.2014	Additional Commissioner, (BRU), Central Excise, Pune-I
2	PI/BRU/D.IV/Honeywell/3/2014 dated 07.11.2014	Additional Commissioner, (BRU), Central Excise, Pune-I
3	PI/BRU/D.IV/Honeywell/8/2014 dated 16.12.2014	Additional Commissioner, (BRU), Central Excise, Pune-I

4	PI/BRU/D.IV/Honeywell/17/2014 dated 24.12.2014	Additional Commissioner, (BRU), Central Excise, Pune-I
5	PI/BRU/D.IV/Honeywell/25/2014 dated 24.12.2014	Additional Commissioner, (BRU), Central Excise, Pune-I
6	PI/BRU/D.IV/Honeywell/75/2014 dated 09.12.2014	Assistant Commissioner, (BRU), Central Excise, Pune-I
7	PI/BRU/D.IV/Honeywell/31/2014 dated 14.01.2015	Assistant Commissioner, (BRU), Central Excise, Pune-I
8	PI/BRU/D.IV/Honeywell/53/2014 dated 14.01.2015	Additional Commissioner, (BRU), Central Excise, Pune-I
9	PI/BRU/D.IV/Honeywell/63/2014 dated 27.02.2014	Additional Commissioner, (BRU), Central Excise, Pune-I
10	PI/BRU/D.IV/Honeywell/92/2014 dated 18.03.2015	Additional Commissioner, (BRU), Central Excise, Pune-I
11	PI/BRU/D.IV/Honeywell/107/2014 dated 18.03.2015	Additional Commissioner, (BRU), Central Excise, Pune-I
12	PI/BRU/D.IV/Honeywell/41/2014 dated 25.03.2015	Additional Commissioner, (BRU), Central Excise, Pune-I
13	PI/BRU/D.IV/Honeywell/80/2014 dated 16.03.2015	Additional Commissioner, (BRU), Central Excise, Pune-I

4. However, while fixing the amount of drawback vide aforesaid letters, part of the drawback claims, as mentioned in the table given below, was rejected by Additional /Assistant Commissioner (BRU), Central Excise, Pune-I on the following grounds: -

(i) Wrong quantity / value duty mentioned and Bill of Entry not made available to Division Office;

(ii) Debit of Basic Customs Duty at the time of import in the scrip of Focus Product Scheme (FPS) in terms of Clause (vi) of Notification No.92/2009-Cus dated 11.09.2009or in the scrip of Focus Market Scheme (FMS) as per Clause (vi) of Notification No.93/2009-Cus. dated 11.09.2009;

(iii) Non-fulfillment of condition of Rule 7(1) to the Drawback Rules, viz. the All Industry Rate is more than four – fifth of the amount of duties and taxes of which claim was made.

S No	Letter	Total Drawback claimed	Drawback Rejected			Total Drawback Rejected	Drawback Allowed
		(Rs.)	(i) (Rs.)	(ii) (Rs.)	(iii) (Rs.)	(Rs.)	(Rs.)
1	PI/BRU/D.IV/Honeywell/160/2013 dated 27.10.2014	50970866	134331	25131650	10709342	35975323	14995540
2	PI/BRU/D.IV/Honeywell/3/2014 dated 07.11.2014	19048255	273014	7091672	21507	7386193	11662062
3	PI/BRU/D.IV/Honeywell/8/2014 dated 16.12.2014	8042345	25568	3252227	-	3277795	4764550
4	PI/BRU/D.IV/Honeywell/17/2014 dated 24.12.2014	7519930	17260	4496876	1070480	5584616	1935314
5	PI/BRU/D.IV/Honeywell/25/2014 dated 24.12.2014	11978761	14459	7689623	-	7704082	4274679
6	PI/BRU/D.IV/Honeywell/75/2014 dated 09.12.2014	280172	-	124459	-	124459	155713
7	PI/BRU/D.IV/Honeywell/31/2014 dated 15.01.2015	486498	3253	327507	155738	486498	-
8	PI/BRU/D.IV/Honeywell/53/2014 dated 14.01.2015	11881524	29912	2265077	-	2294989	9586535
9	PI/BRU/D.IV/Honeywell/63/2014 dated 27.02.2015	10509027	23355	2148737	-	2172092	8336935
10	PI/BRU/D.IV/Honeywell/92/2014 dated 18.03.2015	14641986	-	3675931	-	3675931	10966055
11	PI/BRU/D.IV/Honeywell/107/2014 dated 18.03.2015	13572957	-	2653559	-	2653559	10919398
12	PI/BRU/D.IV/Honeywell/41/2014 dated 25.03.2015	15907405	48028	9723483	-	9771511	6135894

13	PI/BRU/D.IV/Honeywell/80/2014 dated 16.03.2015	14653547	95760	3668272	-	3764032	10889515
	TOTAL (Rs.)	**179493273**	**664940**	**72249073**	**11957067**	**84871080**	**94622193**

5. Aggrieved by the rejection of drawback amounts as above, the applicant preferred appeal before The Commissioner of Central Excise (Appeals-I), Pune in terms of Section 35 of Central Excise Act, 1944. Vide Order-in-Appeal No.PUN-EXCUS-001-APP-021-15-16 to PUN-EXCUS-001-APP-0033-15-16 dated 08.07.2015, the Commissioner of CentralExcise (Appeals-I), Pune upheld the decisions of the Additional Commissioner, (BRU)/ Assistant Commissioner, (BRU), Central Excise, Pune-I vide the 13 letters referred to in para 3 above, rejected the 13 Appeals of the applicants on the following grounds:-

- The main issue to be decided in these 13 appeals is whether the amounts of Drawback of Basic Customs duty debited in FPS and FMS scrips were correctly denied. The other major issue, viz. the All Industry Rate being more than four-fifth of the duties and taxes of which Drawback is claimed, is entirely dependent on the first issue. Other two grounds of rejection are based on facts /documents and no decision on the same can be given, as the Appellant have not submitted the relevant documents with their appeals memorandum.

- Import of goods under FPS is governed by Notification 92/2009-Cus dated 11709-2009 read with para 3.15 of the Foreign Trade Policy 2009-14 (in short FTP), Similarly, the import of goods under FMS is governed by Notification No. 93/2009-Cus dated 11.09.2009 read withPara 3.14 of the FTP. As per the said provisions the goods when imported into India against duty credit scrip issued under FPS are exempt from the whole of customs duty leviable under First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the whole of the additional duty leviable thereon under Section 3 of the said Customs Tariff Act. This exemption is available subject to following the conditions stipulated in the said Notifications. As per provisions of Section 75 of the Customs Act, 1962 read with Drawback Rules, the exporter is entitled for the Drawback of the Customs Duties paid on the imported materials used in the manufacture of the goods exported. It

"It is a well settled principle in law that the Court cannot read anything into a statutory provision or a stipulated condition which is plain and intent of the legislature. The language

is the claim of the Appellant in the instant case that the debit in FPS and FMS should be taken as Customs duty paid on the inputs imported under the said schemes, i.e. under Notifications No. 92/2009-Cus &93/2009-Cus. However, it is seen that as per condition (vi) of the Notifications No. 92/2009-Cus 8; No. 93/2009-Cus the importer can avail Drawback or CENVAT Credit of only the Additional duty of Customs leviable under Section 3 of the Customs Tariff Act. Thus it is clear that there is no provision in the said two Notifications for availmentof Drawback of the basic Customs Duty amount debited in the FMS and FPS Scrips. Further, the exemption under the said two Notifications is not unconditional and it is stated in both the Notifications that the exemption is subject to the six conditions stipulated under the said Notifications. In condition (v) of the first Para of both the Notifications, there is a deeming provision, which is only for the purposes of calculation of the Additional duty of Customs leviable under Section 3 of the Customs Tariff Act, if the importer does not claim exemption from the said additional duty of Customs. Thus the claim of the Appellant that the goods are to be deemed to be duty paid as per the said condition (v) of the two Notifications is clearly based on wrong interpretation of the said Notifications by extrapolating the wordings of the said Notifications. As stated above, the position is further clarified beyond doubt in condition (vi) of the first para of the said Notifications wherein it is stipulated ***"that the importer shall be entitled to avail of the Drawback or CENVAT Credit of additional duty leviable under Section 3 of the said Customs Tariff Act against the amount debited in the said scrip."*** Thus even here it becomes clear that Drawback of Basic Customs Duty is not admissible in terms of these Notifications under which the FPS and FMS Scrips are used for duty free import of goods. Any benefit that is not specified in the Notifications cannot be given by extrapolating a meaning into it. A Notification or a statute has to be interpreted by its plain reading and no extraneous meaning can be read into any statute/Notification. This is settled law as laid down by the Hon'ble Supreme Court in the case of **UOI/ Vs. Dharmendra Textiles- 2008 (231)ELT3 (SC)- -**

"It is a well settled principle in law that the Court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent".

In the case of**Excon Building Material Mfg. Co. put. Ltd. Vs. CCE, Bombay - .2005 (186.) E.L.T. 263 (SC)**-the apex court has held that

"It is well settled that where the wording of notification are clear, then the plain language of the notification must be given effect to".

In view of the above it was held that Drawback of Basic Customs Duty debited in the FPS and FMS Scrips is not admissible and the decisions of Ld. Respondent are correct in this regard. Accordingly, as the amounts of Drawback fixed under Rule 7 of the Drawback Rules under the impugned 13 letters need no change, the amounts rejected on the ground that All Industry Rate was more than four fifth of the amount of duties and taxes of which claim was made, are also found to be rejected correctly.

- The Appellant have referred to various Circulars of CBEC in support of their claim, viz. Circular No. 26/2007-Cus dated 20-07-2007 read with Circular No. 50/2011-Cus dated 09-11-2011, Circular No. 18/2006-Cus dated 05-06-2006 and Circular No. 973/7/2013 dated 0409-2013. Based on these Circulars, the Appellant has contended that the goods cleared against duty credit scrip are to be considered as duty paid goods. As regards Circular No. 26/2007-Cus dated 20-07-2007, it is seen that the said Circular is a clarification on the issue regarding recovery of interest on the duty debited in scrip under DEPB Scheme. Although it is stated in Para 4 of the said Circular that it cannot be considered that duty payable is Nil on the goods cleared under DEPB Scheme, it is also stated in Para 5 of the said Circular that the notification issued under DEPB Scheme provides for exemption subject to debit of duties in DEPB Scrips and thus it is not a case where the goods are 'unconditionally' exempted from duty. In other words it is a conditional exemption and hence interest is recoverable in case of default.

- It is an established fact that the recovery of interest is compensatory in nature in case of default. Furthermore it is clearly stated in the said CBEC Circular as well

as letter F. No. 605/85/2006-DBK dated 21-07-2006 that the FTP has been changed and the Government has consciously decided to allow Drawback of additional customs duty paid under DEPB. Notifications No. 92/2009-Cus and Notification No. 93/2009-Cus are therefore consistent with the conscious decision of the Govt. to allow the Drawback of additional customs duty and not of the Basic Customs Duty. As regards Circular No. 50/2011-Cus dated 09.11.2011, the same relates to clearance of goods from Customs Bonded warehouse by debiting duty in scrip. As such the same is not relevant to the matter under consideration especially in view of the fact that the condition under the Notification clearly states that the Drawback of additional customs duty is admissible.

- As regards Circular No. 973/07/2013-CX dated 04-09-2013, in para 3 of the said Circular it is stated that '---- *.The scrip holder is also permitted to avail of cenvatcredit of the duties debited in the scrip_ In view of these provisions it has been decided that such debit of duty in these scrips shall be treated as payment of duty for the purpose of determining the applicability of rule 6 of the Cenvat Credit Rules, 2004'*. Further, the CENVAT Credit of the duties debited in scrip are mentioned in para 1 of the said circular which states that *'The holder of the said scrip, to whom the goods are cleared, is entitled to avail Cenvat credit of duties of excise, against the amount debited in the said scrip as per one of the conditions of the notification'* and the condition of the Notification clearly states that the CENVAT Credit of Additional Customs duty is admissible. As such even by referring to this Circular it is clear that the deeming provision as per the Notifications No. 92/2009-Cus and No. 93/2009-Cus is applicable to Additional Customs duty and Basic Customs Duty is not covered thereunder.

- From the detailed reading of all said the Circulars relied upon by the Appellant, it is seen that none of the said Circulars even remotely imply that the Basic Customs Duty amount debited in FPS and FMS scrips is eligible for calculating the amount of Drawback under Rule 7 of the Drawback Rules.

- Appellant have relied upon a number of case laws. However, in none of the cited case laws, the issue regarding admissibility of Drawback of Basic Customs Duty is dealt with in the context of FPS and FMS Scrips. As concluded in Para 8 above, in view of unambiguous provisions of Notifications

No. 92/2009-Cus 86 No. 93/2009-Cus what is stated in those Notifications has to be strictly followed and no extraneous meaning can be interpolated by applying case laws wherein decisions had been given in the context of different Notifications/ different export promotion schemes, whose conditions were different.

- Appellant have also contended that the decision in the case of Dorft Ketal Chemical (I) Pvt. Ltd. - 2013 (295) ELT 155 (GOI) relied by the Respondent is not applicable to the present case. I find that it has been held in the said decision that only additional duty of Customs paid through DEPB scrip is to be considered for fixation of Brand rate. Thus, the said decision supports the view taken by the Respondent, which has also been found to be the correct interpretation of the relevant Notifications. Thus, I do not find any merit in this argument of the Appellant.

- As an alternative contention, the Appellant have also contended that if Drawback of Basic Customs Duty is not allowed, then their FPS and FMS Scrips may be allowed to be re-credited. It is not disputed that the said goods were liable to Basic Customs Duty on their import into India. Therefore, unless there is an exemption Notification (like Notification No. 92/2009-Cus or 93/2009-Cus) the same has to be paid by the Importer. If re-credit of Basic Customs Duty in the FPS and FMS Scrips were permitted, it would amount to violation of the provisions of the said two Notifications 92/2009-Cus and 93/2009-Cus, unless the Appellant have paid the Basic Customs Duty in cash. Appellant have not submitted any proof of having paid the said Basic Customs Duty in cash. Therefore re-credit of the FPS and FMS Scrips cannot be permitted. Accordingly, I find no merit in the said argument of the Appellant, as it would result in grant of exemption from Basic Customs Duty on the imported goods without any legal provision/exemption Notification.

6. Aggrieved by the said thirteen Orders in Appeal, the applicant have filed thirteen revision applications under Section 35EE before Joint Secretary (RA) on 14.10.2015 bearing Revision Application No.371/48-60/DBK/15-RA.

7. While filing the impugned thirteen Revision Applications, the applicant have pleaded that -

(i) the applicants are entitled for the duty drawback of the customs duty &cesses paid by utilizing the FPS or FMS Scrip. The inputs imported against duty credit scrip were indeed duty paid goods only and hence, they are entitled for availing the benefit of duty draw back under Section 75 of the Customs Act, 1962 read with Drawback Rules.

(ii) Rule 6 / 7 of the Drawback Rules provide for the drawback of duties paid on the material and components used for the manufacture of exported goods. The goods imported against FPS/FMS/DEPB are duty paid goods or the only duty paid in cash would amount to duty paid goods has been clarified vide following CBEC Circulars wherein it is clarified that the goods cleared against duty credit scrip shall be considered as duty paid goods and not exempted goods.

a. Circular No.26/2007-Cus dated 20.07.2007,
b. Circular No. 18/2006-Cus dated 05.06.2006,
c. Circular No.973/7/2013-CX dated 04.09.2013,
d. Circular No. 50/2011-Cus dated 09.11.2011.

(iii) the scrips FMS, FPS, etc. are duty credit scrips wherein the applicants have duty credits available in scrip's, which are obtained against the export of goods, made by them. Hence, utilizing the duty credit scrips by way of debiting the amount equivalent to the Customs duty payable while importing the goods is another mode of payment of Customs duties on imported goods. Hence, the goods cleared under the said scrips are duty paid goods only and the drawback of duty paid would be available under the clear provisions of Section 75 of the Act read with Rule 2(a) & Rule 7 of Drawback Rules.

(iv) the exemption is subject to the condition that the duty scrip is produced at the time of imports for suitable debit in the said scrip (Condition no. (ii) of the Notification No. 92/2009-Cus or 93/2009-Cus). Therefore, the applicants instead of paying customs duty in cash, the same had deposited from the balance

available in the scrip. Hence, it is submitted that asking to deposit of cash duty in addition to debit in the scrip will amount to collection of double duties and hence, once amount equivalent to the duty is debited in the duty credit scrip, the same is considered as duty payment and exempted from making cash payment of duties.

(v) Reliance in this regard has been placed on the decision of Hon'ble CESTAT in case of Universal Power Transformers Pvt. Ltd. [2010 (256) ELT 244 (Tri. Bang)], Tanfac Industries Ltd. Tanfac Industries Ltd. [2009 (240) ELT 341 (Mad.)] and Voltamp Transformers Ltd. (2012 (276) ELT 23S) (Tri. Ahmd.)] affirmed by Gujarat High Court in [2013 (296) ELT A16 (Gujarat)].

(vi) the goods cleared against the duty credit scrip are not exempted goods. Once the fact that goods are not exempted is proved irrespective of the fact whether the notification provides for it or not, the applicants are entitled for duty drawback of basic customs duty and cesses debited in the scrip as per the provisions of Section 75 of Customs Act, 1962 read with Rule 2(a) & Rule 6/ 7 of Duty Drawback Rules, 1995.

(vii) Ld. Commissioner (Appeals)without appreciating the submission and whether the goods imported under the FMS/ FPS are duty paid or not has rejected the appeal only by taking reference to condition no vi of the Notification No. 92/2009-Cus and 93/2009-Cus. The said condition is as below:

"that the importer shall be entitled to avail of the drawback or CENVAT credit of additional duty leviable under Section 3 of the said Customs Tariff Act against the amount debited in the said scrip".

(viii) That the aforesaid condition of the notification cannot be read in isolation. The condition of notification shall be read along with Section 75 of the Customs Act, 1962 to determine the eligibility of duty drawback to the applicant.

(ix) once it is established that the goods imported under FPS/ EMS are duty paid only, the above said condition should be read in the following manner to

provide the harmonious meaning to Section 75 of the Customs Act read with the Drawback Rules.

- The importer shall be entitled to avail of the drawback against the amount debited in the said scrip; or
- CENVAT credit of additional duty leviable under Section 3 of the said Customs Tariff Act against the amount debited in the said scrip

(x) under the above said provisions, the applicants are legally entitled for the drawback of the basic customs duty paid through utilizing the scrips. Hence, taking reference only to the conditions no (vi) of the said Notifications to deny drawback is legally incorrect.

(xi) without appreciating the above said submission, the Ld. Commissioner (Appeals) has held that the above said argument of the applicants would lead to reading between the lines which is not warranted in law in case of clear and specific wording of notification. Further to support its argument, it has relied on various Supreme Court decisions.

(xii) the Ld. Commissioner (Appeals) has erred in recording the above said finding in as much as the argument of the noticees was not in relation to interpretation of the wording of the notification 92/2009-Cus or 93/2009-Cus. The noticees only argued that the drawback is governed by provisions of Section 75 of Customs Act, 1975 and any notification issued cannot curtail the benefit extended by the provisions or Customs Act, 1962 as long as the provisions of Section 75 of the CustomsAct, 1962 is not amended to that extent.

(xiii) the Ld. Commissioner (Appeals) has erred completely in recording the finding that the arguments of the applicants are far stretched and extrapolating the conditions of the notification.

(xiv) the Ld. Commissioner (Appeals) has also erred in finding that condition no. (vi) of the notification can only governed by the deeming fiction created in the notification with respect to the eligibility of drawback or cenvat credit of the duties paid by the applicants using the duty credit scrip.

(xv) assuming without accepting the Ld. Commissioner (Appeals) is correct in law, whether the deeming fiction will entitle the importer to avail the cenvat credit irrespective of the fact whether the same is used in the manufacturing activity or not?

(xvi) irrespective of the condition prescribed in notification the applicants the eligibility of drawback and cenvat credit will continue to be governed by the provisions of DBK Rules or CENVAT Credit Rules, 2004 respectively.

(xvii) reliance in this regard is placed on the decision of Hon'ble Supreme Court in case of Rochiram& Sons [2008 (226) ELT 20 (SC)] wherein the Hon'ble Supreme Court has decided the eligibility of re-export drawback in of inputs which were imported against DEPB scrip and re-exported as found defective afterimportation. The relevantnotification during the period of dispute for import against DEPB scrip was 104/95-Cus as amended wherein there was no provision for even availment of duty drawback of the duties debited in the DEPB scrip. However independent of the conditions of the prevailing notification, the Hon'ble Supreme Court had considered the claim of the assessee for availing the benefit of re-export drawback under Section 74 of the Act.

(xviii) in view of the above referred decision of Hon'ble Supreme Court in case of Rochiram the present claim of the applicants should have been considered by the Ld.Commissioner (Appeals) under Section 75 of the Act read with Rule 2(a), Rule 6 andRule 7 of the DBK Rules independently without referring the conditions of the notification. However, without appreciating the submissions of the applicants, the Ld. Commissioner (Appeals) has recorded the finding that arguments of applicants are far stretched and extrapolating the conditions of the notification.Therefore, the applicants submit that the Ld. Commissioner (Appeals) has erred in understanding the legal propositions made by the applicants. Hence the impugned order is incorrect in law and liable to be set aside.

(xix) the Notification No. 92/2009-Cus or 93/ 2009-Cus itself creates deeming fiction for payment of duty.

(xx) the condition (vi) allowing the credit ofadditional duties of customs paid which means that the inputs imported by the applicants have suffered customs duty. The said condition also allows duty drawback of the additional customs duty. Therefore, the said notification per

se does not treat the goods imported under the FPS or FMS scrip being exempt from duties.

(xxi) in view of the above, the applicants submit that as per the provisions of Section75 read rule 2(a) of DBK Rules, the applicants are entitled for drawback of the entire duty suffered on the duty paid inputs which are used in the manufacture of the finished goods.

(xxii) Para 3.17.11 of FTP reads as under:

"Duty Credit Scrip can also be utilized / debited for payment of Custom Duties in case of EO defaults for Authorizations issued under Chapters 4 and 5 of this Policy. However, penalty / interest shall he required to be paid in cash"

(xxiii) in view of the above specific Para in FTP, the applicants submit that duty liabilitycan be discharged by utilizing the FPS or FMS scrip.Hence the inputs imported under Notification No.92/2009-Cus/ 93-2009-Cus by utilizing FPS or FMS scrip are duty paid inputs only.

(xxiv) Rule 7 or Rule 6 of DBK Rule does not debar the applicants from claiming the duty drawback of the duty paid otherwise than for cash.That in view of the above the applicants are entitled for theduty drawback of the duty paid through FPS or FMS scrip and the goods imported under Notification No. 92/2009-Cus/ 93-2009-Cus. Hence the applicants are entitled for the duty drawback under Rule 7 or Rule 6 of DBK Rules.

(xxv) there is no specific provision under the Notification No 92/2009-Cus/ 93-2009-Cus or DBK Rules which prohibits duty drawback of basic customs duty paid by utilizing FPS or FMS scrip. Therefore, once it is establishedthat goods imported under the FPS or FMS scrip are duty paid, the applicants should be entitled for duty drawback BCD paid utilizing FPS or FMS scrip.

(xxvi) the Ld. Commissioner (Appeals) failed to appreciate the below mentioned CBEC Circulars referred by Applicants in the reply filed:

- Circular No. 18/2006-Cus dated 05.06.2006;
- Circular No. 26/2007-Cus., dated 20.07.2007; and

- Circular No.973/2013-CX dated 04.09.2013.

(xxvii) the above mentioned circulars specifically provide that the goods importedutilizing scrips (such as DEPB, SFIS, etc) are not to be considered as exempted goods.

(xxviii)as a matter of discipline the Adjudicating Authority cannot go beyond the CBEC Circular and is liable to follow the same. This principle has been upheld by the Apex Court in the case of Collector of Central Excise, Patna v. Usha Martin Industries -1997 (094) ELT 460, wherein the Hon'ble Supreme Court held that CBEC circulars are binding on lower authorities.Further, the Supreme Court in the case of Commissioner Of C. Ex., Bolpur v. Ratan Melting & Wire Industries [2008 (231) E.L.T. 22 (S.C.)] held that:

"Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court".

(xxix) The Supreme Court in the above mentioned case held that Circulars issued by CBEC are binding in law on the authorities until and unless there is a Supreme Court or High Court decision contrary to the CBEC Circular. For this reliance has alsobeen placed on the following recent judgments upholding the same principle:

- Union Of India v. Arviva Industries (I) Ltd [2008 (10) STR 534]
- Filatex India Ltd. v. Commissioner Of C. Ex. & Service Tax, Vapi [2014 (302) E.L.T. 446 (Tri. Ahmd.)]

(xxx) reliance is also placed on the Supreme Court decision in the caseof Commissioner of Customs, Calcutta & Others v. Indian Oil Corporation Limited & Another, (2004) 3 SCC 488

(xxxi) the Supreme Court in the above mentioned case held that " *Revenue cannot even raise the contention that the Circular is not valid or is contrary to the provisions of statue, Revenue is bound to follow that circular. The Hon'ble Courts in the following judgments also took the same view and held that that Revenue cannot be permitted to take a stand contrary to the instructions issued by the Board*":

- Collector of Central Excise, Bombay v. Jayant Dalai PrivateLtd. -1996 (88) E.L.T. 638.
- Collector of C.Ex.Vadodara v. Dhiren Chemicals Industries- 2002 (143) E.L.T.19 (S.C.).
- In Re-designco - 2012 (283) ELT 454 G.O.I.

(xxxii) that from the above mentioned judicial pronouncements it is quite clear thatwhen the CBEC Circular is in operation customs authorities are bound to follow such circular until and unless there is a contrary view taken by High Court or Supreme Court.

(xxxiii) inthe present case, the CBEC Circulars issued clearly provides that goods imported utilizing scrips are to be considered as taxable goods and not exempted goods. Once. it is established that goods are taxable, the Applicants submit there should not be denial of duty drawback of customs duty paid utilizing FPS or FMS scrip.

(xxxiv) the Ld. Commissioner (Appeals) has erred in finding that the circulars relied upon by the applicants are irrelevant and not clarifying as to whether the basic customs duties debited in the scrip shall be allowed as drawback or not.

(xxxv) the applicants submit as per the clarification issued from time to time, the goods imported/ cleared domestically against duty credit scrip shall be considered as duty paid goods and drawback of the duties debited shall be allowed as drawback under Section 75 of the Customs Act, 1962 read with DBK Rules.

(xxxvi) the Ld. Commissioner (Appeals) ought to have considered the alternative argument of the applicants to sanction at least All Industry Rate drawback during the pendency of the application for fixation of drawback under Rule 7.the applicants were under bonafide belief that basic customs duty debited in the scrip is available as drawback

and hence considered the same while filing the application. However. by filing the application under Rule 7, the applicants could not get any amount of drawback which otherwise would have been available to them as drawback under Rule 3 i.e. All Industry Rate if the applicants wouldhave declared the respective drawback schedule entry in the shipping bill.

(xxxvii) during the pendency of litigation in respectof basiccustoms duty debited in scrip is available as drawback or not for the purpose of fixing actual duty suffered, at least All Industry Rate of drawback shall be sanctioned totheapplicants in respect of the shipping bilk wherein the test of 4/5'h of actual duty suffered is not satisfied on account of such exclusion of basic customs duty debited in the scrip to avoid the financial hardship. Therefore, in respect of such shipping bills in dispute. at least an amount equivalent to the All Industry Rate of drawback shall be allowed to the applicants.

(xxxviii) reliance in this regard is placed on CBEC Circular No. 10/2003-Cus wherein itwas clarified by CBEC that considering the time involved in fixation of Brand Rate of Drawback, the exporter should be sanctioned the All Industry Rate of Drawback to avoid financial hardship on the exporter. That further reliance in this regard is also placed on the decision of Hon'ble BombayHigh Court in case of Alfa Lavel (India) Ltd. [2014 (309) ELT 17 (Bom.)] wherein the Hon'ble High Court has considered the principle of provisional drawback. That the Ld. Commissioner (Appeals) ought to considered the arguments ofthe applicants extended during the personal hearing and should have allowed the duty drawback as eligible under Rule 3 of DBK Rules during the pendency of the litigation.

(xxxix) theLd. Commissioner (Appeals) ought to have followed its own decision in case of Cummins India Ltd. (Order-in-Appeal No. PHI/RP/292, 293, 294/2012 dated 14.12.2012) wherein the aforesaid circular was relied upon to hold that All Industry Rate of drawback under Rule 3 can be obtained by exporter before filing the application under Rule 7. In the present case, since the applicants have not obtained any such All IndustryRate of Drawback in respect of the shipping bills in dispute, it is submitted that All Industry Rate of Drawback should at least be sanctioned to them pending this legal dispute to avoid the financial hardship as per CBEC circular and decisions referred above. That in view of the above, the applicants submit that till the

time the legal issue getssettled, the applicants should be allowed the All Industry Rate of Drawback.

(xl) the Ld. Commissioner (Appeals) should have restored the duty credit in the FPS or FMS scrip while holding that the applicants are not entitled for duty drawback under Rule 6 or 7 of the DBK Rule of duty paid through FPS or FMS scrip. duty paid through FPS or FMS scrip should be restored in FPS or FMS scrip respectively. That the Ld. Commissioner (Appeals) should have at least issued a certificate based on which the applicants could have re-credited theFPS or FMS scrip to that extent from DGFT. That reliance in this regard is placed on the CBEC Circular No.27/2010-Cus dated 13.08.2010 wherein it was clarified by CBEC that the refund of additional duty of customs under Notification No. 102/2007-Cus should be allowed by way of re crediting the DEPB scrip.

(xli) in this regard the applicants wish to place reliance on the decision of Hon'ble Supreme Court in case of Rochiram (supra) wherein the Hon'ble Supreme Court had directed to issue a fresh scrip equivalent to the drawback available under Section 74 of the Act.Similarly, the Hon'ble CESTAT in te case of Cipla Ltd. [2015-TIOL-1927-CESTAT-MUM] has allowed the registration of DEPB scrip issued I lieu of drawback of the goods re- exported from India which were imported against DEPB scrip. That the stand taken by the Ld. Commissioner (Appeals) for rejecting the re-credit is completely against the above referred settled position of law.

8. Since the Revision applications filed by the applicant were long pending with Revisionary Authority, Delhi and the amount involved therein was huge, they approached the Hon'ble Delhi High Court vide Writ Petition (C) 6776 of 2017 for the appointment of revisionary authority and early disposal of their applications. The Hon'ble Delhi High Court vide its final Order dated 08.08.2017 in the above Writ Petition directed that the RA will endeavour to expeditiously dispose of the Petitioner's application and, in any event, not later than four weeks from the date of its Order.

9. In pursuance of the Office Memorandum issued under F No. 276/125/2016-CX.8A(Pt.) dated 25.08.2017, the office of the Principal Commissioner (RA), Mumbai has started functioning from 06.09.2017.The case file of the instant revision application was received in this office from RA office Delhi on 14.09.2017. The personal hearing in the case was granted and held on16.10.2017 in which the applicant and his advocate appearedand re-

iterated the submissions and compendiums.The applicant also filed additional submissions vide their letter dated 02nd November 2017 received in this office on 8th November 2017.

10. It was submitted by the applicant that in view of law laid down in the Hon'ble Gujarat High Court Judgement [2016(339) ELT 509 Guj] in Ratnamani Metals and Tubes Ltd their 13 RAs may be allowed. However, Shri Satbir Sharma, Assistant Commissioner, GST & CX., Pune-I opposed the applicants & filed a written brief on behalf of the Commissioner GST & CEX, Pune-I and prayed that the said RAs may be dismissed.

11. The Government has carefully gone through the submissions made by the applicant in the instant Revision Application and oral submissions made during the personal hearing along with the Order in Appeal, 13 letters referred to in Para 3 above, Orders in Appeal,and the circulars / relevant judgements cited in this case.

12. The Government notes that Applicants had filed Applications for fixation of Drawback amounts under Rule 7(1) of Customs & Central Excise Duties & Service Tax Drawback Rules, 1995 ('Drawback Rules' in short) for fixation of amount of drawback,however, while fixing the amount of drawback vide aforesaid letters, part of the drawback claims, was rejected by Additional /Assistant Commissioner (BRU), Central Excise, Pune-I on the following grounds: -

(i) Wrong quantity / value duty mentioned Bill of Entry not made available to Division Office;

(ii) Debit of Basic Customs Duty at the time of import in the scrip of Focus Product Scheme (FPS) in terms of Clause (vi) of Notification No.92/2009-Cus dated 11.09.2009 or in the scrip of Focus Market Scheme (FMS) as per Clause (vi) of Notification No.93/2009-Customs dated 11.09.2009;

(iii) Non-fulfillment of condition of Rule 7(1) to the Drawback Rules, viz. the All Industry Rate is more than four - fifth of the amount of duties and taxes of which claim was made.

13. The Government notes that the Additional /Assistant Commissioner (BRU), Central Excise, Pune-I had denied the drawback claim against Basic Customs duty on the following grounds

- that they have claimed drawback of basic customs duty leviable on inputs imported under the exemption notification No 92/2009 Cus dated 11.09.2009 as amended, which exempts goods when imported into India against a duty credit scrip issued under FPS in accordance with para 3.15 of Foreign Trade Policy 2009-2014 and the exemption is given in two parts, viz.

  a) the whole of the duty of Customs leviable thereon under the First Schedule of the Customs Tariff Act, 1975

  b) the whole of the additional duty leviable thereon under Section 3 of the Customs Tariff Act,

  And condition No.(vi) of the notification No 92/2009 Cus dated 11.09.2009 states

  "that the importer shall be entitled to avail the drawback of cenvat credit of additional duty leviable under Section 3 of the Customs Tariff Act against the amount debited in the said scrip"

- After going through the said notification it is observed that it is a conditional exemption notification exempting certain goods from payment of basic customs duty and additional customs duty if the conditions mentioned therein are followed. In other words when any goods are imported by availing benefit of the said notification, those goodsare exempted goods i.e. on which customs duty has not been paid. When customs duty has not been paid on the goods, a question of granting drawback in respect of the same does not arise. However, by virtue of condition no. (vi) of the said notification the importer is entitled to avail drawback /cenvat credit of additional duty leviable under Section 3 of Customs Tariff Act against the amount debited in the scrip. It is observed that the notification does not grant such a benefit in respect of basic customs duty debited in the scrip. In other words drawback of basic customs duty debited in the scrip is not allowed.

14. On the contrary, the applicant has contended that Customs duty paid by debiting FPS/FMS scrip is valid payment of Customs duty which has been repeatedly recognized by Courts and Circulars as equivalent to payment of duty using cash; there is no bar under the drawback rules, against the grant of drawback of BCD paid by debiting duty credit scrips, when such duty paid inputs have been used in the manufacture of goods exported out of India; imports against duty free scrip is administered by way of an exemption notification No 92/2009 Customs dated 11.09.2009 also does not bar such grant of drawback.

15. In their further written submissions made on the date of hearing, the applicants' have reliedupon Gujarat High Court Judgement [reported in **2016(339)ELT 509 (Gujarat)**] in the cases of **Ratnamani Metals and Tubes Ltd and Jayant Agro Organics Ltd.** which has decided the identical issue of drawback of Basic Customs duty paid using the scrips.

16. After analyzing the law pertaining to the issue in detail, the High Court, vide its decision dated 06.05.2016 held that (a) duty paid by debiting duty scrips is equivalent to payment of duty using cash, (b) thereis no provision under the drawback rules prohibiting the grant of drawback on BCD paid by debiting duty scrip, (c) the condition in the notifications governing duty scrips, regarding grant of drawback of CVD, does not bar the grant of drawback of basic customs duty paid by debiting scrip, and thus, drawback of basic customs duty paid by debiting scrips like DEPB/FPS/FMS/etc. will be available to the assesse.

17. The department in the cross objections have stated that the rejection of drawback to the extent of customs duty and cess paid by way of utilization of FPS/FMS scrip was based on the fact the notification no.92/2009-Cus and 93/2009-Cus both dated 11.09.2009 provide for exemption of payment of customs duty to the goods imported into India against duty credit scrip issued under FPS & FMS respectively. Further, in the condition No.(vi) mentioned in the said notification, it is provided that the importer shall be entitled to avail the drawback of cenvat credit of additional duty leviable under Section 3 of the Customs Tariff Act against the amount debited in the said scrip. It is thus inferred that there is no mention of Basic Customs duty paid by way of debit; in scrip being entitled for drawback and therefore this benefit was not extended to the applicants. Further, the CBEC circulars and Case Laws quoted by the applicants clarify that the goods cleared against duty credit scrip shall be considered as duty paid goods and not exempted goods. However, it is not the case of the department that appropriate duty has not been paid by the applicants but the present case

relates to entitlement of drawback of duty paid through scrip's or not and therefore, the circular and case laws quoted by them are not applicable to the present case.

18. It is also stated by the department that notification no.92/2009-Cus and 93/2009-Cus based on which the brand rate fixation to the extent of Basic Customs duties paid through FPS/FMS scrips are rejected, have been amended from time to time but the position with reference benefit of drawbackin respect of basic customs duty paid through scrip remains the same till date. Therefore, it was contended by the department that there has never been an intention to allow drawback on the Basic Customs duty paid through scrips at all.

19. The Government has carefully examined the contentions of both the sides. The Government has noticed that the identical issue had come up for consideration before Hon'ble Gujarat High Court in the case of **Ratnamani Metals and Tubes Ltd and Jayant Agro Organics Ltd. [reported in 2016(339)ELT 509 (Guj)].** While deciding the issue whether, when an importer utilizes DEPB scrip for the purpose of customs duty on inputs and raw materials, benefit of duty drawback would be available upon export of final product, after hearing both sides, High Court had allowed the petitions. The relevant paras of the said judgement (paras 16 and 17) dated 06.05.2016 are reproduced below:-

"16. It can thus be seen that the DEPB scheme aims at neutralising the incidence of customs duty on import component of export product, where upon export, credit would be given at specified rate on the FOB value of the exports. Such credit could be utilised for payment of duty in future or may even be traded. It was in this background that Supreme Court in case of Liberty India v. Commissioner of Income tax reported in 317 ITR 218, had held that DEPB being an incentive which flows from the scheme framed by the Central Government, hence, incentives profits are not profit derived from the eligible business (in the said case falling under Section 80IB of the Income Tax Act) and belong to the category of ancillary profits of the undertaking. Such incentive in the nature of DEPB benefit from the angle of the income tax has been seen as income of the undertaking. Thus when an importer whether imports goods under DEPB scheme or pays customs duty on the imports on purchased DEPB credits, he essentially pays customs duty by adjustment of the credit in the passbook. It would therefore, be incorrect to state that the imports made in such fashion have not suffered the customs duty".

17. "As noted, neither Section 75 nor the Rules of 1995, prohibits entitlement of drawback when the basic customs duty has been paid through DEPB scrip. To read such

limitation through the clarification issued by the Government of India in various circulars which principally touch the question of eligibility of drawback, when additional duties have been paid through DEPB would not be the correct interpretative process".

Further, the said judgment also considers the various exports promotion schemes like VKGUY, FMS & FPS on the same footing as that of DEPB Scheme. The relevant parasi.e 19, 20 of the said judgment are reproduced below:-

"19 The case of imports under different other schemes substantially stand on the same footing. Though as is bound to be, terms of each scheme are different. In case of VKGUY, the foreign policy provides for incentive with the objective to compensate high transport costs and offset other disadvantages to promote exports of various products specified therein which include the agricultural produce, minor forest produce, Gram Udyog products, forest based products etc. In case of such exports, the incentive is made available in form of duty credit scrip at the rate of 5% of the FOB value of the exports. Likewise, in case of FMS, it is provided that same is to offset high freight cost and other externalities to select international markets to enhance India's export competitiveness in these markets. Specified product exported to specified countries qualify forsuch benefits. Duty credit scrip at the specified rate of the FOB value of the exports would be provided. In case of FPS, the objective is to promote export of products which have high export intensity/employment potential so as to offset infrastructural inefficiencies and other associated costs involved in marketing of these products. In this scheme also, exports qualify for duty credit scrip at the rate of 2% or 5% of the FOB value as provided in the notification. It can thus be seen that in all these cases, for different reasons the Government of India provides export incentives at specified rates of the value of the exports. The intention is to make the exports viable, more competitive and to neutralise certain inherent handicap faced by the industry in the specified areas. These export incentive schemes have nothing to do with offset of duty element of imported raw materials or inputs used in export products, unlike as in the case of DEPB."

"20 Thus, under these schemes, the Government of India having realised that exports in question require added incentive, provides for the same in form of credit at specified rate of FOB value of the export which credit can be utilised for payment of customs duty.

To disqualify such payment for the purpose of duty drawback would indirectly amount to denying the benefit of the export incentive scheme itself".

20. The office of the Commissioner of Goods and Service Tax, Kutch, Gandhidham vide letter F No. Legal/SCA-01/2015 dated 17.10.2017 has informed that Senior Analyst, Legal Cell CBEC New Delhi vide letter F.No. 276/178/2016-CX.8A, dated 21.09.2016 has informed that with the approval of the competent authority it was decided not to file SLP in the subject case, as the Revenue has been taking views that lead to conclusion that debit of BCD in the scrip is a mode of payment of that duty in lieu of cash payment of duty, since freely transferable duty credit was given in lieu of cash refund or incentive.

21. In view of the aforesaid clarification of the Legal Cell CBEC, the Government observes that Hon'ble Gujarat High Court's order dated 06.05.2016 in the case of Ratnamani Metals and Tubes Ltd and Jayant Agro Organics Limited has attained finality.

22. Thus, it is evident that the issue involved in this case is covered by the ratio of aforesaid Hon'ble Gujarat High Court's order dated 06.05.2016 in the case of RatnamaniMetals and Tubes Ltd and Jayant Agro Organics Ltd. [reported in 2016 (339) ELT 509 (Gujarat)], in favour of the applicant.

23. The Government following the ratio of aforementioned judgment of Gujarat High Court which has attained the finality, holds that the applicant are entitled to drawback against the Basic Customs Duty paid through Focus Product Scheme (FPS) and Focus Product Scheme (FMS) scrip.

24. Government also observes that the applicant has requested that they should be allowed All Industry Rate of drawback by placing reliance in this regard on CBEC Circular No. 10/2003-Cus wherein it was clarified by CBEC that considering the time involved in fixation of Brand Rate of Drawback, the exporter should be sanctioned the All Industry Rate of Drawback to avoid financial hardship on the exporter. That further reliance in this regard is also placed on the decision of Hon'ble Bombay High Court in case of Alfa Lavel (India) Ltd. [2014 (309) ELT 17 (Bom.)] wherein the Hon'ble High Court has considered the principle of provisional drawback.

25. In this regard the Government observes that there was no such provision existing at the material time of export for providing payment of provisional drawback in respect of cases under litigation. The Government further observes that drawback claims have been rejected

for non fulfillment of condition of Rule 7(1) of Customs & Central Excise Duties & Service Tax Drawback Rules, 1995, in as much as the All Industry Rate is more than four – fifth of the amount of duties and taxes of which claim was made. In this connection para 23 of Hon'ble Bombay High Court's, judgment in the case of **Alfa Laval (India) Vs Union of India Ltd. 2014 (309) E.L.T. 17 (Bom.)** is referred, which reads as under :

> *"Rule 7 categorically provides that where in respect of any goods, the manufacturer or exporter finds that the amount or rate of drawback determined under Rule 3 is less than 4/5th of the duties or taxes paid on the inputs/input services used in the production or manufacture of said goods, he may make an application within sixty days for determination of the amount or rate of drawback thereof under Rule 7, disclosing all the relevant facts and subject to the other conditions stipulated under Rule 7. The word "finds" appearing in Rule 7 after the words "manufacturer or exporter", ex facie indicates that it is only once the manufacturer or exporter comes to the conclusion that the amount or rate of drawback determined under Rule 3 is less than 4/5th of the duties or taxes paid on the inputs/input services used in the production or manufacture of the exported goods, can he make an application for determining the Brand Rate of drawback under Rule 7. There could certainly be instances where the manufacturer or exporter would not, at the time of export, be able to determine and/or come to the conclusion that the rate of drawback determined under Rule 3 for the specified exported goods, is in fact less than 4/5th of the duties or taxes paid on the inputs/input services used in the production or manufacture of the said exported goods. To cover this difference, Rule 7(1) allows the manufacturer or exporter to make an application in this regard and claim the difference, provided the rate of drawback determined under Rule 3, is in fact less than 4/5th of the duties or taxes paid on the inputs/input services, used in the production or manufacture of the said exported goods. **In other words, if the rate of drawback as determined under Rule 3 is more than 4/5th (80%) of the duties or taxes paid on the inputs/input services used, then the application made under Rule 7(1) would have to be rejected.***

26. From the above, the Government observes that application under Rule 7(1) of Customs & Central Excise Duties & Service Tax Drawback Rules, 1995 can be made only when rate of drawback determined under Rule 3 is less than 4/5th of the duties or taxes paid on the inputs/input services used in the production or manufacture of the exported goods. In

view of the above Government observes that the decision of the Additional Commissioner (BRU) / Assistant Commissioner (BRU), Central Excise Pune-I for rejecting the claim for non fulfillment of condition of Rule 7(1) of Customs & Central Excise Duties & Service Tax Drawback Rules, 1995 i.e. when the All Industry Rate is more than four - fifth of the amount of duties and taxes of which claim was made, is legal and correct and hence is liable to be upheld.

27. The applicant has pleaded that the drawback may also be allowed on the wrong quantity / value; duty mentioned and bills of entry not produced by them before the department. There is no provision in law which could allow any assessee to claim drawback without producing the bills of entry. The portion of drawback in respect of which the applicant has not produced bills of entry is liable to be rejected.

Order

In view of the above facts and circumstances, the Government of India

(i) allows the drawback on the Basic Customs Duty paid through Focus Product Scheme (FPS) and Focus Product Market Scheme (FMS) scrip to the applicantas claimed under the impugned thirteen applications,

(ii) upholds the orders of Commissioner (Appeal) and Additional Commissioner (BRU) / Assistant Commissioner (BRU), Central Excise Pune-I rejecting the drawback claim for non fulfillment of condition of Rule 7(1) of Customs & Central Excise Duties & Service Tax Drawback Rules, 1995.

(iii) upholds the rejection of the claim of drawback of the applicant in respect of the wrong quantity / value, duty mentioned and bills of entry not produced by them before the department.

The thirteen revision applications are allowed subject to the aforementioned terms and conditions and theOrder in Appeal No. No.PUN-EXCUS-001-APP-21-15-16 to PUN-EXCUS-001-APP-0033-15-16 dated 08.07.2015 is modified to that extent.

8th November 2017

(ASHOK KUMAR MEHTA)
Principal Commissioner (RA) & Ex-Offico
Additional Secretary to Government of India
Mumbai

To,
M/s. Honeywell Turbo Technologies Pvt. Ltd.,
Raisoni Industrial Estat,
Village Maan, Taluka-Mulshi,
Near Hinjewadi Phase-II,
Pune 411 057

ORDER No. O1-13 / 17-CUS /ASRA/ Mumbai DATED 8TH NOVEMBER, 2017

Copy to;

1. The Principal Commissioner of GST & CX , Pune-I Commissionerate
2. The Commissioner (Appeals-I), GST &CX, Pune, F-Wing, 3rd floor, ICE, House, Sassoon Road, Pune-411001
3. The Additional Commissioner (BRU), GST & CX,, Pune-I Commissionerate
4. The Assistant Commissioner (BRU), GST & CX,, Pune-I Commissionerate
5. Sr. P.S. to AS (RA), Mumbai
6. Guard file
7. Spare Copy.