REGISTERED SPEED POST AD

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 380/78/DBK/14-RA
F. No. 380/68/DBK/14-RA
F. No. 380/81/DBK/14-RA

Date of Issue: 11/02/20

ORDER NO. 05-07/2020-CUS(WZ) /ASRA/MUMBAI DATED 31.01.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT.SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Commissioner of Customs
Custom House,
Kandla

Respondent : M/s APL International Pvt. Ltd.,
408, Tulsani Chambers,
Nariman Point,
Mumbai
& 2 Others

Subject : Revision Applications filed under Section 129DD of the Customs Act, 1962 against OIA No. 67 to 89/2014/Cus/Commr(A)/KDL/2014 dated 10.03.2014 passed by the Commissioner of Customs(Appeals), Kandla.

ORDER

These revision applications have been filed by the Commissioner of Customs, Kandla(hereinafter referred to as "the applicant" or "the Department") against OIA No. 67 to 89/2014/Cus/Commr(A)/KDL/2014 dated 10.03.2014 passed by the Commissioner of Customs(Appeals), Kandla in the case of M/s APL International Pvt. Ltd.

2.1 M/s APL International Pvt. Ltd., 408, Tulsani Chamber, Nariman Point, Mumbai (hereinafter referred to as "respondent no. 1") are engaged in the export of agriculture products including Soya Bean De Oiled Cake(hereinafter referred to as DOC) falling under Tariff Item No. 2304 0020 of the First Schedule to the Customs Tariff Act, 1975. Shri Rajendra Samariya (hereinafter referred to as "respondent no. 2") was the Director of the respondent no. 1 at the relevant time. All the activities of the respondent no. 1 relating to export and availment of duty drawback had taken place as per his directions. The said respondent no. 1 had exported Soya De Oiled Cake from Kandla Port falling under the jurisdiction of the Commissioner of Customs, Kandla under claim of drawback.

2.2 M/s Vippy Industries Ltd., Dewas(hereinafter referred to as "respondent no. 3") was a manufacturer engaged in the manufacture of soya oil and soya DOC by solvent extraction process using hexane as solvent in their factories and had sold the said DOC to the respondent no. 1 which was exported by respondent no. 1 by availing the facility of duty drawback.

2.3 An intelligence gathered by the Directorate General of Central Excise Intelligence(DGCEI) , Regional Unit, Indore indicated that the respondent no. 1 had exported the DOC falling under Tariff Item No. 2304 0020 of the First Schedule to the Customs Tariff Act, 1975 from Kandla Port by availing the benefit of Duty Drawback. The said DOC was purchased by them from the manufacturers who had manufactured the same by availing the benefit under Rule 19(2) of the CER, 2002 by procuring hexane without payment of central excise duty by following the procedure as prescribed under Rule 19(2) of the CER, 2002 and notifications issued thereunder. The said hexane procured without payment of central excise duty was used in the manufacture of DOC

and such DOC was exported by respondent no. 1 under claim of duty drawback @ 1% of FOB value as per All Industry Rate of Drawback(Sr. No. 23) prescribed vide Notification No. 81/2006-Cus(NT) dated 13.07.2006, 68/2007-Cus(NT) dated 16.07.2007 superseded by Notification No. 103/2008-Cus(NT) dated 29.08.2008.

2.4 In view of the provisions of Rule 3 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 and condition 7(f) of the Notification No. 81/2006-Cus(NT) dated 13.07.2006, 68/2007-Cus(NT) dated 16.07.2007(and other similar notifications), it appeared that All Industry Rate of Drawback specified under the Schedule annexed to Notification No. 81/2006-Cus(NT) dated 13.07.2006, 68/2007-Cus(NT) dated 16.07.2007, as amended, from time to time(and other similar notifications) are not admissible on export of DOC if the same is manufactured in terms of sub-rule (2) of Rule 19 of the CER, 2002 by using excisable material(hexane) in respect of which duties have not been paid.

3.1 On the basis of the details, partywise chart submitted by the respondent no. 1 and the investigation carried out at the end of the manufacturers, the documents of duty free procurement of hexane by availing the benefit under Rule 19(2) of the Central Excise Rules, 2002 resumed from them; viz. hexane procurement and consumption registers, Appendix-46 and invoices of petroleum companies M/s HPCL, M/s BPCL, M/s IOCL etc. and the statements of authorised persons of the manufacturer and the legal position mentioned above, it appeared that the respondent no. 1 had wrongly claimed and availed duty drawback amounting to Rs. 1,44,047/- from Kandla Port on the exported goods(DOC) valued at Rs. 1,44,04,700/- purchased by them from the manufacturers who had manufactured the same under bond by procuring hexane without payment of duty payable thereon and by availing the benefit under Rule 19(2) of the CER, 2002. It therefore appeared that the respondent no. 1 was not entitled to duty drawback on the exports of such DOC in view of the provisions of Rule 3 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995(Drawback Rules) and condition 7(f) of Notification No. 81/2006-Cus(NT) dated 13.07.2006, 68/2007-Cus(NT) dated 16.07.2007 and condition no. 8(f) of Notification No. 103/2008-Cus(NT) dated 29.08.2008 and therefore the said amount of duty drawback paid to them appeared to be recoverable from them under Rule 16 of the Drawback Rules read with Section 75 and Section 28(1) of the Customs Act, 1962. It also appeared that the said

respondent no. 1 had wrongly claimed and irregularly availed the said amount of duty drawback by suppression of facts and willful mis-declaration as they had not disclosed the facts of manufacturing the DOC by availing the benefit of Rule 19(2) of the CER, 2002 in the Appendix-I submitted with the shipping bills for claim of drawback. The respondent no. 1 was also liable to pay interest at the applicable rate under Section 28AB of the Customs Act, 1962.

3.2 It appeared that these acts of omission and commission on the part of respondent no. 1 and respondent no. 2 - the Director of the company who was over all in charge of all the export related work including the availment of drawback at the relevant period have knowingly and intentionally got filed incorrect declaration in Appendix-III of the shipping bills that DOC had been manufactured without availing the benefit of Rule 19(2) of the CER, 2002 thereby rendering themselves liable to penalty under Section 114 of the Customs Act, 1962 and Section 114AA of the Customs Act, 1962.

3.3 The manufacturer of DOC; respondent no. 3 had in connivance with the respondent no. 1 purposely not issued ARE-2 for removal of the said DOC and by abetting/omission had rendered the DOC liable for confiscation under Section 113(i) of the Customs Act, 1962. The respondent no. 3, had also been called upon to show cause why penalty should not be imposed on them under Section 114(iii) of the Customs Act, 1962 for having connived with the exporter by purposely not issuing ARE-2. The respondents were issued SCN on the above grounds.

4. After careful consideration of the evidences adduced by the investigation and relying on various case laws, the Additional Commissioner of Customs, Custom House, Kandla vide OIO No. KDL/DBK/1419/ADC/SS/2013-14 dated 28/29.10.2013 disallowed the drawback claims amounting to Rs. 1,44,047/- and ordered recovery of the amount of duty drawback already sanctioned/released, directed the respondent no. 1 to pay back the amount of duty drawback erroneously availed by them, ordered recovery of interest on the amount of duty drawback erroneously sanctioned, imposed penalty of Rs. 1,00,000/- on respondent no. 1, imposed penalty of Rs. 1,00,000/- on respondent no. 3 and imposed penalty of Rs. 50,000/- on respondent no. 2.

5. Aggrieved by the OIO, the respondents filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) averred that procurement of raw

materials under Rule 19(2) of the CER, 2002 would not be a hindrance for claiming 1% drawback being the customs component. He took note of the fact that the dispute related to the period prior to 17.09.2010. However, he discussed the contents of Circular No. 35/2010-Cus dated 17.09.2010 for interpretation of Notification No. 81/2006-Cus(NT), 68/2007-Cus(NT) & 103/2008. He observed that condition 5/6 of these notifications identifies the customs component when CENVAT facility has been availed. It also clarifies that in a situation where the rate of drawback under the category of CENVAT facility availed and CENVAT facility not being availed is the same signifies that the drawback pertains only to the customs component. The benefits under Rule 18 and Rule 19(2) would have no effect on drawback of customs component. He observed that the respondent no. 1 had claimed drawback of 1% of FOB value which was the customs component of AIR drawback. He averred that rebate of duty on export goods and drawback of customs component does not amount to double benefit. The Commissioner(Appeals) concluded that Notification No. 84/2010-Cus(NT) dated 17.09.2010 & Circular No. 35/2010-Cus dated 17.09.2010 reinforce the position that drawback of customs was available even if facility under Rule 18 or Rule 19(2) has been availed. He held that circulars are clarificatory in nature and would apply to notifications issued earlier if the provisions therein are identical and that Notification No. 84/2010-Cus(NT) and Circular No. 35/2010-Cus make explicit what was implicit in earlier notification. In the light of these findings, the Commissioner(Appeals) vide his OIA No. 67 to 89/2014/Cus/Commr(A)/KDL/2014 dated 10.03.2014 set aside the OIO with consequential relief to the appellants.

6. The Commissioner of Customs, Kandla found that the OIA No. 67 to 89/2014/Cus/Commr(A)/KDL/2014 dated 10.03.2014 was not legal and proper and therefore directed the Assistant Commissioner to file revision application on the following grounds :

(i) AIR Drawback is not available when an exporter avails the facility under Rule 19(2) of the CER, 2002 as per condition 7(f) of Notification No. 81/2006-Cus(NT) and 8(f) of Notification No. 103/2008-Cus(NT).

(ii) Rule 5 of the Drawback Rules provides that revised rate of drawback could be given retrospective effect whereas in the instant case the benefit of AIR drawback has been allowed only w.e.f. 20.09.2010 under Notification No.

84/2010-Cus(NT) as clarified by the Office of the Drawback Commissioner vide letter dated 04.01.2012 and therefore there is no retrospective effect.

(iii) Commissioner(Appeals) has ignored the clarification dated 04.01.2012 issued by Commissioner(Drawback) misinterpreting Board Circular No. 35/2010-Cus and Notification No. 84/2010-Cus(NT) although it clearly mentions that it is effective only w.e.f. 20.09.2010.

(iv) Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of Rubfila International Ltd. vs. Commissioner[2008(224)ELT A133(SC)] wherein it was held that where it was evident that inputs had not suffered any duty, the mischief of Rule 3(1)(ii) of the Drawback Rules would be attracted and no drawback can be claimed.

(v) Reliance was also placed upon the judgment of the Hon'ble Supreme Court in the case of CCE, Chandigarh-I vs. Mahaan Dairies[2004(166)ELT 23(SC)], Hon'ble Delhi High Court in the case of Sesame Foods Pvt. Ltd. vs. UOI[2010(253)ELT 167(Del)]. Reliance was placed upon the decision in the case of Sterling Agro Industries Ltd. Government of India Order No. 214-215/10-Cus dated 06.07.2010 against which the party filed W.P. No. 5894/2011 before the Division Bench of the Gwalior Bench of Hon'ble High Court of Madhya Pradesh and their Lordships held that drawback would be admissible under Rule 3(1) of the Drawback Rules if the benefit from payment of duty or rebate of CENVAT had been reversed, thus upholding the stand that simultaneous availment of drawback and Rule 19(2) cannot be permitted.

(vi) The case laws of Mars International[2012(286)ELT 146(GOI)] and Aarti Industries Ltd.[2012(285)ELT 461(GOI)] relied upon by the Commissioner(Appeals) in the impugned order pertained to the period after 20.09.2010 after issuance of Notification No. 84/2010-Cus(NT) dated 17.09.2010.

(vii) Even the C & AG had pointed out this fraud in PAC Audit Report No. 15/2011-12 in para 2.3.12.

7.1 The respondent no. 1 and respondent no. 2 filed written submissions in the matter on 03.11.2014. They placed reliance upon the CBEC Circular No. 35/2010-Cus dated 17.09.2010 to contend that they were correctly eligible for drawback. It was averred that the circular holds that customs component of AIR drawback would be

admissible even if rebate of duty of raw materials is claimed or the raw materials are procured without payment of duty under Rule 19(2) of the CER, 2002. It was also pointed out that for chapter 23, only 1% drawback was available both with & without CENVAT facility. It was averred that the 1% drawback pertains to customs portion & was admissible. They further contended that Notification No. 84/2010-Cus(NT) was identical to Notification No. 68/2007-Cus(NT) and Notification No. 103/2008-Cus(NT). It was further argued that Circular No. 35/2010-Cus was a beneficial circular and was therefore to be applied retrospectively. In this regard, reliance was placed upon the case laws of CCE, Bangalore vs. Mysore Electricals Ind. Ltd.[2006(204)ELT 517(SC)], Suchitra Components Ltd. vs. CCE, Guntur[2007(208)ELT 321(SC)] and Bezel Pharma Pvt. Ltd. vs. CCE, Mumbai[2008(221)ELT 512(Tri-LB)]. It was pointed out that the appeal of the revenue against the judgment in the case of Bezel Pharma Pvt. Ltd. had been dismissed by the Hon'ble Apex Court as reported at [2010(255)ELT A14(SC)]. The respondents further stated that the issue was no longer res integra in view of the judgments In re : Aarti Industries[2012(285)ELT 461(GOI)] and In re : Mars International[2012(286)ELT 146(GOI)] wherein it was held that allowing rebate of duty paid on finished exported goods, drawback of customs portion will not amount to double benefit. Therefore, the customs component of drawback would be available if the raw material was procured without payment of central excise duty in terms of Rule 19(2) of the CER, 2002.

7.2 The respondents further argued that it was a settled proposition of law that the revenue authorities are bound by Circulars issued by the Board and placed reliance upon the case laws of CCE, Vadodara vs. Dhiren Chemical Industries[2002(139)ELT 3(SC)] and Paper Products Ltd. vs. CCE[1999(112)ELT 765(SC)]. They submitted that the appellate authority had rightly held that as per the circular availment of drawback of only the customs component would not come in the way of granting refund of unutilized credit of excise duty element and had rightly relied upon the decision In re : Benny Impex Pvt. Ltd.[2003(154)ELT 300(GOI)]. It was further submitted that it was a settled proposition of law that the Department having accepted the principle laid down in earlier cases cannot be permitted to take a divergent stand in subsequent cases. In this regard, reliance was placed upon the judgments of the Hon'ble Apex Court in the cases of CCE vs. Novopan Industries Ltd.[2007(209)ELT 161(SC)] and Jayaswals Neco Ltd. vs. CCE[2006(195)ELT 142(SC)]. It was averred that the order passed by the

appellate authority was legally correct and proper and sustainable in law. The respondents argued that the instant revision application was time barred as there was nothing on record to show that the same was filed within prescribed time. In so far as the clarification dated 04.01.2012 is concerned, it was submitted that the said clarification had not been supplied to the respondents and that they reserved their right to make submissions thereon after receipt of the copy of the same. On the basis of these submissions, the respondents pleaded that the revision applications be dismissed and that they be granted personal hearing before passing any order.

8. Shri H. U. Patel, Superintendent(DBK), Custom House, Kandla attended the personal hearing on 08.01.2020 on behalf of the Department. He reiterated the grounds of revision application and prayed that the OIA be set aside. The respondent no. 1 and respondent no. 2 were granted personal hearings on 24.09.2018, 08.01.2020, 14.01.2020. However, they failed to attend personal hearing on the appointed dates. Respondent no. 3 was granted personal hearing in the matter on 04.10.2019. Shri Ashutosh Upadhyay, Advocate appeared on their behalf. He explained the case and relied upon the decision In Re : Rama Phosphate Ltd.[2014(313) ELT 838(GOI)]. Thereafter, Respondent no. 3 submitted letter dated 04.01.2020 acknowledging personal hearings granted on 08.01.2020 and 14.01.2020. They further stated that their counsel Shri Ashutosh Upadhyay had attended earlier personal hearing fixed on 04.10.2019, explained the case and filed written reply/submissions well within the time period. They stated that they do not wish to add anything further or again attend a hearing. They prayed that the case may be decided on merits as per the grounds of appeal and submissions filed by them. They requested that the revision application filed by the Department be dismissed/rejected.

9.1 Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal. Government observes that the short issue in all these revision applications is whether duty drawback @ 1% of FOB value is admissible to the exporter respondent on the exports of DOC under Rule 3(1) of the Drawback Rules read with the provisions of Notification No. 81/2006-Cus(NT) dated 13.07.2006, 68/2007-Cus(NT) dated 16.07.2007 and 103/2008-Cus(NT) dated 29.08.2008.

9.2 It is observed that the detailed investigation has established that respondent no. 3 had procured duty free hexane by availing the facility under Rule 19(2) of the CER, 2002 and used the same for the manufacture of DOC and sold the same to respondent no. 1. Government takes note that the second proviso to Rule 3 of the Drawback Rules at clause (ii) thereof bars drawback if goods are produced or manufactured using imported materials or excisable materials or taxable services in respect of which duties or taxes have not been paid. Similarly condition no. 7(f) of Notification No. 81/2006-Cus(NT), 68/2007-Cus(NT) and condition no. 8(f) of Notification No. 103/2008-Cus(NT) provides that the rates of drawback specified in the schedule shall not be applicable to export of a commodity or product if such product is manufactured or exported in terms of sub-rule (2) of Rule 19 of the CER, 2002. Thus it is apparent that the All Industry Rates of Drawback specified under the schedule annexed to the notifications are not applicable to the exporter of such goods if the goods have been manufactured with inputs on which duty has not been paid and have been procured by availing the facility under Rule 19(2) of the CER, 2002.

10. Before delving into the merits, the contentions made out by respondent no. 1 and respondent no. 2 to aver that the revision applications were time barred as there was nothing on record to show that they have been filed within prescribed time must be dealt with. In this regard, the Government observes that the impugned order is dated 10.03.2014 whereas the revision application has been filed on 13.06.2014. Assuming without admitting the contention of the respondents regarding the possibility of the Departments revision applications being hit by time bar in terms of Section 129DD(2) of the Customs Act, 1962, even if it is presumed that the Department had received the impugned order within a few days of its issue by the Commissioner(Appeals), the revision application has been filed within the initial three months itself and in the worst case scenario, within the further discretionary period of three months vested in the Central Government for condonation in case of delay. However, it is pertinent to note that revision applications are filed by the Department under the provisions of Section 129DD(1A) of the Customs Act, 1962 whereas the time limit of three months from the date of the communication of the order against which application is made under Section 129DD(2) of the Customs Act, 1962 is applicable only to sub-section (1) of Section 129DD of the Customs Act, 1962 which are germane to any person(the party) who is aggrieved by any order passed under Section 128A of the Customs Act, 1962 by the

Commissioner(Appeals). As such, the time limit prescribed for filing revision application is not applicable to instances where the Department finds that the order passed by the Commissioner(Appeals) under Section 128A of the Customs Act, 1962 is not legal and proper and files revision application under Section 129DD(1A) of the Customs Act, 1962. The legislature has in its wisdom not set any time limit for the Department to recover any refund/drawback allowed to the party out of the Government treasury to ensure that any money which is legitimately not due and has been wrongly refunded/granted as drawback to the party by reason of fraud, collusion, mis-statement or suppression of facts can be remedied by way of revision application. Therefore, this ground raised by the respondent fails.

11. Government finds that the respondents have not denied the fact of duty free procurement of inputs and their use in the manufacture of DOC by the manufacturers and their export under claim of duty drawback. The inference that can be drawn from the condition in the notifications and Rule 3 of the Drawback Rules is that duty should necessarily have been suffered on the inputs used in the export product. This is also the settled legal position. The duty element on the inputs is the primary ingredient for deciding the admissibility of drawback on exports. With regard to the inferences drawn by the Commissioner(Appeals) in the impugned order based on CBEC Circular No. 35/2010-Cus dated 17.09.2010, it is apparent from the text of the circular that the clarification regarding drawback in a situation where the raw materials have been procured without payment of central excise duty under Rule 19(2) of the CER, 2002 has been specifically stated to be admissible only with reference to Notification No. 84/2010-Cus(NT) dated 17.09.2010. It is pertinent to note that the portion where the issue has been raised in clause (d) of para 4(vi) of the circular, the notification mentioned is Notification No. 103/2008-Cus(NT) dated 29.08.2008. However, the notifications determining AIR rate of drawback for the preceding periods do not find mention in the portion where the reference has been answered and only Notification No. 84/2010-Cus(NT) dated 17.09.2010 finds mention. Therefore, it is obvious that the clarification issued by the Board applies only to Notification No. 84/2010-Cus(NT) dated 17.09.2010 which is applicable from 20.09.2010. The issue has been settled beyond doubt by the clarification issued by the Office of the Drawback Commissioner vide his letter F. No. 609/292/2008-DBK dated 04.01.2012 to the Federation of Indian Export Organisation.

12.1 Government takes note of the judgments of the courts on the issue. In the case of Rubfila International Ltd. vs. Commissioner[2008(224)ELT A133(SC)], the apex court upheld the principle that when there is evidence that the inputs had not suffered duty, the mischief of Rule 3(1)(ii) of the Drawback Rules would be attracted and no drawback can be claimed. So also, in the case of Sesame Foods Pvt. Ltd. vs. UOI[2010(253)ELT 167(Del)], their Lordships held that "drawback" presupposes that it is preceded by a transaction that has suffered some incidence of duty and if goods like agricultural inputs are not imported and do not suffer incidence of excise duty, the question of fixing AIR for such commodities cannot arise. In the case of Suraj Impex (India) Pvt. Ltd. vs. Secretary, Union of India[2017(347)ELT 252(M.P.)], the Hon'ble High Court of Madhya Pradesh held that simultaneous availment of drawback as well as Rule 19(2) was introduced by omission of clause 8(f) of the erstwhile Notification No. 103/2008 and the introduction of new clause 9(b) in Notification No. 84/2010 which was made effective from 20.09.2010 and explained the same in Circular No. 35/2010. Since the Notification No. 84/2010 was effective from 20.09.2010, the same cannot be given retrospective effect in the light of the aforementioned facts.

12.2 Government observes that in the case of Anandeya Zinc Oxides Pvt. Ltd.[2016(337)ELT 354(Bom.)], the Hon'ble Bombay High Court had occasion to examine the argument put forth by that manufacturer that drawback of customs portion could be availed alongwith facility for procurement of inputs under Rule 19(2) of the CER, 2002. The Hon'ble Bombay High Court found that the view taken by the authorities below that the petitioners in that case could not avail customs drawback under Notification No. 26/2003-Cus(NT) dated 01.04.2003 could not be faulted. It was further held that there was no scope for bifurcating drawback towards customs and excise allocation. Their Lordships noted that the notification clearly provides an exclusion to the applicability of the entire notification in specific situations which have been specified therein; one of which was - goods manufactured or exported in terms of sub-rule (2) of Rule 19 of the CER, 2002. They opined that nothing could be read into such notification and that it was well settled that taxation and fiscal statutes have to be strictly construed. Their Lordships firmly held that the Courts cannot read words into such provisos. The judgments of the Apex Court and the High Courts are binding precedents. Therefore, Government concludes that AIR drawback is not admissible to the respondent no. 1 and

the drawback sanctioned and paid to the said respondent is liable to be recovered alongwith interest.

13. Government proceeds to consider the case for imposition of penalty on the exporter and the manufacturer who has supplied DOC to the exporter. The respondent no. 3 has not issued ARE-2 for removal of the DOC but has only issued export invoices while clearing the goods. The fact that many different manufacturers failed in following the procedure in an identical manner puts a question mark on their actions. Such synchronized failure in not issuing the ARE-2's cannot be passed of as a coincidence. The fact that further weakens the defence about their bonafides and their claim that non-issue of ARE-2 was merely due to oversight is the fact that the DGCEI has booked cases against several manufacturers and exporters who had adopted the same practice of not issuing ARE-2's. There are a total of 18 manufacturers/exporters involved in the proceedings under the impugned order. Besides these manufacturers/exporters there are other cases booked by the DGCEI which involve identical facts and involve several other manufacturers/exporters. It is therefore apparent that the procedure adopted by the manufacturers was ideal for the exporter to claim ignorance of the fact that inputs had been procured by availing the facility of Rule 19(2) of the CER, 2002 and claim drawback. The fact that this practice was adopted by several manufacturers/exporters across Commissionerates is a pointer to the adoption of this modus to enable exporters to claim drawback where the manufacturers had availed the facility under Rule 19(2) of the CER, 2002 to procure inputs. Government is therefore of the view that the respondent no. 1 as well as the manufacturer have rendered themselves liable to be penalized. In Re : Rama Phosphate Ltd.[2014(313)ELT 838(GOI)], the Government had arrived at the conclusion that the manufacturer could not be penalized as there was no documentary evidence. The Government finds that the very fact that all the manufacturers had not issued ARE-2 and the practice has been commonly adopted by all of them evidences the fact that there was some sort of an arrangement between the manufacturers and the exporters to enable the exporter to avail drawback. Government therefore holds that both the manufacturers and the exporters are liable to be penalized. However, in so far as respondent no. 2 is concerned, it is observed that the investigation has not led any evidence or finding to justify imposition of penalty on him. Government therefore refrains from imposing penalty on respondent no. 2.

14. Government therefore sets aside the impugned OIA No. 67 to 89/2014/Cus/Commr(A)/KDL/2014 dated 10.03.2014 and restores the OIO No. OIO No. KDL/DBK/1419/ADC/SS/2013-14 dated 28/29.10.2013 passed by the Additional Commissioner of Customs, Custom House, Kandla save and except for the imposition of penalty on respondent no. 2.

15. The revision applications filed by the Department are disposed off in the above terms.

16. So ordered.

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 05-07 /2020-Cus(WZ) /ASRA/Mumbai DATED 31.01.2020.

To,

1. M/s APL International Pvt. Ltd.
   408, Tulsiani Chamber,
   Nariman Point,
   Mumbai
2. Shri Rajendra Samariya
   Director, M/s APL International Pvt. Ltd.
   408, Tulsiani Chamber,
   Nariman Point,
   Mumbai
3. M/s Vippy Industries Ltd.
   28-30, Industrial Area,
   Dewas, Madhya Pradesh

Copy to:

1. The Commissioner of Customs, Custom House, Kandla.
2. The Commissioner of Customs(Appeals), Kandla.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy