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सत्यमेव जयते

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. 380/11-12/DBK/WZ/18-RA | 2305 Date of Issue:- 13|12|2018

ORDER NO. 1047-1048 /2018-Cus(WZ)/ASRA/MUMBAI DATED 30.11.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SETION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Sl. No.	Revision Application No.	Applicant	Respondent
1	380/11-12/DBK/WZ/18-RA	The Commissioner of Customs, Pune	Ms/ General Motors India Pvt. Ltd.

Subject: Revision applications filed under Section 129DD of the Customs Act, 1962, against the Order in Appeal No. PUN-CT-APPII-000-252 & 253 -17-18 dated 05.10.2017 passed by the Commissioner (Appeals), Central Excise, Pune-II.

ORDER

These Revision applications are filed by The Commissioner of Customs, Pune (hereinafter referred to as the 'applicant') against the Orders-In-Appeal No. PUN-CT-APPII-000-252 & 253 -17-18 dated 05.10.2017 passed by the Commissioner (Appeals), Central Excise, Pune-II.

2. Brief facts of the case are that M/s General Motors India Pvt. Ltd. (hereinafter referred as 'the respondent) having registered office at Plot No. A-16, MIDC Talegaon, Phase II Expansion, Tal. Maval, Dist. Pune – 410 507 , is manufacturer and exporter of passenger cars. The respondent had been exporting their products under Drawback Scheme regularly. Since the quantum of drawback available under All Industry Rate of Drawback is inadequate, the party had been filing drawback claim under Rule 7 of the Customs, Central Excise & Service Tax Duty Drawback Rules, 1995, for fixation of brand rate of drawback on passenger cars exported out of India. The respondent had filed a number of drawback claims during the period from June-2015 o April-2017 and applied for fixation of Brand Rate. The export is for the goods viz. 'Motor Car Chevrolet Spark 1.2SA and SD variants'. The said goods were claimed to have been manufactured out of duty paid imported material.

3. The Additional Commissioner (BRU), Central Excise, Pune-I Commissionerate vide his letters F. No. PI/BRU/MISC-DBK/GM/06/2017 dated 11.05.2017 and F. No. 29/PI/BRU/General Motors/29/2015 dated 12.05.2017 had rejected the eighteen (18) drawback claims and the drawback claims for the amount of Rs.1,50,65,127/- (Rupees One Crore Fifty Lakh Sixty Five Thousand One Hundred Twenty Seven Only), respectively, since the respondent had not followed the statutory requirements in preparation and submission of claim and also for not following the FIFO principle for claiming the brand rate of drawback.

4. Aggrieved by the same, the respondent filed appeal with Commissioner (Appeals), Central Excise, Pune-II. The appellate authority vides Orders in Appeal Nos. PUN-CT-APPII-ooo-252 & 253 -17-18 dated 20.10.2017 remanded the case back to the original adjudicating authority to pass a reasoned order in this case after conducting detailed verification of documents submitted by the respondent. The appellate authority had observed that:

4.1 during the verification of the Drawback Claim by the Assistant Commissioner, Central Excise, Talegaon division, Noticed some discrepancies such as – Non-submission of bills of entry and consumption statement for verification, for which drawback amount of Rs. 2,00,38,41,344/- was rejected. In respect of the drawback claim of Rs. 1,49,33,943/-, the respondent had undertook during the personal hearing to submit the bills of entry, but failed to submit the remaining for a very long time.

4.2 as records to be verified were voluminous, the department asked to respondent to depute the dedicated employee of the respondent to explain the documents submitted and calculation which would help in expediting the verification process.

4.3 the respondent were not providing the relevant information promptly viz. Consumption Report etc. as & when required by the department in order to process the claims on FIFO basis. This has resulted in tremendous delay.

4.4 before deciding the subject issue on merits, it would be in fitness of things to ask the Additional Commissioner to pass a reasoned speaking order taking in to account all the facts of the case and after observing the principles of natural justice.

5. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application alongwith application for condonation of delay of four days in filing the Revision Application. The Revision Application has been filed on the following grounds that :

5.1 the Commissioner (Appeals) has erred in remanding the case back to the Original Adjudicating Authority since after amendment in Section 35(A) of the Central Excise Act, 1944, the Commissioner (Appeals) has no power to remand back a case to original adjudicating authority for fresh decision.

5.2 the Commissioner (Appeals) has relied upon the judgments which are of no significance up on the decision of the Supreme Court in the case of

M/s MIL India Ltd. vs. Commissioner of Central Excise, Noida, [2007-TIOL-30-SC-CX].

5.3 the respondent failed to produce the required documents to fix the Brand Rate in the given time.

6. A Personal hearing held in these Revision Applications was attended by Shri Mahesh Patil, Deputy Commissioner (BRU), Pune on behalf of the applicant. Shri Sandeep Narvekar, DGM (Finance), GM Motors India and Shri T. Vishwanathan, Advocate attended the personal hearing on behalf of the respondent. The Government observed that there was a delay of 4 days in filing these Revision Applications and in its application for condonation of delay the applicant has submitted that inadvertently the Revision Applications were posted to earlier address of RA office i.e. at Parel instead of present address i.e World Trade Centre, Cuffe Parade, Mumbai. The reason explained being sufficient cause, the Government condones the delay of four days in filing the instant Revision Application and proceed in the case on its merits.

7. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

8. The Government has gone through the submissions from both the sides and observed that the processing of the impugned drawback claims involved submission of voluminous data / documents to attain finality. The Original Adjudicating Authority had rejected all 18 drawback claims filed by the respondent in view of the laxity and lack of clarity on the claim amount and methodology for computation and non submission of documents.

10. The Government holds that essence of justice requires that a person who is to decide the case must give the respondent a fair hearing before him enabling them to state their case and view. Fairness is flexible, pragmatic and relative concept and not a rigid, ritualistic or sophisticated abstraction. In the instant case, the Government finds that the applicant has not given proper opportunity of hearing to defend the case. Hence, the Government finds that the appellate authority has rightly mentioned that in the fitness of the things, the Additional Commissioner be asked to pass a

reasoned speaking order taking into account all the facts of the case and after observing the principles o natural justice.

11. In view of above, without going into the legal issue, as to whether the Commissioner (Appeals) has power to remand or not, the Government holds that the impugned order of Commissioner (Appeals) remanding the matter cannot be set aside. Accordingly, the Government remands the cases back to the Original Adjudicating Authority with directions to pass fresh orders of adjudication in accordance with the law after giving the respondent an opportunity of adducing evidence and of being heard and to pass reasoned speaking order within 8 weeks of receipt of this order.

12. The Revision applications are accordingly dismissed.

13. So ordered.

(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 1047-1048 /2018-Cus(WZ) /ASRA/Mumbai. DATED 30.11.2018

To

M/s General Motors India Pvt. Ltd.
Plot No. A-16,MIDC,
Phase-II Expansion, Talegaon,
Taluka Maval, Dist. Pne- 410 507.

Copy to :

1. The Commissioner of Customs, Pune, G.S.T. Bhavan, 41/A, Sassoon Road, Pune- 411 001.
2. The Commissioner (Appeals), Pune – II, 2nd floor, 'F' Wing, G.S.T. Bhavan, 41/A, Sassoon Road, Pune- 411 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare copy.