

REGISTERED  
SPEED POST



F.No. 380/07-34/DBK/14-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue... 12/5/14 R

ORDER NO. 116-143/14-Cus DATED 12-05-2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129 DD OF THE CUSTOM ACT, 1962.

SUBJECT : REVISION APPLICATION FILED, UNDER SECTION 129 DD OF THE CUSTOM ACT, 1962 AGAINST THE ORDER-IN-APPEAL No. 371-398/BPS/MUM/2013 dated 27.09.2013 passed by Commissioner of Central Excise (Appeals), Mumbai Zone-I.

APPLICANT : Commissioner of Central Excise, Mumbai, Thane-II, 4<sup>th</sup> Floor, Navprabhat Chambers, Ranade Road, Dadar (West), Mumbai 400 028.

RESPONDENT : M/s Deejay Distillaries, B-1, Daffodils, Hiranandani Garden, Central Avenue Road, Powai, Mumbai.

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ORDER

These revision applications have been filed by Commissioner of Central Excise, Thane-II, Mumbai against the Order-in-Appeal No. 371-398/BPS/MUM/2013 dated 27.09.2013 passed by Commissioner of Central Excise (Appeals), Mumbai Zone-I with respect to Orders-in Original passed by Additional Commissioner of Central Excise, Thane-II as detailed in the table below. M/s. Deejay Distilleries, Powai, Mumbai are the respondent in this case.

Sr. No.	Order-in-Original No. & date	Order-in-Appeal No.& date
1.	12/AK/DBK/Th-II/2013 dt. 14.02.2013	371-398/BPS/MUM/2013 dt. 27.9.2013
2.	MBI/JCH/CCE/13/Th-II/09 dt. 4.6.13	-do-
3.	MBI/JCH/CCE/14/Th-II/09 dt. 4.6.13	-do-
4.	MBI/JCH/CCE/29/Th-II/10-11 dt. 4.6.13	-do-
5.	MBI/JCH/CCE/16/Th-II/09 dt. 4.6.13	-do-
6.	MBI/JCH/CCE/20/Th-II/09 dt. 4.6.13	-do-
7.	MBI/JCH/CCE/DD/41/Th-II/10-11 dt. 7.6.13	-do-
8.	MBI/JCH/CCE/DD/42/Th-II/10-11 dt. 7.6.13	-do-
9.	MBI/JCH/CCE/DD/07/Th-II/11-12 dt. 7.6.13	-do-
10.	MBI/JCH/CCE/DD/45/Th-II/10-11 dt. 7.6.13	-do-
11.	MBI/JCH/CCE/DD/34/Th-II/10-11 dt. 7.6.13	-do-
12.	MBI/JCH/CCE/26/Th-II/10-11 dt. 7.6.13	-do-
13.	MBI/JCH/CCE/23/Th-II/09 dt. 7.6.13	-do-
14.	MBI/JCH/CCE/DD/43/Th-II/10-11 dt. 7.6.13	-do-
15.	MBI/JCH/CCE/DD/01/Th-II/11-12 dt. 13.6.13	-do-
16.	MBI/JCH/CCE/04/Th-II/11-12 dt. 13.6.13	-do-
17.	MBI/JCH/CCE/05/Th-II/11-12 dt. 13.6.13	-do-
18.	MBI/JCH/CCE/DD/02/Th-II/12-13 dt. 17.6.13	-do-
19.	MBI/JCH/CCE/01/Th-II/12-13 dt. 17.6.13	-do-
20.	MBI/JCH/CCE/DD/35/Th-II/10-11 dt. 19.6.13	-do-
21.	MBI/JCH/CCE/36/Th-II/10-11 dt. 19.6.13	-do-
22.	MBI/JCH/CCE/DD/05/Th-II/12-13 dt. 02.7.13	-do-
23.	MBI/JCH/CCE/DD/07/Th-II/12-13 dt. 02.7.13	-do-
24.	MBI/JCH/CCE/DD/08/Th-II/12-13 dt. 02.7.13	-do-
25.	MBI/JCH/CCE/DD/12/Th-II/12-13 dt. 02.7.13	-do-
26.	MBI/JCH/CCE/DD/10/Th-II/11-12 dt. 03.7.13	-do-
27.	MBI/JCH/CCE/DD/14/Th-II/12-13 dt. 03.7.13	-do-
28.	MBI/JCH/CCE/DD/19/Th-II/12-13 dt. 05.7.13	-do-

2. Brief facts of the cases are that respondent M/s. Deejay Distilleries, Powai, Mumbai a merchant exporter exported 'Indian Made Foreign Liquor' (hereinafter referred to as 'IMFL') under claim for duty Drawback. M/s. Deejay Distilleries Pvt. Ltd. having its manufacturing premises situated at Kolavali, Post - Chinchni Bhawada, Taluka - Dahanu, Distt. Thane, falling under the jurisdiction of Thane-II Commissionerate, is a supporting manufacturer for M/s Deejay Distilleries, Powai for the purpose of manufacture and export under claim for duty drawback. M/s Deejay Distilleries, Powai had filed total 17 applications, against various shipping bills, for

fixation of Brand Rate under Rule 6 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 in respect of Central Excise duty paid on inputs used in the manufacture of 'IMFL', which were subsequently exported. The Additional Commissioner (DBK) and Assistant Commissioner (DBK) after due scrutiny and considering the verification report submitted by the then Deputy Commissioner, Central Excise, Boisar-II Division allowed the fixation of Brand Rate of DBK in respect of inputs except Ethyl alcohol. The fixation of DBK brand rate on Ethyl alcohol used in manufacture of IMFL was disallowed on following grounds:-

- (i) That Grain based 'Ethyl Alcohol' was used for domestic clearances and not for export purpose is not admissible, since the brand which was registered by them is common in both type of clearances.
- (ii) The purchase orders indicate that the export goods agreed upon were specific whisky brands and not any whisky. Specific Brand names are indicated in each of the purchase orders. Same brands were also cleared for domestic market using grain based ENA. Hence, the registered brand names cannot differ in its input.
- (iii) A product IMFL- Whiskey with brand name 'India Royale' which is common in most of the Drawback applications has the words printed on the labels as "A blend of premium malts and purest Indian Grain Spirits". This label is sufficient indication of the fact that grain based 'Ethyl Alcohol' was used in its production.
- (iv) Labels of this product 'Indica Royale' was subsequently changed to "A blend of premium malts and purest Indian Neutral Spirits", which is a clear indication of the fact that, Grain based 'Ethyl Alcohol' was used for manufacture of whisky for export purpose, otherwise there was no need to M/s. Deejay Distilleries, Powai to change/alter the labels after the exports.
- (v) There is no difference in the technical specification of Grain based 'Ethyl Alcohol' as compared to Molasses based 'Ethyl Alcohol'. This aspect would have helped M/s. Deejay Distilleries, Powai in exporting grain based whisky while maintaining that, it was molasses based, purely to get undue drawback benefit.
- (vi) Apart from 'Indica Royale' there are few more whisky brands which are exported. None of these products have any label claiming that they are manufactured using molasses based 'Ethyl Alcohol'. Hence, even these could have been made out of grain based 'Ethyl Alcohol'.
- (vii) It is not clear as to whether whisky exported was exclusively made from 'Ethyl Alcohol', which was based on Molasses or it was manufactured from Ethyl Alcohol generated from Grain based.

2.1 Being aggrieved by the said Orders, respondents, filed appeals before Commissioner (Appeals), who vide order-in-appeal No. SB/18 to 34/TH-II/10 dated 03.02.2010 set aside 17 orders passed by the Additional Commissioner (DBK) & Assistant Commissioner(DBK), Central Excise, Thane-II Commissionerate and directed the lower adjudicating authority for fixation of the brand rate as applicable.

The Commissioner (Appeals) has decided the appeal mainly considering (a) the purchase orders between M/s DDPL and its foreign buyers/purchases for supply of IMFL manufactured from Molasses based Ethyl Alcohol, (b) certificates issued by various manufacturers of Ethyl Alcohol that they have supplied Molasses based Ethyl Alcohol to M/s DDPL, (c) Certificate from State Excise Sub Inspector that M/s DDPL have never used 'Grain based Ethyl Alcohol, for manufacture of IMFL for export purpose (d) letter of Technical Officer (DBK), CBEC , New Delhi bearing F.No. 609/55/2008-DBK dated 21.01.09.

2.2 Being aggrieved with the Order-in-Appeal dated 03.02.2010 the department filed revision application No. 380/35-51/DBK/10-RA. After considering all the submissions, Government vide G.O.I. Revision Order No. 225-241/11-Cus dated 04.08.2011 remanded the case to original authority for deciding afresh after conducting the complete verification/cross checking of all the relevant statutory records of the manufacturing unit so as to determine whether the IMFL exported was manufactured out of molasses based Ethyl alcohol or grain based alcohol. It was also directed that while conducting the verification, the detailed data analysis done by Commissioner (Appeals) in his Order-in-Appeal dated 03.02.2010 was also to be kept in mind.

2.3 The original authority in remand proceedings, vide Order-in-Original No. 12/AK/DBK/Th-II/2013 dated 14.02.2013, [Order-in-Original mentioned at Sr. No.(1) of the table] rejected the application for brand rate fixation on the ground that batch no. was not found on the export documents, the superintendent Excise/AC in their verification report heavily relied upon certificate issued by the state excise's inspector; that the, certificate does not contain the basis i.e. documents/records, on the basis of which the certificates were issued and that in absence of details of records/documents leading to conclusion that the certificates do not have evidential value.

2.4 Apart from the drawback claims covered in first round of revisionary Proceedings as contained in case mentioned at Sl.No.(1) of table above, the respondent also filed some fresh applications for fixation of brand rate of drawback in respect of IMFL manufactured and exported them subsequently. These applications for fixation of drawback brand rate on the portion representing ENA/Ethyl Alcohol were rejected by the original authority vide Orders-in-Original/Letters mentioned at Sr. No. 2 to 28 of the table above. The original authority held that batch no. was not found on the export documents and also observed that jurisdictional central excise authorities in their verification report have heavily relied upon certificate issued by the state excise's inspector; that the certificate does not contain the basis i.e. documents/records, on the basis of which the certificates were issued and that in absence of details of records/documents leading to conclusion, the certificates do not have evidential value.

3. Being aggrieved by the impugned Orders-in-Original, the respondents party filed appeals before Commissioner (Appeals) who decided the all the appeals in favour of respondents vide impugned orders-in-appeal dated 27.09.2013.

4. Being aggrieved by the impugned Orders-in-Appeal, the applicant department has filed these Revision Applications under section 129 DD of the Customs Act, 1962 before central Government on following grounds:-

4.1 The main issue before the Commissioner (Appeals) was to decide whether the goods, i.e., 'IMFL', exported is exclusively manufactured from 'Molasses based Ethyl Alcohol' or it is manufactured from 'Grain based Ethyl Alcohol' and whether it is correct to use same brand name on the product for the export goods as well as for domestic market. The Commissioner (Appeals) has mainly relied upon the certificates issued by the jurisdictional central excise and state excise officers. However, there is no reasons given by the appellate authority which can confirm with pinpointed accuracy that the exported goods were manufactured from molasses based ethyl alcohol.

4.2 The Commissioner (Appeals) failed to consider that the Technical Officer (DBK), Government of India, CBEC, vide letter bearing F.No. 609/55/2009-DBK dated 21-01-2009 clarifying that if M/s. DeeJay Distilleries uses Ethyl Alcohol (94.68% purity), drawn from Molasses route, as their raw material to manufacture Whisky/'IMFL' and exports the same, then adoption of rate prescribed under All India Rate in respect of Ethyl Alcohol may be allowed for the determination of the Brand Rate of duty Drawback on Whisky/'IMFL'. However, if the export products are made out of Ethyl Alcohol manufactured through Grain route then such benefit (of adoption of AIR for calculation of Brand Rate) would not be available. It is clear that Ethyl Alcohol should be generated from Molasses route for claiming the Drawback. Molasses based ENA is not proved either by M/s. DeeJay Distilleries or by the appellate authority, while deciding the case.

4.3 The Commissioner (Appeals) has discussed Bombay Prohibition Act, 1949, but the order is silent on affixing of labels. It is stated that "All bottled potable liquor shall bear a label showing the name of the manufacturer, the name of potable liquor, the place of manufacture, the alcoholic percentage and the batch number of the potable liquor, the guaranteed fluid contents of each bottle or receptacle shall be clearly indicated in bold letters on the labels. All labels required to be used shall be submitted to the Commissioner for his approval before use." Taking in to account all the strict conditions of Bombay Prohibition Act, 1949, the contention of M/s. DeeJay Distilleries that the 'Grain based Ethyl Alcohol' was used only for domestic clearances and not for export purpose is not acceptable. Moreover, certain labels of exported product has sufficient indication of the fact the 'Grain based Ethyl Alcohol' was used in its production and the contention of M/s. DeeJay Distilleries that it is just a marketing gimmick cannot be accepted.

4.4 The Commissioner (Appeals) has erred in relying on the certificate given by the lower authority of State Excise Certifying that 'Grain based Ethyl Alcohol' was never used for exportation of goods, as the export consignments were never monitored/inspected by the State Excise Department. The State Excise officer has never produced any manufacturing date or details in respect of ingredients used in the products exported. Hence, the State Excise certificate that only 'Molasses based

Ethyl Alcohol' was used and 'Grain based Ethyl Alcohol' was never used in the products exported cannot be accepted.

4.5 The Commissioner (Appeals) has failed to consider that the original adjudicating authorities after due scrutiny of the Drawback claim applications filed by M/s. Deejay Distilleries have passed the order, as per the guidelines issued vide Board's Circular No. 14/2003-Cus dated 06-03-2003, as amended.

4.6 The Commissioner (Appeals) in his order discussed the details of intake of Ethyl Alcohol purchased from various sugar industries, but failed to consider that the same is not disputed by the adjudicating authorities. The basic thing was to prove as to whether the raw material procured (i.e. molasses route) is used in exported goods or otherwise. The Order-in-Appeal is silent on this aspect and failed to prove the nexus.

4.7 The Case relied by the Commissioner (Appeals) in his order are primarily not applicable in the instant case, as it is a basic condition that 'IMFL' should have manufactured by Ethyl Alcohol generated by molasses route, for fixation of brand rate for Drawback. The question of brand name does not arise. In the present case brand names are one and the same for domestic market as well as exported products.

4.8 The major part of the Order-in-Appeal mentions about the rules and procedure, which were rightly applied by the original adjudicating authorities. The molasses used for manufacturing Ethyl Alcohol for exports of IMFL is not free from doubt.

4.9 The cases of Raigad and Goa Commissionerate referred by the Commissioner (Appeals) in his order does not mention about the procurement of Ethyl Alcohol, whether molasses based or grain based. Since the Drawback is only applicable to the Ethyl Alcohol generated through molasses base, these cases are not binding on this Commissionerate.

4.10 The Commissioner (Appeals) has relied on the reference made to the Technical Officer (Drawback), CBEC, New Delhi and reply received from the said authority, but failed to consider that no specific reply has been received. The Board has referred the earlier letter addressed to the Commissioner of Central Excise, Thane-II wherein, clarifying that Ethyl Alcohol drawn from molasses route is eligible for fixation of Drawback and no relief to the 'Grain based Ethyl Alcohol' is available. 'Molasses based Ethyl Alcohol' is not proved by M/s. Deejay Distilleries and by the Commissioner (Appeals), while deciding the case.

5. A Show Cause Notice was issued to the Respondent under section 129 DD of the Customs Act, 1962 to file their counter reply. The Respondent vide their letter dated 30.04.2014 & 07.05.2013 made the following submissions:

5.1 Department had objected that Commissioner has relied upon Purchase order of foreign buyer but not on the usage of Actual Ethyl Alcohol in the exported goods.

The fact of actual use was verified from the manufacturing records maintained as per the Bombay Prohibition Act in Registers/ Forms PL/VIII/VII/VI/I & II. As per the order of JS (Review) Government of India Para 12 the production and clearance of IMFL from Grain based is also verified from the above records it is observed from the records that the IMFL manufactured from grain based alcohol is cleared for domestic consumption in India. While IMFL manufactured from Molasses based alcohol is exported as well as cleared for domestic consumption in India.

5.2 It is contended by the department that the exporter has not proved that molasses based ethyl alcohol was used in manufacture of exported IMFL. The verification of the records has been carried out as mentioned in Point 4.1 as above the IMFL manufactured from Grain based alcohol is not exported. Whatever IMFL exported, it is observed from records that it is manufactured from Molasses based alcohol only.

5.3 The point raised that as per Bombay Prohibition Act all Potable Liquor shall bear a label showing name of manufacturer, name of Potable liquor, place of manufacture, alcoholic percentage batch number, guaranteed fluid contents of each bottle be indicated, and all the labels are required to be submitted to the Commissioner for approval. The exporter has argued that the phrase used in one of the label "Blend of Purest malt and Indian Grain Spirit" is a sales gimmick, further labels were affixed as per the direction of the purchaser i.e. importer of foreign country. Further while discussing the said contention of the department the Joint Secretary (Review) has accepted the contention of Commissioner (Appeal) going with the chart that exported goods are manufactured from Molasses based Alcohol. However, the JS (Review) that the production and clearance of IMFL manufactured from Grain based alcohol shall also be scrutinized. As per above direction the total production of IMFL for the year 2007-08 & 2008-09 have been verified from the State Excise Statutory records Registers/Forms PL/VIII/VII/VI/I & II. It is observed from the records that no IMFL of grain based alcohol is exported. Only IMFL manufactured from Molasses based alcohol is exported.

5.4 As the department has contended that state excise officer while giving the certificate that Grain based ethyl alcohol was never used for exportation of goods had not given any chart details of the IMFL manufacture and cleared The IMFL manufactured and cleared is verified from the State Excise Statutory records particularly Registers/ Forms PL/VIII/VII/VI/I & II and no contrary fact was noticed against the certificate of State Excise Officer. The above facts are already been discussed in Point.

5.5 The department has contended that Commissioner (Appeals) has failed to consider the raw material molasses based alcohol procured is used in exported goods or otherwise. The State Excise Statutory records particularly Registers/Forms PL/VIII/VII/VI/I & II has been verified and it is observed that IMFL exported is manufactured from Molasses based Alcohol only. The above facts have already been discussed in Point 4.1 to 4.5.

5.6 It is contended by the department that the Molasses used for manufacturing Ethyl Alcohol for export of IMFL is not free from doubt. As per the above points the

State Excise Statutory records particularly Register /Forms PL/VIII/VII/VI/I & II that IMFL exported is manufactured from Molasses based Alcohol only.

5.7 The department has contended that in the cases of Raigad and Goa Commissionerate referred by Commissioner of Appeals does not mention about procurement of Ethyl Alcohol whether Molasses or Grain based. As per State Excise Statutory records particularly Register/ Forms PL/VIII/VII/VI/I and II that IMFL exported is manufactured from Molasses based alcohol only. The above facts have already been discussed in para 4.1 to 4.9.

5.8 It is contended by the department that exporter has not proved that molasses based ethyl alcohol is used for IMFL exported. As per State Excise Statutory records particularly Registers / Forms PL/VIII/VII/VI/I & II that IMFL exported is manufactured from Molasses based Alcohol only."

5.9 As directed the samples of IMFL exported was drawn and sent for testing to UDCT, Mumbai for testing. The result of Dr. S.T.Mhaske, PHD (Tech.), Department of Paint & Polymer Engineering Technology, University institute of Chemical Technology, N.M Parekh Marg, Matunga, Mumbai - 400019 is as under:-

"To analyse liquor sample of IMFL for Grain based Ethyl Alcohol or Molasses based Ethyl Alcohol we are not having facility to Test" (Exhibit-XXIX).

The Professor of UDCT cannot conclusively give testing report that the IMFL is manufactured from Molasses or Grain based Ethyl Alcohol. The JS (Review) in his order in Para 13 has clarified that test reports of manufacturers or any test laboratory can be relied upon. However, in this case the learned Professor has failed to test the requisite contents. Thus the only way to verify is by Statutory Record.

6. Personal hearing scheduled in these cases on 5.5.2014 was attended by Shri Dinbandhu Diwakar, Asstt. Commissioner on behalf of applicant department and he reiterated grounds of revision applications. The respondents were represented by Shri Pradip Kalani, Shri Angello Sequera, Export Manager of the Company; Shir D.K.Nayyar, Advocate and Shri Jayant Bothra, Chartered Accountant. They mainly reiterated submissions made in their counter reply dated 30.4.2014.

7. Government has carefully gone through the relevant case records and written submission and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government observes that initially the original authority had rejected respondent's request for fixation of brand rate of DBK on portion of Ethyl Alcohol mainly on the ground that the respondents failed to prove that the exported goods i.e. IMFL were made from molasses based Ethyl Alcohol and not grain based alcohol. Commissioner (Appeals) vide orders-in-appeal dated 3.2.2010 decided the cases in favour of respondents. In first round of revisionary proceeding, in revision applications filed by department against said orders-in-appeal, Government vide G.O.I. Revision Order No. 225-241/11-Cus dated 04.08.2011 remanded the case to original authority for deciding afresh after conducting the complete verification/cross checking of all the relevant statutory records of the manufacturing unit so as to determine whether the IMFL exported was manufactured out of molasses based



Ethyl alcohol or grain based alcohol. It was also directed that while conducting the verification, the detailed data analysis done by Commissioner (Appeals) in his Order-in-Appeal dated 03.02.2010 was also to be kept in mind. The original authority in remands proceedings, vide Order-in-Original No. 12/AK/DBK/Th-II/2013 dated 14.02.2013, [Order-in-Original mentioned at Sr. No.(1) of the table] again rejected the application for brand rate fixation on the ground that batch no. was not found on the export documents, and the jurisdictional central excise authorities in their verification reports heavily relied upon certificate issued by the state excise's inspector; which does not contain the basis i.e. documents/records, on the basis of which the certificates were issued. Apart from drawback claims covered in first round of Proceedings as contained in case mentioned at Sl.No.(1) of table above, the respondent also filed some fresh applications for fixation of brand rate of drawback in respect of IMFL manufactured by them. The fresh applications for fixation of drawback on the portion representing ENA/Ethyl Alcohol were also rejected by the original authority vide Orders-in-Original/Letters mentioned at Sr. No. 2 to 28 of the table above on the same grounds. Being aggrieved by the impugned Orders-in-Original the respondents filed appeals before Commissioner (Appeals) who decided all the appeals in favour of respondents vide impugned orders-in-appeal at 27.09.2013. Now, the applicant department has filed these revision applications ground mentioned in para (4) above.

9. Government notes that vide G.O.I. Revision Order No. 225-241/11-Cus dated 04.05.2011 the case was remanded for deciding afresh after conducting the complete verification/cross checking of all the relevant statutory records of the manufacturing unit by Central Excise authorities, so as to conclusively determine whether IMFL exported is manufactured out of molasses based Ethyl Alcohol or grain based Ethyl Alcohol. It was also directed that the detailed data analysis done by Commissioner (Appeals) in his Order-in-Appeal and any other Chemical test reports available with manufacturer or any other authority may also taken into account. The original authority has stated that no such test report were available. The detailed verification was got done from Central Excise range Superintendent but the said report was not accepted on the ground stated above. It is on record that original authority did not supply the copy of said verification report to the respondents so as to give them opportunity to file their counter reply. However respondent has collected the verification report dated 26.03.2012 and 31.05.2012 under RTI reply.

10. Commissioner (Appeals) has reproduced relevant abstracts from the verification report dated 26.03.2012 and given his findings on said report in his Order-in-Appeal as under:-

*"16. For the sake of brevity only, it would be quite prudent to reproduce relevant abstracts from the verification report dated 26.03.2012 of the Jurisdictional Superintendent of Central Excise, Div. Boisar-II, Thane-II's:-*

*As per the Direction the following further reports is being submitted as under:*

1. *Batch wise total production and clearance from the unit for the period 2007-08/2008-09 is enclosed at exhibit XXVII. In this statement identification of Molasses Based*

IMFL and grain based IMFL is mentioned. This statement is verified from PL VIII register going back for identifying the raw material by tracing Batch no. in PL VII/PLVI/PLV register under heading Material issued. In the PL IV register under the heading receipt PL I i.e. indent number is shown. From the indent number the type of alcohol purchased is verified. The Production is also verified from Batch card i.e. PL II.

2. One of the main objections while filing the appeal was that in one Brand i.e. Indian Royale Malt Whisky, on label a phrase "Blend of Premium Malts and Purest Indian Grain Spirits" was written. The department had raised objection that the said IMFL was manufactured from Grain based Alcohol. From the above list of batch wise production at Exhibit XXVIII a separate list of batches manufactured of brand Indian Royale is prepared, and it is verified from PL VIII/VII/VI/V/I & II from register. It is observed from the records all these batches are manufactured from Molasses based Alcohol. From the PL II form i.e. Batch Card it is observed that nearly 1% of Malt Spirit is added for flavour as explained in the first Para of the verification on report.
17. It may, therefore, be appreciated that the Appellants have been maintaining elaborate Statutory Records in the form of various registers/Forms PL-I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII (details as per Exhibit-I to the above verification report) prescribed under State Excise Rules & Regulations. It is also to be kept in mind that the raw materials (Molasses/ENA) and finished goods (Whisky/IMFL) and their transportation for home consumption or for Export purposes, as the case may be, are under rigid physical control of the State Excise Department. Since Chemical Analysis of the samples of IMFL could not categorically state whether or not the same was produced out of ENA/Ethyl Alcohol drawn from Grain Route or Molasses route, it was all the more necessary to rely solely upon the entries made in the Statutory Records maintained by the Appellants under State Excise Rules and Regulations. Under such circumstances, one may not simply undermine the State Excise Department's records & reports on the captioned subject. The subject reports and certificates issued by the Central/State Excise Authorities are vital documents which cannot be undermined or brushed aside by the Adjudicating Authority as irrelevant and unreliable.
18. I find that the Jurisdictional Superintendent of Central Excise in his subject verification report has heavily relied upon various certificates issued by the State Excise Departmental officers, having jurisdiction over the respective manufacturing unit where from the Appellants had purchased the ENA/Ethyl Alcohol during the relevant period. All these certificates, in an unambiguous language, clearly certify that the manufacturing units of Ethyl Alcohol have manufactured and supplied only Molasses based Ethyl Alcohol to M/s. Deejay Distilleries Pvt.Ltd. The above certificates also give reference to the invoice no. and date, transport permit Nos. and dates, Indent No and date and quantity of Ethyl Alcohol in litre so supplied by the respective manufacturers of Ethyl Alcohol.
19. In view of the above categorical verification report as well as the certificates issued by the State Excise Department, it becomes amply clear that the Appellants had used ENA i.e. Ethyl Alcohol of the specified purity for manufacturing their export product i.e IMFL out of the Ethyl Alcohol drawn from Molasses route only. Therefore, I hold that the substantive

*requirements for adoption of the rates prescribed under AIR, as provided in the Board's letter F.No.609/55/2008-DVK dated 02.02.2009 are fully complied with."*

11. Government notes that the superintendent Central Excise has conducted detailed verification from all the relevant statutory records of the manufacturing unit apart from considering the certificate issued by state Excise authorities and then categorically stated that IMFL manufactured from grain based Ethyl Alcohol is cleared for domestic consumption in India while IMFL manufactured from Molasses based alcohol is exported as well as cleared for domestic consumption. It was further stated in the report that no IMFL of grain based alcohol is exported and only IMFL manufactured from Molasses based alcohol is exported. The said verification report clearly established that, IMFL manufactured from molasses based Ethyl Alcohol was only exported. This verification report is a valid evidence and original authority has not revealed any justified reason to reject the same. There was no issue of mentioning batch numbers in export documents when the brand rate fixation applications were rejected initially. The original authority has not pointed out anything in the verification report which suggested the use of grain based ethyl alcohol in the manufacture of IMFL exported. Government finds that the superintendent Central Excise has verified batch wise particulars of IMFL produced and backward linkage was done by tracing batch numbers, and by also verifying batch card wise production. Respondent has stated that before export clearance the exporter has to execute bond with state Excise authorities for exporting IMFL without payment of state Excise duty that prior to export the exporter has to take pass for export of IMFL in form I from Dy. Supdt. Collector of Thane, that after export one copy of FORM I duty endorsed by Customs Authority are submitted to state Excise authority as proof of export. The said pass in Form I contains batch number also. The original authority has not even considered such vital documentary evidences. Government notes that Commissioner (Appeals) has rightly observed that original authority has erred in out rightly rejecting the brand rate fixation application by ignoring the categorical positive finding of Supdt. Central Excise in his verification report stating that IMFL manufactured from molasses based ethyl alcohol was only exported.

12. Government notes that CBEC letter F.No. 609/55/2009 dated 02.02.2009, clarified as under:-

*"if M/s Deejay Distilleries use Ethyl Alcohol (94.68% purity), drawn from molasses route, as their raw material to manufacture Whisky/Indian Made Foreign Liquor and exports the same, then adoption of rate prescribed under AIR in respect of ethyl alcohol may be allowed for determination of the Brand Rate of duty drawback on Whisky/IMFL. However, if the export products are made out of Ethyl Alcohol manufactured through Grain route then such benefit (of adoption of AIR for calculation of Brand Rate) would not be available."*

The said clarification is very much applicable to the instant case since the Central Excise verification has established that manufacturer has used Ethyl Alcohol

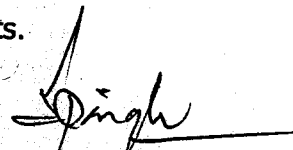
drawn from molasses route to manufacture IMFL exported in this case. As such adoption of rate prescribed under AIR in respect of ethyl alcohol is admissible for determination of Brand rate of duty drawback on said whisky/IMFL.

13. Government further notes that in present revision applications applicant department has again raised the other same point which were decided vide G.O.I. Revision order No. 225-241/11-Cus dated 04.05.2011. It is not legally permissible for department to raise the same points again. The remand proceeding were required to be conducted strictly in accordance with the remand order. In the remand order, it was directed to decide the brand rate fixation application afresh after conducting the complete verification from relevant statutory records of the manufacturing unit to determine whether IMFL exported was manufactured from molasses based ethyl alcohol or not. The verification conducted has established that IMFL exported is manufactured from molasses based ethyl alcohol. As such, there was no option to raise the other ground already decided in earlier revision proceedings.

14. In view of above discussions Government donot find any infirmity in the impugned Orders-in-Appeal therefore uphold the said Order-in-Appeal with all consequential reliefs to the respondents.


15. The revision applications are thus rejected being devoid of merits.

16. So, ordered.

  
(D.P. Singh) 12/5/14  
Joint Secretary to the Govt. of India

The Commissioner of Central Excise,  
Thane-II, 4<sup>th</sup> Floor, Navprabhat Chambers,  
Ranade Road, Dadar (West), Mumbai 400 028.

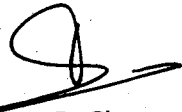
(Attested)

  
(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
CBEC-OSD (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Rev)  
भारत सरकार/Govt of India  
नई दिल्ली / New Delhi

Order No. 116-143/14-Cx dated 12-05-2014

Copy to:

1. Commissioner of Central Excise (Appeals), Mumbai Zone-I, Mehar Building, Dadi Seth Lane, Chawpatty, Mumbai 400 007.
2. The Assistant Commissioner(Drawback)/Additional Commissioner (Drawback), Commissionerate, 4<sup>th</sup> Floor Navprabhat Chambers, Ranade Road, Dadar (West), Mumbai 400 028.
3. M/s Deejay Distillaries, B-1, Daffodils, Hiranandani Garden, Central Avenue Road, Powai, Mumbai.
4. Shri D.K. Nayar, Advocate, A-103, Defence Colony, New Delhi-110024.
- ✓ 5. PS to JS(RA)
6. Guard File.
7. Spare Copy

  
(Bhagwat P. Sharma)  
OSD(RA)