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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No.371/02/DBK/14-RA / 1595

Date of Issue 03.03.2021

ORDER NO. 126/2021-CX (WZ) / ASRA / MUMBAI/ DATED 02.03.2021
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY
TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE
CENTRAL EXCISE ACT, 1944.

- Applicant** : M/s Manugraph India Ltd.
Unit-2, Kodoli, Tal. Panhala,
Dist. Kolhapur- 416 114.
- Respondent** : The Commissioner of Central Excise, Kolhapur.
- Subject** : Revision Application filed, under Section 35EE of
the Central Excise Act, 1944 against the Order-in-
Appeal No. PUN-EXCUS-002-APP-123-13-14 dated
27.11.2013 passed by the Commissioner of Central
Excise (Appeals), Pune-II.

ORDER

The Revision Application is filed by M/s Manugraph India Ltd., Unit-2, Kodoli, Tal. Panhala, Dist. Kolhapur- 416 114 (herein after referred to as 'the applicant') against the Order in Appeal No. PUN-EXCUS-002-APP-123-13-14 dated 27.11.2013 passed by the Commissioner of Central Excise (Appeals), Pune-II in respect of Order in Original No. 02/CEX/AC/DBK/12 dated 11.01.2013 passed by the Assistant Commissioner (Tech.), Central Excise, Kolhapur Commissionerate.

2. Brief facts of the case are that the applicant are engaged in manufacture of Printing Machines & parts thereof falling under CH.S.H. No. 84431100 of the Central Excise Tariff Act, 1985. The applicant had filed a Brand Rate application for fixation of Duty Drawback for "Web Offset Printing Press Model "Hiline" exported under Shipping Bill No. 8874944 dated 22.09.2010 for Rs.3,89,619/- (Rupees Three Lakh Eighty-Nine Thousand Six Hundred Nineteen Only) under Rule 6(1)(a) of the Customs & Central Excise Duties & Service Tax Drawback Rules, 1995. After necessary verification, the drawback was sanctioned vide Brand Rate Letter No. 21/2010-2011 dated 28.02.2011 and the claim for Rs.3,89,619/- was sanctioned to the applicant. During the re-verification, it was found that the claim for Brand Rate of drawback under Rule 6 of the Drawback Rules, 1995 was not admissible under the said rule as the exported goods i.e. "Web Offset Printing Press Model" falling under CSH No. 84431100 are covered under the Schedule to Notification No. 84/2010 Cus (NT) dated 17.09.2010 & condition No. 10 of the said Notification provides that ***"Where the export product is not specifically covered by the description of goods in the said schedule, the rate of drawback may be fixed, on an application by an individual manufacturer or exporter in accordance with the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995."*** As such a Show

Cause Notice dated 03.02.2012 was issued to the applicant for rejection of the drawback claim of Rs.3,89,619/-.

2.2 The Adjudicating Authority also observed that Clause (b) to Condition 8 of Notification No. 84/2010 stipulates that rate of drawback specified in the drawback schedule shall not be applicable to export of commodities of product which is manufactured or exported in discharge of export obligation against an Advance Licence or Advance Authorisation. The Advance Authorisation issued under duty exemption scheme of the relevant export and import policy or the Foreign Trade Policy. Thus, All Industry Rate of Drawback though provided in respect of the subject export goods at drawback entry No. 844399, no drawback is admissible in respect of the subject export goods which are exported in discharge of export obligation against the Advance Licence.

2.3 In view of above observations, the adjudicating authority vide Order in Original No. 02/CEX/AC/DBK/12 dated 11.01.2013 ordered the withdrawal of the Brand Rate Letter No. 21/2010-11 dated 28.02.2011 and also ordered to recover the amount of drawback i.e. Rs. 3,89,619/- already disbursed to the applicant.

3. Aggrieved by the said order, the Applicant filed appeals before Commissioner (Appeal), Central Excise, Pune-II. The appellate authority upheld the order in original vide impugned order in appeal. The Appellate Authority observed that the impugned goods i.e. printing machinery are not covered under tariff item 844399 of DBK Schedule and as such not covered by DBK Schedule. Therefore, the applicant's claim for Brand rate of drawback under Rule 6 of the Drawback Rules, 1995 was correct. However, in the absence of endorsement on the Advance Authorisation the drawback is not admissible to the applicant.

4. Being aggrieved by the impugned Order in Appeal, the applicant filed the instant Revision Application on following grounds :-

4.1 Clause (b) to Condition 8 of Notification No. 84/2010 stipulates that rate of drawback specified in the drawback schedule shall not be applicable to export of commodities or product which is manufactured or exported in discharge of export obligation against an Advance Licence or Advance Authorisation. In such case, the applicants are entitled to the Drawback of amount of RS. 3,89,619/- as approved under Brand Rate Letter No.21/2010-1 dated 28.02.2011.

4.2 As per Para 4.1.14 of the Foreign Trade Policy, 2009-14

"In case of an Advance Authorisation, drawback shall be available for any duty paid material, whether imported or indigenous, used in goods exported, as per drawback rate fixed by DoR, Ministry of Finance (Directorate of Drawback). Drawback shall however, be allowed only for such duty paid items which have been endorsed on Authorisation by RA."

Hence, mere non-mention of the Drawback allowed in the Advance Authorisation would not disentitle the said Drawback as the said drawback is not allowed under the Foreign Trade Policy, but allowed under provisions of Section 74 to Section 76 of the Customs Act, 1962.

The provision of mention of drawback allowed in the Authorisation was only for verification of the exports made against the said Authorisation to ascertain the discharge of export obligation. In such circumstances, disallowance of drawback in the absence of endorsement on the Advance Authorisation is not proper and just.

4.3 where the exporter is not eligible for All Industry Rates because the manufacturer has availed certain duty free facilities like Advance Licences / DEEC etc. the manufacturer has to apply under Rule 6 of the Drawback Rules, 1995 for fixation of Brand Rate of Drawback. As per the instructions under M.F. & C.A. (DR)

Circular No. 14/2003-Cus dated 06.03.2013 and on the basis of the said brand rate letter, the drawback is to be paid to the exporter by the office of the Customs.

4.4 As per Rule 14 & 16 of the Drawback Rules, 1995, where an amount of drawback & interest, if any, has been paid erroneously or amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by the proper officer of Customs repay the amount so paid erroneously. As per provisions of Rule 14 & 16, the proper officer of Customs who has paid the drawback has to initiate the action for recovery. In the said circumstances the Order in Appeal issued by the appellate authority is not just and proper.

5. Personal Hearing was fixed on held on 14.01.2020. The same was attended by Shri Jitendra N. Somaiya, Advocate on behalf of the applicant before predecessor Revision Authority.

In view of change in the Revision Authority, the personal hearings were fixed on 02.12.2020, 07.12.2020, 10.12.2020 and 28.01.2021. No one attended the personal hearing on behalf of the applicant or department.

Shri J. J. Somaiya, Advocate, vide letter dated 25.01.2021, informed that they have made detailed submissions as to how and why the Order in Appeal is not sustainable and requested on behalf of the applicant to decide the matter. As such, the instant Revision Applicant is taken up for decision on the basis of documents and submissions available on record.

6. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the submissions from both sides.

7. The timeline of the events leading to the instant proceedings would be pertinent. The applicant has stated that they had filed Brand Rate application under Rule 6 of the Drawback Rules, 1995 for their product “Web Offset Printing Press Model” falling under C.S.H. No. 84431100. However, the drawback sanctioning letter was subsequently withdrawn in view of the Condition No. 10 of the Notification No. 84/2010- Cus (NT) dated 17.09.2010. The appellate Authority has discussed the issue elaborately in the impugned Order in Appeal and arrived at the conclusion that the impugned goods are not covered under tariff item 844399 of DBK Schedule and as such not covered by DBK Schedule. The appellate authority held that in the absence of endorsement on the Advance Authorisation the drawback is not admissible to Appellants.

8. The issue involved in the present case is whether drawback claim would be admissible under Rule 6 of the Drawback Rules, 1995 when the clause (b) Condition No. 8 of the Notification No. 84/2010-Cus (N.T.) dated 17.09.2010 bars the drawback specified in the said Schedule to export of a commodity or product if such commodity or product is manufactured or exported in discharge of export obligation against an Advance Licence or Advance Authorisation or Duty Free Import Authorisation issued under the Duty Exemption Scheme of the relevant Export and Import Policy or the Foreign Trade Policy. The relevant text of the Notification No. 84/2010-Cus (N.T.) dated 17.09.2010 is reproduced hereinafter.

“(8) The rates of drawback specified in the said Schedule shall not be applicable to export of a commodity or product if such commodity or product is-

(a) manufactured partly or wholly in a warehouse under section 65 of the Customs Act, 1962 (52 of 1962);

(b) manufactured or exported in discharge of export obligation against an Advance Licence or Advance Authorisation or Duty Free Import Authorisation issued under the Duty Exemption Scheme of the relevant Export and Import Policy or the Foreign Trade Policy”

8.1 The Notification No. 84/2010-Cus (N.T.) dated 17.09.2010 has been issued in exercise of the powers conferred by sub-section (2) of section 75 of the Customs Act, 1962 (52 of 1962), sub-section (2) of section 37 of the Central Excise Act, 1944 (1 of 1944), and section 93A and sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994) read with rules 3 and 4 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 to bar the drawback specified in the said Schedule to export of a commodity or product if such commodity or product is manufactured or exported in discharge of export obligation against an Advance Licence or Advance Authorisation or Duty Free Import Authorisation issued under the Duty Exemption Scheme of the relevant Export and Import Policy or the Foreign Trade Policy. The plain reading of the condition does not leave any scope for interpretation. Needless to say, there is no scope for any hypothesis in the interpretation of the condition 8 to the said Notification. The condition under the said notification very unequivocally bars the holder of Advance Authorisation from availing the benefit of drawback if the exported goods are manufactured / exported in discharge of export obligation under Advance Authorisation. As such it is held that the condition no. 8 (b) in Notification No. 84/2010-Cus (N.T.) dated 17.09.2010 negates the applicant's right to claim drawback on exported goods. The applicant seeks to canvas the use of the same export transaction for seeking discharge of advance authorisation issued under the Customs Act, 1962 as well as for seeking drawback on exported goods.

9. It is pertinent to mention that if there is a statutory rule or an Act on the matter, the executive must abide by the Act or the Rules and it cannot ignore or act contrary to that Rule or the Act. In view of the above, the Appellate Authority's order cannot be faulted and the same does not give rise to any substantial question of law.

10. In view of above circumstances, Government finds no infirmity in the impugned Order-in-Appeal and therefore upholds the same.

11. Revision Application is thus rejected being devoid of merit.

Shrawan
2/3/21
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

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ORDER No. /2021-CX (WZ) / ASRA / MUMBAI DATED 02.03.2021

To,
M/s Manugraph India Ltd.
Unit-2, Kodoli, Tal. Panhala,
Dist. Kolhapur- 416 114.

Copy to:

1. The Commissioner, CGST, Kolhapur Commissionerate, Vasant Plaza Commercial Complex, 4th & 5th Floor, C.S. No. 1079/2 K.H., Rajaram Road, Bagal Chowk, Kolhapur-416001.
2. The office of the Central Tax (Appeals-I), Pune, 'F' wing, 3rd floor, GST Bhavan, 41/A, Sassoon Road, Pune 411001.
3. The Deputy Commissioner of CGST, Division -II, Kolhapur, 2nd Floor, Ratikamal Complex, Opp. Basant Bahar Talkies, Assembly Road, Shahupuri, Kolhapur.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard File.
6. Spare Copy.