F.No. 371/53/DBK/2017-RA

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SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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. 371/53/DBK/2017-RA/1559 Date of Issue: 05.05.2022

ORDER NO. 143/2022-Cus (WZ)/ASRA/MUMBAI DATED 26-4-2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : M/s Shiva Pharmachem Ltd.

Respondent: Commissioner of Central Excise, Customs & Service Tax (Appeals-I), Vadodara

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. VAD-EXCUS-001-APP-615/2016-17 DATED 03-03-2017 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals-I), Vadodara.

ORDER

This Revision Application is filed by the M/s Shiva Pharmachem Ltd., Plot No.588, ECP Canal Road, Village: Luna, Taluka: Padra, Dist: Vadodara (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. VAD-EXCUS-001-APP-615/2016-17 DATED 03-03-2017 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals-I), Vadodara.

2. The brief facts of the case was that, the applicant filed an application for fixation of Brand Rate of Duty Drawback of Rs. 2,53,464/- under Rule 7(1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 (herein after DBK Rules, 1995) on export of 42210 Kgs. of Isophthaloyl Chloride vide their Shipping Bill No. 3925005 dated 03.11.2015 and Shipping Bill No. 4050378 dated 09.11.2015. The divisional office vide their letter F.No. III/20-21/Shiva/DBK/15-16, dated 07.03.2016 stated that the applicant has applied for Brand Rate on materials, imported by the importer namely M/s Lok Chemicals Pvt. Ltd, Mumbai which was later procured by the applicant under invoices issued under Rule 11 of Central Excise Rules, 2002, from the importer for the manufacture of exported goods. M/s Lok Chemicals Pvt. Ltd, Mumbai had imported the material namely Isophthalic Acid/Purified Isophthalic Acid vide Bill of Entry No. 2610336 dated 16.09.2015 and Bill of Entry No. 2669922 dated 22.09.2015 under FMS and FPS Scheme respectively on which no duty was paid by them, being exempted vide Notification No. 93/2009-Cus, dated 11.09.2009 and Notification No.92/2009-Cus dated 11.09.2009. The impugned Notifications exempts materials imported into India against the duty credit script issued in terms of paragraph 3.14 and 3.13.2 of the Foreign Trade Policy from the whole of the duty of Customs leviable thereon, which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and whole of the additional duty leviable thereon, under Section 3 of the Customs Tariff Act, thereon, subject to the conditions specified in the said notification. The applicant had applied for Fixation of Brand Rate of Duty Drawback under

Rule 7 of Duty Drawback Rules, 1995 for the Customs Duty suffered on imported materials under the FMS and FPS Scheme, which was exempted and on which Customs Duty was not paid by them, i.e. duty debited in duty credit script license only and hence the said credit was inadmissible to them and same is required to be rejected. Further, the Bill of Entry was also not in the name of the applicant. Hence, show-cause notices vide F.No VIII/20-31/CUS/DBK/15-16 dated 07.03.2016 was issued proposing to reject their application seeking fixation of Brand Rate of Duty Draw-back under Rule 6& 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The Adjudicating authority vide his OIO No: OIO/05/DBK/CUS/T/ 16-17 dated 19.12.2016, rejected the application filed for fixation of brand rate under Rule 11 of the Central excise Rules, 2002. Aggrieved by the said Order, the applicant filed appeal with Commissioner Appeal.

3. Commissioner Appeal vide his OIA No VAD-EXCUS-001-APP-615/ 2016-17 dated 03-03-2017 rejected the appeal filed by the applicant.

4. Being aggrieved by the said Order, the applicant filed the present appeal on the following grounds:

a) The applicant submitted that the Authorities have recorded that the imported Input was procured by the Applicants, from an Importer, registered with the Central Excise Department and if, this be the case, Bill of Entry, would always be in favour of the Importer but this cannot alone deny the Application of Brand Rate of Duty Drawback, when all other evidences clearly indicate that goods are imported and they have suffered from Import Duty and such Input has been used for production of export goods.

b) The main ground, for rejection was that Inputs were imported by Importer, under FMS and FPS, under the two Notifications viz Notification No. 93/2009-Cus, dated 11.09.2009 and Notification No.92/2009-Cus dated 11.09.2009, which grant exemption and therefore, Input has not suffered any Duty of Customs and therefore, question of granting Drawback, does not arise.

c) The afore stated ground is not correct, in as much as, by now it is a settled question of Law that when any goods are imported on which, duty has been levied by using an Incentive Scrip or any other similar Scrip, issued by the Central Government, it amounts to an Importer having paid the actual duty and therefore, if, it is a case of CENVAT Credit, CENVAT Credit of specified Duties of Customs, is admissible and if, it is a case of Drawback, then Duty Drawback, is also admissible. In this connection, the Applicants, relied upon the following Decisions:

1. 2007-TIOL-1614-CESTAT-MAD SESHASAYEE PAPER & BOARDS LTD. Vs C.C.E., SALEM;

2. 2007-TIOL-2308-CESTAT-MAD SESHASAYEE PAPER AND BOARDS LTD. Vs C.C.E., SALEM;

3. 2009-TIOL-291-HC-MAD-CUS TANFACE INDUSTRIES LTD. Vs ASSTT. COMMR., OF CUSTOMS, CUDDALORE;

4. 2010 (256) E.L.T. 244 (Tri.-Bang.) UNIVERSAL POWER TRANSFORMER PVT. LTD. VERSUS C.C.E., BANGALORE.

5. 2010-TIOL-1647-CESTAT-AHM ESSAR OIL LTD. VERSUS C.C.E., RAJKOT.

6. 2011-TIOL-1708-CESTAT-AHM VOLTAMP TRANSFORMERS LTD. Vs C.C.E., VADODARA;

7. 2012 (276) E.L.T. 238 (Tri.-Ahmd.)VOLTAMP TRANSFORMERS LTD. Vs C.C.E., VADODARA;

8. 2013 (296) E.L.T. A-16 (GUJ.) C.C.E. Vs VOLTAMP TRANSFORMERS LTD;

9. 2013 -TIOL-2175-CESTAT-MUM BRINTONS CARPETS ASIA PVT. LTD. Vs C.C.E., PUNE;

10. 2015-TIOL-1805-CESTAT-KOL C.C.E., KOLKATA-III Vs TEXMACO RAIL AND ENGG LTD. AND VICE VERSA

11. 2016-TIOL-1425-HC-AHM-CUS RATNAMANI METALS AND TUBES LTD. Vs UNION OF INDIA.

d) The applicant submitted that one of the arguments, canvassed while rejecting Brand Rate Application of Duty Drawback, is to the effect that the

Documents, do not reveal that the Basic Customs Duty, has been charged by the Importer to the Applicants. This argument is erroneous and imprudent. The Authorities, below, have agreed that the Importer is registered with the concerned. Central Excise Authority, for passing on of the CENVAT Credit of Countervailing Duty of Customs and Additional Duty of Customs. Both duties have been shown by the Importer, in his Excise Invoice, which fact has not been denied by the Authorities, below. The Importer has collected Price of the goods, from the Applicants and it is manifestly clear that as he could not pass on the CENVAT Credit of Basic Customs Duty, which, legally cannot be passed on, it is taken for granted that it is included in the Value of goods, charged by the said Importer to the Applicants. Thus, all the duties, suffered on the imported Inputs, have been charged by the Importer to the Applicants and therefore, the arguments, canvassed by the Authorities, below and stated hereinabove, are without any substance.

e) From what is discussed hereinabove, it is manifestly clear that the Brand Rate Application of Duty Drawback of the Applicants, has been wrongly denied by the Authorities and requested to direct the Original Authority, to allow the Brand Rate Application of the Applicants, for Duty Drawback, in respect of imported goods, with Interest.

f) The Respondent, while dismissing the Appeal of the Applicants, has relied upon the Judgement of the Honourable Gujarat High Court, in case of GUJARAT AMBUJA EXPORTS LTD., VERSUS GOVERNMENT OF INDIA [2013 (289) E.L.T. 273 (Guj.)].

g) The applicant referred to Madras High Court, in case of TANFAC INDUSTRIES LTD., VERSUS ASSISTANT COMMISSIONERM OF CUSTOMS, CUDDALORE [2009 (240) E.L.T. 341 (Mad.)], wherein it was maintained that the goods, imported under DEPB Scheme, cannot be taken as exempted goods but Duties of Customs, are paid by debiting the Credit, available in the said DEPB Scheme and therefore, if, there is any delay in payment of

Tax, Interest is payable on such Tax, which clearly indicates that any Scrip is used for payment of Duties of Customs, it is actual payment of Duties of Customs, made by the Person, using the said Scrip. Against the said Judgement of the Honorable Madras High Court, TANFAC INDUSTRIES LTD., approached the Honorable Apex Court of India, on the ground that the goods, cleared under DEPB Scheme being exempt, question of paying any Interest, does not arise but the Honorable Apex Court of India, in the Judgement, titled as TANFAC INDUSTRIES LTD., VERSUS COMMISSIONER [2009 (244) E.L.T. A-121 (S.C.)], dismissed the Appeal of the said TANFAC INDUSTRIES LTD., on the ground that Interest, in question, was chargeable to them, as the Debit Entry made in such an Import Scrip, amounts to payment of Tax. Hence, the arguments of the Applicants, are more prudent and supported by the Decision of the Honorable Apex Court of India and hence, the Order-in-Appeal of the Respondent, relying upon the Judgement of the Honorable Gujarat High Court, is required to be set-aside.

5. A personal hearing in the case was held on 23.11.2021 which was attended by Shri Santosh Vijayvariya, Assistant Commissioner, on behalf of the Respondent. He appeared online and reiterated the earlier submissions and requested to maintain Commissioner Appeal's Order. Another Personal hearing was held on 30.11.2021. Shri Animon Nair, Senior Manager, appeared online and submitted that duty debited by using VKGUY scrips should be admissible for brand rate fixation. He submitted manner of payment should not be a ground for denial of brand rate of drawback. He relied on Ratnamani Metals case[2016 TIOL-1425-HC-AHM-CUS]

6. 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.

7. The issue to be determined in the current case is whether the applicant is entitled for fixation of Duty Drawback in terms of proviso of Rule 7 (1) of Customs, Central Excise Duties and Service Tax Drawback

Rules, 1995, in view of the fact that the import duty on inputs were not actually paid but debited in duty scrip issued under the Focus Market Scheme (FMS) & Focus Product Scheme (FPS), availing the exemption under Notification Nos. 92/2009-Cus (FPS) dated 11.09.2009 and 93/2009-Cus (FMS) dated 11.09.2009 at the time of import of the inputs.

8. Government observes that in this case, the applicant is a manufacturer exporter and have procured inputs from the importer who had claimed the benefit of Notification Nos. 92/2009-Cus (FPS) dated 11.09.2009 and 93/2009-Cus (FMS) dated 11.09.2009. The said inputs were used in the manufacture of excisable goods which were exported and thereafter the applicant applied for fixation of Brand rate of duty drawback. The same was rejected by the adjudicating authority and the appellate authority on the grounds that the imported input was imported under exemption from payment of import duty and hence the export goods were not eligible for drawback.

9. Government observes that the contention of the department is that basic customs duty paid through debit in duty scrip issued under the Focus Product Scheme (FPS) and Focus Market Scheme (FMS) does not make the imported goods as "Customs duty paid" and the goods so imported deserved to be treated as "exempted goods" only. And, thus the applicant was not entitled to avail drawback in respect of duties of Customs as per First Schedule to the Customs Tariff Act, 1975 debited through scrip issued under the Focus Product Scheme (FPS) and Focus Market Scheme (FMS) issued to the importer and not to the applicant.

10. Government finds that this issue has been dealt in the case of Ratnamani Metals and Tubes Ltd. Vs UOI decision of Gujarat High Court [2016 (339) ELT 509(Guj)]. The relevant paras of the judgement is reproduced below:

> *"......11. We may also refer to the Board Circular No. 41/2005, dated 28-10-2005 since much debate on this circular has taken place in the orders passed by the authorities. The relevant portion of the said circular reads as under:*

> *"Subject : Eligibility of brand rate of duty drawback where inputs used in the manufacture of export products are imported availing of DEPB Clarification Regarding.*
>
> *The undersigned is directed to invite your attention on the above mentioned subject and to state that an issue has been raised as to whether additional customs duty paid through debit under DEPB can be allowed as brand rate of duty drawback.*
>
> *2. The matter has been examined by the Board. Hitherto, the additional customs duty paid in cash only was adjusted as CENVAT credit or duty drawback while the same paid through debit under DEPB was not allowed as duty drawback. In the Foreign Trade Policy, 2004-2009, which came into force w.e.f. 192004, it has been provided under Paragraph 4.3.5 that the additional customs duty/excise duty paid in cash or through debit under DEPB shall be adjusted as CENVAT credit or Duty Drawback as per the rules framed by the Department of Revenue. Taking note of this change, it has been decided that the additional customs duty paid through debit under DEPB shall also be allowed as brand rate of duty drawback.*
>
> *3. Accordingly the instructions contained in Circular No. 3/99Cus., dated 321999 stand modified.*

12. A similar clarification came to be issued under Circular No. 26/2007, dated 20-7-2007 in which it was provided as under :

> *"3. In brief, the issue involved is, whether the duty paid through debits under DEPB is to be treated as payment of duty or exemption from duty. Hitherto, the stand taken by the department was that goods cleared through debit under DEPB are exempted goods and, accordingly, no CENVAT or drawback was allowed for such payments. Para 4.3.5 of the Foreign Trade Policy, 200409 was amended allowing, additional Customs duty paid through debit under DEPB to be adjusted as Cenvat credit or duty drawback. The said position was clarified vide Circular No. 59/2004Cus., dated 21-10-2004 [2004 (173) E.L.T. T9]. It implies that the goods cleared by debits through DEPBs are not to be treated as exempted but duty paid.*
>
> *4. Section 61 of the Customs Act, 1962 provides for charging of interest on duty payable on clearance of warehoused goods. Section 61(2)(i) and (ii) provides that the interest shall be payable on the amount of duty payable at the time of the clearance of the goods from the warehouse. In case of clearances under DEPB Scheme, the amount of duty payable is required to be debited from DEPB scrip. Therefore, it cannot be considered that the duty payable is nil or exempted. This is further supported by the fact that the CENVAT credit or duty drawback is available even when the additional Customs duty is debited under DEPB."*

13. It can thus be seen that the benefit of duty drawback is available in terms of Section 75 of the Customs Act, 1962 as provided in the Drawback Rules as specified by Government notifications from time to time. Section 75

in plain terms enables the Government of India to issue notification allowing drawback of the duty on export of goods or inputs utilised for manufacture of export goods. The drawback would be relatable to duty of customs chargeable under the Act on such imported materials.

14. As noted, in exercise of powers under sub-section (2) of Section 75, the Drawback Rules of 1995 have been framed. In terms of Rule 3 of the said Rules of 1995, drawback is allowed on export of goods at such rates as may be determined by the Central Government. Under further proviso to Rule 3 however, such drawback would not be available in various categories specified therein. None of these categories include the payment of customs duty on the goods through DEPB scrip. In other words, Rule 3 does not prohibit a claim of drawback as per the specified rates if the duty on the imported goods is not paid in cash but by surrendering credit in the DEPB scrip. Thus neither Section 75 of the Customs Act, nor Rule 3 of the Rules of 1995, provide any restriction on claim of drawback, if the basic duty of customs is paid through DEPB.

15. In order to appreciate the department's concern about the customs duty not being paid when the import is made under DEPB scheme, we may broadly refer to the DEPB scheme. The scheme is framed under the import-export policy and is one of the many duty exemption or remission schemes. The scheme provides that objective of DEPB is to neutralise incidence of customs duty on import component of export product which would include special additional duty in case of nonavailment of Cenvat credit. Neutralisation would be provided by way of grant of duty credit against export product which would be at a specified percentage of FOB value of export. The holder of DEPB would have an option to pay additional customs duty in cash also. DEPB is freely transferable. The Foreign Trade Policy of 20092014 contained an additional clause which hitherto was not a part of the policy and reads as under:
"Applicability of Drawback.
Additional customs duty/Excise Duty and Special Additional Duty paid in cash or through debit under DEPB may also be adjusted as CENVAT Credit or Duty Drawback as per DOR rules

16 It can thus be seen that the DEPB scheme aims at neutralizing 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 utilized 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 801B 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.

18. We may recall, in the circular dated 28.10.2005 it was clarified that hitherto additional customs duty paid in cash only was adjusted as Cenvat credit or duty drawback and the same paid through debit under DEPB was not allowed as duty drawback. However, with effect from 1-9-2004, Foreign Trade Policy provided that additional customs duty/excise duty paid in cash or through debit under DEPB shall be adjusted as Cenvat credit or duty drawback as per the rules. It was in this background provided that additional customs duty paid through debit under DEPB shall also be allowed as brand rate of duty drawback. Thus, the Foreign Trade Policy removed restrictions on additional customs duty being adjusted against Cenvat credit or duty drawback, unless paid in cash. A corresponding clarification was issued. This clarification cannot be seen in reverse as to eliminate the facility of drawback when basic customs duly has been paid through DEPB scrip.

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 for such 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 C/SCA/10826/2018 JUDGMENT 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.

21. Judgement of this Court in case of Gujarat Ambuja Exports Ltd (supra), was rendered in different background. The question there was chargeability of education cess which was calculated at the rate of 2% on the aggregate of duty of customs levied and collected by the Central Government. In this background, question arose where the imports are made under DEPB scheme, would education cess be applicable. Noticing that subject to adjustment in DEPB scrip, the imports are made exempt from payment of duty, it was held that there cannot be education cess on such imports. The issue in the present case is vastly different.

22. Likewise, the decision of learned Single Judge of Madras High Court relied upon by the counsel for the Revenue in case of Associated Autotex Ancillaries P.Ltd. v. Joint Secretary, MF reported in 2007(211) ELT 368(Mad), did not concern the present controversy. In the said case, it was held that modification by circular dated 28.10.2005 would be prospective and the clarification of brand rate of duty drawback C/SCA/10826/2018 JUDGMENT would be available also in relation to additional customs duty paid through DEPB, would have no retrospective effect.

23. In the result, both the petitions are allowed. Impugned orders are reversed. <u>Proceedings are placed back before the original authority for fixation of brand rate of duty in each case.</u> Petitions are disposed of."

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11. Government finds that in another case of M/s Synthite Industries Ltd. WP(C) No. 30543 of 2018 filed before Hon'ble Kerala High Court, Gujarat High Court decision in the case of Ratnamani Metals and Tubes Ltd. Vs UOI [2016 (339) ELT 509(Guj)] was followed which reads as under:

" The petitioner, a Company dealing with major food, fragrance and flavours, has sought the following reliefs:

"A. issue a Writ of certiorari or such other appropriate writ, direction or order quashing Ext.P13 Circular NO. 3/99-Cus dated 03.02.1999; B. issue a Writ of

certiorari or such other appropriate writ, direction or order quashing Ext.P15 Order-in-Appeal dated 11.05.2018; C. issue a Writ of mandamus or such other appropriate writ, direction or order directing Respondent No.4 to allow the drawback claim of the Petitioner in full including the basic customs duty paid by utilizing DEPB scrips;

D. issue a Writ of mandamus or such other appropriate writ, direction or order directing Respondents to clarify that for the purpose of duty drawback under Section 75 of the Customs Act, 1962 payment of customs duties by utilizing DEPB scrips is equivalent to payment of customs duties in cash; and E. pass such other order/orders as may be deemed fit and proper in the facts and circumstances of the case."

2. Ratnamani Metals and Tubes Ltd. Vs Union of India – Through Joint Secretary's decision is on identical issue. And I dispose of this writ petition applying the same ratio."

12. In view of the above Judgements, the application filed for fixation of the brand rate of drawback where the customs duty has been paid through debit in duty scrip issued under FPS and FMS is in order. Further government finds, Rule 2(a) of the definition of drawback in the Drawback Rules 1995, includes duties paid on imported materials used in manufacturing the export product, besides the duties paid for excisable materials used and tax paid on taxable services used. There is neither any restriction in the definition that duty should have been paid in cash, nor is there any specific exclusion of duty paid by debit in duty scrip issued under FPS and FMS. In the Applicant's case, the duty was paid through debit in duty scrip issued under FPS and FMS. Board's Circular No.26/2007-Customs dated 20.07.2007 clearly points out that imported goods cleared on payment of duty through DEPB are not to be considered as exempted but duty paid goods. Government observes there are plethora of judgments wherein it is held that when any goods are imported on which duty has been levied by using an Incentive Scrip issued by the Central Government, it amounts to an importer having paid the actual duty. Once it is considered as duty paid, all the duties paid have to be considered for fixing the brand rate. Hence the payment of basic customs duty through debit to duty scrip issued under FPS and FMS should be considered as proper duty payment

and hence Governments remands the case back to the adjudicating authority for correctly considering the fixation of brand rate of drawback in the applicant's case.

13. Since the issue raised in the current Revision application is similar to the above referred Gujarat High Court Judgement, relying on the ratio of above judgement, Government sets aside the Order in Appeal No VAD-EXCUS-001-APP-615/2016-17 DATED 03-03-2017 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals-I), Vadodara and proceedings are remanded back to the original authority for fixation of brand rate of duty in the impugned case.

14. The Revision Application is allowed in terms of above.

Shrawan 26/4/22
(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 143/2022-Cus (WZ)/ASRA/Mumbai Dated 26.4.2022
2020.

To,
M/s Shiva Pharmachem Ltd.,
Plot No.588, ECP Canal Road,
Village: Luna, Taluka: Padra,
Dist: Vadodara-391440.

Copy to:
1) Commissioner of Central Excise, Customs & Service Tax (Appeals-I), Vadodara, Central Excise Building, 1st Floor Annexe, Race Course, Vadodara-390007
2) The Commissioner of CGST, Vadodara-I, GST Bhavan, Race Course Circle, Vadodara-390007.
3) Sr. P.S. to AS (RA), Mumbai
4) Guard file
5) Notice Board.