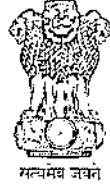


REGISTERED SPEED POST AD



**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. 195/737/12-RA

Date of Issue: 12/02/20

ORDER NO. 160/2020-CX (WZ) /ASRA/MUMBAI DATED 03.02.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT.SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Valvoline Cummins Ltd.
Office No. 610, 606-608,
Platinum Techno Park,
Plot No. 17-18,
Sector-30 A, Vashi,
Navi Mumbai - 400 705

Respondent: Commissioner, Central Excise, Raigad

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the OIA No. US/268/RGD/2012 dated 25.04.2012 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.

ORDER

The revision application has been filed by M/s. Valvoline Cummins Ltd., Office No. 610, 606-608, Platinum Techno Park, Plot No. 17-18, Sector-30 A, Vashi, Navi Mumbai – 400 705 (hereinafter referred to as “the applicant”) against OIA No. US/268/RGD/2012 dated 25.04.2012 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.

2.1 The applicant had got their goods manufactured from their job worker; viz. M/s Ultra Plus Lubes Pvt. Ltd., 53, Jawahar Co-op. Industrial Estate, Behind State Bank of India, Kamothe, Kalamboli, Panvel – 410 029. They had submitted application dated 21.07.2008 for fixation of Brand Rate for the period from 16.04.2008 to 31.03.2009 for the goods first exported vide Shipping Bill No. 6222529 dated 16.04.2008. In response the then Assistant Commissioner, Central Excise, Raigad issued Brand Rate letter no. 06/2009-10 dated 12.05.2009 fixing brand rate for Shipping Bill No. 6222529 dated 16.04.2008 and subsequent period from 24.04.2008 to 23.04.2009. In the said brand rate letter quantity restriction of 75,000 ltrs. for the product CHAMP 4 T 20 W 40 SG/CC was put since the applicant had sought brand rate only for so much quantity in their application.

2.2 Thereafter, the applicant filed application bearing no. RCS/02/033/08-09 dated 03.06.2009 for enhancing the quantity restriction from 75,000 ltrs. to 2,91,600 ltrs. in respect of the above product as further exports were made by them and the raw material shown in the application was sufficient to manufacture the further quantity sought to be included in the quantity restriction. The said application was sent to the Divisional Office for verification and the Division Office vide letter F. No. V. Gen(30)115/DRAWBACK/PNL/08-09 dated 04.03.2010 informed that as per the application for the enhancement of the quantity restriction had not been made during the validity of the brand rate letter as stipulated in para 3(d)(vii) of Circular No. 14/2003-

Cus. Dated 06.03.2003 issued vide F. No. 609/32/2003-DBK the applicants request does not merit consideration.

2.3 The applicant again requested vide letter dated 08.04.2011 to consider their application since brand rate letter had been received by them only on 12.05.2009; i.e. after expiry of the validity and only at that time they could notice that goods exported by them were more than the quantity restriction fixed. They also stated that they had applied for quantity enhancement within 30 + 30 days from the expiry of the terminal date of brand rate letter. They also enclosed copy of extract of the drawback rules. The applicant vide their letter dated 15.07.2011 further submitted that the word "reference" mentioned in para 3(d)(vii) of Circular No. 14/2003-Cus dated 06.03.2003 means "reference to export which has taken place during the validity period" of the Brand Rate letter. They have further stated that they can substantiate the availability of the duty paid input material required for the enhanced export quantity. They have also stated that they have exported the goods manufactured out of duty paid inputs and have also realized the sale proceeds. Hence, drawback is admissible to them.

3.1 On taking up the case for decision, the Additional Commissioner(Tech), Central Excise, Raigad found that the argument of the applicant that they had received the brand rate letter only after expiry of the validity period and they came to know about the quantity restriction only when they received the brand rate letter did not hold water as all the exports of the product under question were done in the year 2008 and at that time the applicants application was still under consideration of the Department. He further observed that the quantity restriction of 75,000 ltrs. was put in the brand rate letter as sought by the applicant himself. Therefore, if the applicant was aware that they were exceeding the quantity restriction sought by them before the issue of the brand rate letter, they could have immediately intimated the same to the Department and the Department would have considered the request at that stage itself; i.e. before the issue of the Brand Rate letter. He further held that the applicants

submission that there was communication delay between their Mumbai Office, Delhi Office and CHA is also not acceptable since the goods were manufactured and exported from their job workers premises located in Navi Mumbai and all correspondence regarding Brand Rate application was being done by the applicant from their Navi Mumbai Office.

3.2 With regard to the applicants submission that they had applied within 30 + 30 days of the termination of the brand rate letter as per drawback rules, the adjudicating authority held that this submission was untenable as there was no such provision either in the law or any of the circulars issued by the Board which were prevalent then. On the contrary, para 3(d)(vii) of Circular No. 14/2003-Cus dated 06.02.2003 categorically states that the application for enhancement of quantity should be filed during the validity of the Brand Rate letter. In so far as the applicants submissions regarding the word "reference" mentioned in para 3(d)(vii) of Circular No. 14/2003-Cus dated 06.02.2003, the adjudicating authority observed that it meant the "application" for enhancement of the quantity and could not be construed to mean "reference to export consignments" which had taken place during the validity period. In the light of these findings, the Additional Commissioner rejected the applicants request for enhancement of quantity vide his OIO No. Raigad/ADC/Brand Rate-01/11-12 dated 30.08.2011.

4.1 Aggrieved, the applicant preferred appeal before the Commissioner(Appeals). The Commissioner(Appeals) observed that the applicant had applied for fixation of brand rate for 75000 litres of one of their products; viz. "CHAMP 4 T20 W40 SG/CC" to be exported during the period from 16.04.2008 to 31.03.2009 based on their Shipping Bill No. 6222529 dated 16.04.2008 vide their application dated 21.07.2008 addressed to the Assistant Commissioner, Central Excise Raigad. The jurisdictional Assistant Commissioner had after verification of the applicants Brand Rate application issued Rate Letter No. 06/2009-2010 dated 11.05.2009 fixing the brand rate of drawback restricted to exports made under Shipping Bill No. 6222529 dated

16.04.2008 and further exports from 24.04.2008 to 23.04.2009 with quantity restriction of 75000 litres. The applicant had thereafter made application for enhancement of quantity restriction in respect of the said product from 75000 litres to 291600 litres vide their letter dated 03.06.2009 filed in the Division Office on 15.06.2009. The Commissioner observed that the application for enhancement of quantity restriction had been made beyond the validity period of Brand Rate letter whereas as per para 3(d)(vii) of Board Circular No. 14/2003-Cus dated 06.03.2003 the application for enhancement of quantity restriction was required to be made within the validity period of the Brand Rate letter.

4.2 He further observed that the quantity restriction of 75000 litres given in the Brand Rate letter was given based on the applicants original application for fixing brand rate of drawback. The applicant was also aware that the quantity of the product exported by them had already been exported during the validity period of the Brand Rate letter. The Commissioner(Appeals) further held that the application for enhancement of quantity restriction could not be treated as a fresh application for fixing brand rate of drawback and that the Circular No. 14/2003-Cus dated 06.03.2003 does not provide for any condonation in case of delay in filing application for enhancement of quantity restriction of brand rate of drawback. Moreover, the case laws submitted by the applicant were in respect of application for fixation of brand rate of drawback and not in respect of enhancement of quantity restriction and hence were not applicable to the present case. The Commissioner(Appeals) therefore rejected the appeal filed by the applicant vide his OIA No. US/268/RGD/2012 dated 25.04.2012.

5. Aggrieved by the OIA No. US/268/RGD/2012 dated 25.04.2012, the applicant filed revision application on the following grounds :

(a) There is no time limit provided in Rule 6 or Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 for making application for enhancement of quantity restrictions in the Brand Rate letter. Hence, the

request for enhancement in quantity restrictions claimed by them could not be rejected on grounds of time bar.

- (b) The applicant submitted that Rule 6 and Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 only provided time limit for filing the application for determination of Brand Rate and does not provide for time limit in filing the application for enhancement of quantity restrictions in case the Brand Rate had already been determined. They therefore contended that they were not bound by any limitation of time to apply for enhancement of quantity restrictions.
- (c) It was further contended that the subsequent application for enhancement of quantity restriction must be related back to the original application for determination of Brand Rate.
- (d) They submitted that it was only after the receipt of the Brand Rate Letter dated 12.05.2009 that the applicants realized that the total quantity exported was more than the quantity for which Brand Rate Letter had been issued. Hence, they had applied for enhancement in quantity restriction from 75,000 litres to 2,91,600 litres.
- (e) The applicant submitted that the time limit prescribed in the Board Circular dated 06.03.2003 can be condoned by the Department.
- (f) They further submitted that the Brand Rate Letter had been issued by the Assistant Commissioner after the expiry of the validity period for which the Brand Rate Letter was issued. Hence, the applicants applied for enhancement in quantity restriction from 75,000 litres to 2,91,600 litres on 03.06.2009.
- (g) The applicant submitted that the delay in filing the application beyond the time limit specified in the Circular dated 06.03.2003 could be condoned by the Department and that there was no time limit for application of Brand Rate specified in the Act. They further contended that if time limit had been

specified in the Act, then that time limit could not have been condoned other than by way of an Act of Parliament.

- (h) It was argued that since in the present case, the time limit had been specified by the Rules prescribed by the Central Government under the powers conferred by Section 75 of the Customs Act, 1962 and circulars issued by the CBEC, the Department had the power to condone the delay in filing the application beyond the time limit specified in the circular.
- (i) They placed reliance on the case laws of Commissioner vs. Suzlon Structures Ltd.[2011(264)ELT 329(Guj)] & Stovec Industries Ltd. vs. UOI[2008(221)ELT 328(Guj)]. In the light of these judgments, the applicants submitted that the application for enhancement of quantity restrictions was filed immediately after receipt of the Brand Rate Letter dated 12.05.2009 and that the delay cannot be attributed to the applicants since the Brand Rate Letter dated 12.05.2009 was issued only after the expiry of the validity period.
- (j) The applicant submitted that in these judgments, the delay in filing application for fixation of brand rate had been condoned where the time limit for filing such application had been provided in the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 itself. Therefore, the delay in filing of application for enhancement of quantity in respect of which no time limit is specified in the Rules would also be condonable.
- (k) It was further submitted that since they had exported the entire quantity out of India, drawback should be allowed to the applicants on the duty paid on inputs used in the manufacture of such export product:
- (l) It was further contended that they should have been allowed to claim drawback on the quantity falling within the limitation period in respect of the subsequent application for enhancement and that the subsequent application should have been considered as a fresh application for fixation of Brand Rate. Hence the applicants should be allowed drawback of such

quantity of exports which falls within the limitation period of subsequent application dated 03.06.2009.

6. The applicant was granted opportunity of personal hearing on 30.11.2017, 27.12.2017, 12.02.2018 & 20.08.2019. However, they failed to appear for the hearing. The applicant has also not filed any submissions, request for adjournment.

7. The Government has carefully gone through the case records, the impugned Order-in-Appeal and the Order-in-Original. The issue involved in the present revision application is whether the applicants application for enhancement of quantity restriction of drawback vide letter dated 03.06.2009 was made within the prescribed time limit and whether the delay, if any, can be condoned.

8.1 Government observes that the applicant has argued that they have received the brand rate letter only after the expiry of the validity period and that they came to know about the quantity restriction only when they received the brand rate letter. In this regard, a finding has been recorded by the Additional Commissioner(Tech), Raigad that all the exports of the product had been effected during the year 2008 while the application of the applicant for fixation of brand rate was still under consideration of the Department and the quantity restriction of 75000 ltrs. was fixed as the applicant themselves had sought Brand Rate for that quantity. Consequently, since the applicant was very well aware of the fact that they were exceeding the quantity restriction sought by them, they should have immediately intimated the Department so that the request for enhancement of quantity restriction could have been considered at that stage and incorporated in the Brand Rate Letter to be issued.

8.2 The applicants argument that they had applied immediately after the validity period and issue of the brand rate letter as per drawback rules is untenable as there is no such provision in the law or any of the circulars

issued by the Board. On the contrary, para 3(d)(vii) of Circular No. 14/2003-Cus dated 06.02.2003 categorically states that application for enhancement of quantity should be filed during the validity of the Brand Letter. The quantity restriction of 75000 litres was fixed in the Brand Rate letter based on the applicants original application dated 21.07.2008 for fixing Brand Rate of drawback. It was within the knowledge of the applicant that the quantity of product exported by them was in excess of 75000 litres as the exports had already been effected during the validity period of the Brand Rate letter and that too during the year 2008 itself. However, the applicant filed application for enhancement of quantity on 03.06.2009; even after issue of the Brand Rate Letter on 12.05.2009 with validity for the period between 16.04.2008 to 31.03.2009. After 03.06.2009, the applicant again requested for quantity enhancement on 08.04.2011. Needless to say, the applicant had more than sufficient time to apply for enhancement of quantity restriction as the factum of exports in excess of the quantity applied for was within their knowledge. As such, the applicant did not show any urgency in seeking enhancement of quantity restriction although the Brand Rate Letter was issued after the expiry of the validity period.

8.3 The Drawback Cell of the Board has in Circular No. 14/2003-Cus dated 06.03.2003 specifically spoken about filing of application for enhancement of quantity restriction and explicitly stated that such references made within the validity period of the Brand Rate letter are to be considered on merits and therefore such application for enhancement of quantity restriction cannot be treated as a fresh application for fixing brand rate of drawback. As such, the filing of an application for enhancement of quantity restriction is not an unforeseen event and had already been addressed. The Circular No. 14/2003-Cus dated 06.03.2003 does not provide for any condonation in the case of delay in filing application for enhancement of quantity restriction of Brand Rate of drawback. The case laws of Commissioner vs. Suzlon Structures Ltd.[2011(264)ELT 329(Guj)] & Stovec Industries Ltd. vs. UOI[2008(221)ELT

328(Guj)] pertain to delay in filing application for fixation of Brand Rate of drawback and did not involve applications for enhancement of quantity restriction. Hence, these case laws are of no avail to the applicant.

9.1 Government observes that the assertion made by the applicant that there is no time limit for making application for enhancement of quantity restrictions in the face of the Circular No. 14/2003-Cus dated 06.03.2003 is factually incorrect. Their claim that they realized that the total quantity exported was more than the quantity for which Brand Rate Letter had been issued is incorrect as they would obviously have been aware that they were exporting more than the quantity they had originally applied for fixing Brand Rate drawback. The quantity(2,91,600 litres) that they sought while requesting ~~quantity enhancement for exporting was almost four times the original~~ quantity(75,000 litres). The difference between these quantities is huge and could not have gone unnoticed.

9.2 In the revision application filed by them, the applicant has repeatedly contended that the Department has the power to condone the delay in filing the application for enhancement of quantity restriction. The stipulation that the application for enhancement of quantity restriction should be considered only when the exporter makes such references within the validity of the corresponding Brand Rate letter is laid down in the Circular No. 14/2003 issued vide F. No. 609/32/2003-DBK on 06.03.2003. The powers for revision under Section 35EE of the Central Excise Act, 1944 and Section 129DD of the Customs Act, 1962 can only be exercised within the scope of the statute and the executive instructions issued thereunder. Therefore, the delay in filing application for enhancement of quantity restrictions cannot be condoned by the Revisionary Authority. Be that as it may, there are special powers vested in the Central Government under Rule 17 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

Rule 17. Power to relax. - If the Central Government is satisfied that in relation to the export of any goods, the exporter or his authorized agent has, for reasons beyond his control, failed to comply with any of the provisions of these rules, and has thus been entitled to drawback, it may, after considering the representation, if any, made by such exporter or agent, and for reasons to be recorded in writing, exempt such exporter or agent from the provisions of such rule and allow drawback in respect of such goods.

However, these powers are exercisable by the Joint Secretary(Drawback). Relief if any could be considered only by the appropriate authority.

10. The revision application filed by the applicant is rejected and the OIA No. US/268/RGD/2012 dated 25.04.2012 passed by the Commissioner (Appeals-II), Central Excise, Mumbai is upheld.

11. So ordered.

(SEEMA ARORA)

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

ORDER No. 160/2017-CX (WZ) /ASRA/Mumbai DATED 03.02.2020

To,
M/s. Valvoline Cummins Ltd.
Office No. 610, 606-608,
Platinum Techno Park,
Plot No. 17-18,
Sector-30 A, Vashi,
Navi Mumbai - 400 705

Copy to:

1. The Commissioner of CGST & CX, Raigad.
2. The Commissioner of CGST & CX, (Appeals), Raigad.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy