REGISTERED SPEED POST

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. 373/88-91/DBK/14-RA /5800 Date of Issue:- 09.10.2020

ORDER NO. 175-178/2020-CUS(SZ)/ASRA/MUMBAI DATED 02.09.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Sl. No.	Revision Application No.	Applicant	Respondent
1	373/88-91/DBK/14-RA	M/s Amphenol Interconnect India Pvt. Ltd.	Commissioner of Central Excise, Bangalore-I.

Subject: Revision applications filed under Section 129DD of the Customs Act, 1962, against the Order in Appeal No. 686-689/2013 dated 19.12.2013 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.

ORDER

This Revision application is filed by M/s Amhenol Interconnect India Pvt. Ltd., Plot No. 61, Keonics Electronic City, Hosur Road, Bangalore- 560 001 (hereinafter referred to as the 'applicant') against the Orders-In-Appeal No. 686-689/2013 dated 19.12.2013 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.

2. The applicants are manufacturer and exporter of electrical, electronic and fibre optic connectors, coaxical and flat ribbon cables and interconnect systems. The applicant during the period from February 2012 to December 2012 have exported 'Cable Harness Assembly" by filing drawback shipping bill and claimed drawback at AIR by declaring the drawback Sr. No. 854499. The applicant received drawback at AIR rate of 2% of the FOB value of the exports of Rs. 5,67,913/-. Meanwhile the applicant received Order dated 30.08.2012 of the Additional Commissioner, Central Excise, Bangalore sanctioning the drawback at brand rate. The drawback sanctioned at brand rate was much higher than the drawback received by them at AIR rate. As such, the applicant filed application for fixation of brand rate of drawback under Rule 7 of the Customs Excise & Service Tax Drawback Rule, 1995 (herein after referred to as "Drawback Rules") in respect of exports made vide relevant shipping bills.

3. The Original Authority rejected the Brand Rate fixation applications on the ground that :-

3.1 The applicant have filed AIR drawback at the time of export under specific Sub-SI/tariff item No. of the AIR drawback schedule.

3.2 The applicant's declaration of tariff item no. other than 9801 on the shipping bill is a declaration that he is claiming drawback at AIR rate only.

3.3 The applicant can't claim drawback at brand rate since they have already claimed it at AIR rate.

4. Being aggrieved by the said order, the applicant filed an appeal before Commissioner (Appeals) primarily contending that Rule 7 of Drawback Rules does not bar them from claiming the brand rate of drawback for differential amount, if they have already availed drawback under Rule 3 in respect of the same exports. The Appellate Authority rejected the appeal by relying on the Clarification given by CBEC vide F. No. 604/04/2011-DBK dated 31.12.2011 and also base on the Order No. 121/13/Cus dated 22.05.2013 passed by the Revisionary Authority in respect of M/s Thermax Ltd., Pune.

5. Aggrieved by the said order, the applicant filed instant Revision Application on following grounds :-

5.1 Rule 7 of Drawback Rules does not bar the applicant from claiming the brand rate of drawback for the differential amount, if they have already availed the drawback under Rule 3 in respect of the same exports. The applicant submitted that they are entitled to claim brand rate of drawback in respect of the finished goods exported in terms of Rule 7(1) of the Drawback Rules, 1995 even if the drawback has been claimed at AIR rate.

5.2 If the applicant demonstrate that the drawback available under Rule 3 does not fully reimburse the duty paid inputs used in the export product and that the drawback under Rule 3 is less than 4/5th of the duties actually suffered on the inputs, the claim under Rule 7 is automatically maintainable.

5.3 The Rule 7, itself provides that provisional drawback as applicable under Rule 3 may be sanctioned/disbursed to the exporter-claimant, on an application made by such exporter.

5.4 The Assistant Commissioner in the impugned Order has held that the applicant have already claimed the drawback at All Industrial Rate at 2% by declaring a Sl. No. other than 9801 in respect of all the shipping bills and are therefore not eligible for a Brand Rate fixation. The only ground on which claim under Rule 7 is rejected is that the applicant, have already claimed drawback under Rule 3. It is submitted that there is no bar or prohibition to claim the

benefit under Rule 7 thereof if the benefit of Rule 3 is already claimed. The applicant have claimed drawback on the difference between the amount of drawback under Rule 3 and Rule 7. They have not claimed double benefit.

5.5 The Assistant Commissioner in the impugned Order has also held that the applicant by mentioning a tariff item number other than 9801 in the shipping bill have declared that they are satisfied with the AIR rate and opt for it. This shows that the claim for fixation of drawback at brand rate is denied only on the ground of alleged failure to follow the correct procedure viz. non mention of Chapter Heading 9801 in the shipping bill. This is clearly arbitrary and unreasonable. Admittedly, the Department allowed the claim in the past without mentioning heading 9801 in the shipping bill. In any event, non mentioning of heading 9801 at best can be procedural non compliance and substantive right to drawback cannot be denied on the ground of alleged non compliance of procedure when such procedure was non insisted upon in the past.

5.6 The applicant placed reliance on the Circular No. 10/2003-Cus dated 17.2.2003, wherein the CBEC has clarified that if the drawback has been claimed under Rule 7 and due to procedures etc. if it takes time to sanction drawback then the Department should sanction drawback at AIR and the differential amount may be sanctioned subsequently. The applicant also submitted that Rule 15 of the Drawback Rules provides for supplementary claim.

6. A Personal Hearing in the matter was held on 15.10.2019. Shri Jagdeep Singh, Consultant attended the same on behalf of the applicant. The revision application is taken up for decision on the basis of documents, submissions and evidences available on record.

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

8. The Government finds that the issue needs to be decided in the instant revision application is whether the applicant, who, at the time of export of the goods, have claimed and been granted drawback at AIR under Rule 3 of Drawback Rules are barred from making an application for determination of the brand rate of drawback under Rule 7, when the amount or rate of drawback determined under Rule 3, or revised under Rule 4, is less than 4/5th (80%) of the duties or taxes paid on the inputs / input services used in the production or manufacture of the exported goods.

9. Government finds that the applicant had exported 'Cable Harness Assembly" during the period from February2012 to June 2012 and had claimed All Industry Rate (AIR) of Drawback as determined under Rule 3 of the Drawback Rules,1995. Subsequently, the applicant filed application for fixation of Brand Rate of Drawback under Rule 7 of the Drawback Rules after availment of the said Drawback. Thus it is observed that initially the applicant exported the goods and claimed All Industry Rate of drawback. Subsequently, the applicant wanted to change the same into a claim of fixation of Brand Rate. The lower authorities have objected to it stating that applicants had opted for drawback under AIR in the Shipping Bills which would disentitle them from claiming brand rate of drawback under Rule 7.

10. Further, the Government finds that the C.B.E. & C. vide its clarification contained in F. No. 604/04/2011-DBK, dated 31-12-2011, the C.B.E. & C. has clarified as under :-

> *"(a) As per rule 7 of the Drawback Rules, 1995, if the exporter finds that the amount or rate of drawback determined, under notified AIR drawback under rule 3 or 4 is less then four fifth of the duties & taxes suffered on inputs/input services used in manufacture of export goods, he may within specified period apply before the jurisdictional Central Excise Commissioner for determination of amount or rate of drawback (Brand Rate). Here, it must be kept in mind that the AIR drawback determined under rule 3 or 4 of the Drawback Rules is specified in the Drawback Schedule by notification. The exporter can*

compare this with the facts of his case and decide if it is less than four fifth of the duties & taxes suffered and also whether he want to apply for fixation of Brand Rate in his case.

(b) If the exporter chooses to opt for Brand Rate then the exporter makes declaration in the Shipping Bill mentioning drawback sub-serial/tariff item number as 9801. Then, within the specified time from let export date, the exporter applies for Brand Rate of drawback before the jurisdictional Central Excise authority. During the pendency of this application, the exporter may be allowed the facilitation under the Board' Circular No. 10/2003 subject to necessary conditions.

(c) After the jurisdictional Central Excise authority fixes/sanctions Brand Rate, the matter goes back to the customs at the port of export for making the requisite payment, with reference to the exporter's declaration of having opted for Brand Rate by specifying drawback Tariff Item No. as 9801 in the Shipping Bill at the time of export. It is this option that enables the Shipping Bill to be brought back into drawback queue for payment of Brand Rate.

(d) Thus, provision do not provide that an exporter can avail the AIR Drawback first at the time of export under specified sub-serial/tariff item number of the AIR schedule and then file for determination of the Brand Rate under rule 7. Exporter's declaration of Tariff Item number other than 9801 on the Shipping Bill declaration that he is satisfied with the AIR rate and opts for it. Any other interpretation would all undermine the entire EDI procedure in this respect."

10.1 It is observed that the above clarification explicitly ratifies that opting of AIR drawback under Rule 3 in the Shipping Bills restrains exporter from claiming brand rate of drawback. The said clarification is very much in existence. Further, exporter has to carefully choose a scheme which is beneficial to him at the time of filing Shipping Bill. After choosing a scheme he cannot be allowed to change it subsequently. The Government observes that the C.B.E. & C. in its Circular No. 10/2003-Cus., dated 17-2-2003 clarified that henceforth in all those cases where the exporters have applied for brand

rate of drawback, they may be permitted the duty drawback at All Industry Rate as admissible under the relevant Sr. No. of duty drawback table and subsequently when exporters are issued brand rate of drawback, the differential amount may be sanctioned to them. This circular did not stipulate that exporter can first claim drawback at AIR rate and subsequently apply for brand rate. The C.B.E. & C. has clarified this further in their letter F. No. 604/04/2011-DBK, dated 31-12-2011 discussed above. The said clarification, being legal cannot be flouted. Since, the similar stand was taken by this authority in the case of *M/s. Sandvik Asia* in GOI Order No. 17/2012-Cus., dated 21-2-2012 and subsequent Order No. 96-101/2013-Cus., dated 1-4-2013, the ratio of these Revision orders is squarely applicable to the instant case.

10.2 The Applicant have submitted that they are entitled for supplementary claim under Rule 15 of Drawback Rules. In this regard, Government observes that as per Rule 15, supplementary claim can be filed where rate of drawback determined i.e. AIR is revised subsequently under Rules 3, 4, 6 or 7 of Drawback Rules. In the instant case, there is no such revision of rates. The C.B.E. & C. has clarified as stated above that exporter cannot claim fixation of Brand Rate of Drawback under Rule 7, once he has claimed on the Shipping Bill Drawback at AIR rate. As such, the contention of the application in this regard is not sustainable.

11. Government observes that in a situation as above, specifically when the applicant herein is disputing the interpretation of the relevant statutory provisions and also the conclusions as drawn above, Government thinks it proper to consider and proceed in the matter in the light of Hon'ble Supreme Court's observations in the case of *M/s. ITC Ltd.* v. *CCE, Delhi* - 2004 (171) E.L.T. 433 (S.C.) and other Apex Court/Supreme Court decisions that the statutes have to be interpreted strictly within terms and language of statute and without intendments or any liberal interpretation. Further, Hon'ble

Supreme Court in case of *M/s. India Aluminum Co.* [1991 (55) E.L.T. 454 (S.C.)] and Hon'ble Tribunal in case of *M/s. Avis Electronics* has observed that when provisions are stipulated for doing a particular act in a specific manner then it would mean that any deviation there from is not permitted at all and it should be performed in that manner itself as per Rules.

12. Thus the violations pointed out in these cases cannot be merely treated as procedural minor lapses and therefore the case laws cited by applicants are not applicable to this case.

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

14. The revision application is disposed off in terms of above.

15. So, ordered.

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

To

M/s Amhenol Interconnect India Pvt. Ltd.,
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Copy to :

1. The Chief Commissioner of Central Excise, Ahmedabad Zone 7th Floor,GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad- 380 015.
2. The Commissioner of CGST & Central Excise, Ahmedabad North, Custom House, 1st floor, Navrangpura, Ahmedbad – 380 009.
3. The Commissioner (Appeals-I), CGST & Central Excise, Central Excise Bhavan, 7th Floor, Near Polytechnic, Ambavadi, Ahmedabad – 380 015.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
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