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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
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Mumbai- 400 005

F.No. 195/484-485/13-RA/967 Date of Issue : 06/07/2018

ORDER NO.181-182/2018-CUS(WZ)/ /ASRA/Mumbai DATED 08/06/ 2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT,1944.

Applicant : M/s. Manugraph India Ltd., Kodoli, Kolhapur.

Respondent : Commissioner (Appeals), Central Excise and Customs, Nagpur.

Subject : Revision Applications filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. PII/RKS/28-29/2012 dated 27.01.2012 passed by the Commissioner (Appeals), Central Excise, Pune-II.

ORDER

These revision applications are filed by M/s. Manugraph India Ltd., Kodoli, Kolhapur (herein after referred as 'the applicant') against the Order-in-Appeal No. PII/RKS/28-29/2012 dated 27.01.2012 passed by the Commissioner (Appeals), Central Excise, Pune-II.

2. The brief facts of the case are that the applicant is engaged in the manufacture of printing machines and parts thereof falling under Ch.S.H.84431100 of the schedule to the Central Excise Tariff Act, 1985 and they are clearing the said goods for home-consumption as well as for exports.

3. The applicant exported 'Web Offset Printing Press Model, Hiline Express" printing machine to Sharajah, UAE without payment of duty under Bond under cover of ARE-1 No.32/2010-11, dt.26.9.2010 and ARE-1 No.39/2010-11 covered by shipping bill No.8886371, dt.25.9.2010 and 8916945 dated 05.10.2010 respectively, against their Advance Authorization License No.0310557933/02/03/00 dtd.1.2.2010. Subsequently, after export of the above said printing machinery the applicant filed Brand Rate Application under Rule 6(1)(a) of Customs, Central Excise and Service Tax Drawback Rules, for claiming the drawback of Customs Duties of Rs.8,75,424/- (Rupees Eight Lakhs Seventy Five Thousand Four Hundred Twenty Four only) and Rs.10,57,015/- (Rupees Ten Lakh Fifty Seven Thousand and fifteen only) respectively, involved in the components imported on payment of Customs Duties as well as the duty paid on imported components used by their Unit-1 and used in the manufacture of Folder, which were further used in the manufacture of printing machine exported by the Applicants.

4. On the scrutiny of the Drawback Claims, it was observed that the export-goods were manufactured in the applicant's factory at Unit-II out of the intermediate goods i.e. "Folders', manufactured by using imported items

in their sister unit situated at Plot No. D-1, MIDC, Shiroli (Unit No. I) . This Unit No. I cleared the intermediate goods "Folders" on payment of duty to the Unit-II. The Unit-II availed credit of Cenvat duty paid on the said folders, manufactured at Unit-I. However, the applicants claimed the drawback on the imported inputs, which had been used in their sister- Unit No.I. As the said imported inputs, which were used in the manufacture of "Folders" were not directly used in the export-goods, it therefore, appeared that the applicants were not entitled to the drawback of duties as claimed by them on the said imported inputs. It was also observed that the applicants have claimed drawback on excess component materials as have been used in the manufacture of export goods. The quantum of excess component materials had been arrived at on the basis of the Certificate given by their Chartered Engineer. Therefore, it appeared that they were not entitled to get drawback on the excess quantity of component materials.

5. Therefore, two Show Cause Notices dated 18-03-2014 and 30-03-2011 respectively were issued to the applicant proposing to reduce their drawback claims by amounts shown in the table below in view of the provisions of Rule 6 of Customs & Central. Excise Duties 8s Service Tax Drawback Rules, 1995.

Shipping Bill No. & Date	Reduction on account of inputs used in 'Folder'	Reduction on account of excess inputs shown	Total -Reduction proposed vide SCNs
1	2	3	4
8886371 dated 25-09-2010	Rs.2,39,436/-	Rs.2,43,265/-	Rs.4,82,701/-
8916945 dated 05-10-2010	Rs.2,63,824 /	Rs.3,29,488/-	Rs.5,93,312/-

6. Additional Commissioner, Central Excise, Kolhapur vide his Order-in-Original No.01/2011, dt.3.6.2011 restricted the Brand Rate

Rs.3,92,723/- and rejected the drawback of the said amount of Rs.4,82,701/- and vide his another Order-In-Original No.02/2011, dt.3.6.2011 restricted the Brand Rate to Rs.4,63,703/- and rejected the drawback of the said amount of Rs.5,93,312/-.

7. Being aggrieved by the above said Orders-In-Original passed by the Additional Commissioner, Central Excise, Kolhapur, the applicant preferred an appeal before the Commissioner, Central Excise (Appeals), Pune-II. However, the Commissioner, Central Excise (Appeals), Pune-II vide Order-In-Appeal No.P II/RKS/28-29/2012, dt.27.1.2012 rejected the appeal filed by the applicant by upholding both the Order-In-Original viz. No.01/2011, dt.3.6.2011 and 02/2011, dt.3.6.2011 passed by the Additional Commissioner, Central Excise, Kolhapur.

8. Being aggrieved by the said Order-in-Appeal, the applicant preferred the Revision Application under Section 129 DD of the Customs Act, 1962 against the said Order-In-Appeal on the grounds mentioned in the revision applications.

9. The issue involved in both these Revision Applications being common, they are taken up together and are disposed of vide this common order.

10. A Personal hearing was held in this case on 29.01.2018 and Shri J.R. Vora, Jr. Manager, and Shri D.K. Singh, Advocate, Shri R.K Singh, Advocate, duly authorized by the applicant appeared for hearing. None appeared on behalf of the respondent department. The applicant reiterated the submissions filed in the two Revision Applications and written submissions filed on the day of the hearing. In view of the same it was pleaded that the two Orders in Appeal be set aside and the instant two Revision Applications be allowed.

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

12. The issue to be decided in the present revision applications is whether the applicant is entitled to Drawback under Brand Rate Scheme on manufacture and export of goods, when a part of manufacture has been undertaken in a factory other than the factory of export and whether the reliance placed by the department on the Certificate dated 24.09.2010 issued by Chartered Engineer, while denying fixation of brand rate of Drawback on the excess quantity of component materials indicated in the DBK statements is just or otherwise.

13. Government observes that the applicant, a manufacturer exporter, had exported the "Web Offset Printing Press Model Hiline Express Machine" from their registered premises which was manufactured by using different imported or excisable materials. However, some of the materials were imported duty free under Advance license, some were duty paid; procured domestically and some are imported on payment of duty. The applicant had filed an application for fixation of Brand rate of application in terms of Rule (6)(1)(a) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 before their Jurisdictional Central Excise Commissionerate towards the Basic Customs duty paid on imported materials.

14. Government observes that the drawback sanctioning Authority i.e. Additional Commissioner of Central Excise, Kolhapur, partially sanctioned the claim and reduced the claim amount of the applicant mainly on two grounds that the out of the list of inputs used in the manufacture of said exported product i.e. "Web Offset Printing Press Model Hiline Express Machine" most of the inputs had been received at the applicant's sister concern unit at Unit No.1. This unit No.1 had manufactured the product "Folder" by using the said inputs appeared in the list of inputs claimed in the DBK claim and had cleared the same under their respective invoices on payment of central excise duty after availing Cenvat Credit on the imported inputs used in the same. The applicant had also taken Cenvat Credit of duties paid thereon by Unit No.1 on the said folder and used the said folder in the manufacturing of excisable goods viz "Web Offset Printing Press Model

Hiline Express Machine" which has been exported vide the impugned Shipping Bills. The Additional Commissioner of Central Excise, Kolhapur also observed that the drawback means the rebate of duty or tax, as the case may be chargeable on any imported materials or excisable materials used or taxable services used as input services in the manufacture of export of goods and in the instant case, what is used in the manufacture of export goods i.e. "Web Offset Printing Press Model Hiline Express Machine" is the product "Folder" manufactured and cleared by unit No.1 to the applicant and not the directly imported inputs of the DBK claim. Hence, applicant was not entitled to the drawback of duties as claimed by them on imported inputs mentioned at Sr. No.1 to 251 of the claim (as mentioned at para 5.1 of OIO no. 01/ADC/CEX/Tech.BRU/2011 dated 03.06.2011) and Sr No. 1 to 191 of the claim (as mentioned at par 5.1 of OIO no. 02/ADC/CEX/Tech.BRU/2011 dated 03.06.2011). It was also observed by the Additional Commissioner of Central Excise, Kolhapur that in many cases, the quantities of list of inputs mentioned at Sr. No. 252 to 276 of the claim(as mentioned at para 5.2 of OIO no. 01/ADC/CEX/Tech.BRU/2011 dated 03.06.2011) and the quantities of list of inputs mentioned at Sr. No. 192 to 284 of the claim (as mentioned at para 5.2 of OIO no. 02/ADC/CEX/Tech.BRU/2011 dated 03.06.2011) said to have been used in the manufacture of export goods, are much more than the quantities of inputs certified as used in the manufacture of export goods by the Chartered Engineer (CE). This certificate was issued by the CE in respect of inputs other than the Advance license used for manufacturing the subject exported goods at the time of clearance of the export goods vide his reference No. MIL/B/PHI1/2010-11 dated 24.09.2010. This showed that the applicant had shown more quantities as used in the manufacture of exported product with an intention to claim excess drawback, whereas the CE has certified lesser quantities as used actually in the said export product.

15. Government further observes that the Commissioner (Appeals) while rejecting the appeals filed by the applicant, in his impugned Order observed that

The appellants have further contended that despite a part of manufacturing activities of imported goods (in respect of which Brand rates are sought) having been taken place at-Unit- I of the appellants, they are entitled to claim Drawback under Brand rate for manufacture of export-goods manufactured at Unit-II of the appellants, out of the intermediate goods manufactured at Unit-I. In this connection, I find that one of the essential conditions for grant of drawback under Rule 6 of Drawback Rules, 1995 read with Section 75 of the Finance Act, 1962, is manufacture of export-goods in the factory of manufacturer/exporter, from where .exports have been effected, either on payment of duty or under Bond under Rule 18 and Rule 19 of Central Excise Rules, 2002 respectively. However, I find that in the present case, the exports of final goods under drawback claim have been effected froth Unit-II of the appellants. No claim of drawback has been filed in respect of intermediate-goods manufactured in the Unit-I, as the appellants have already got themselves compensated for the duty paid on the said goods by way of raising cenvat credit. This apart, I also find that the appellants have filed DBK-I Statements in respect of Unit-II of the appellants. DBK-I Statement(s) is the Bill of Materials used in the manufacture of one-unit of export goods. It is therefore factually incorrect to apply the said Bill of Material for the goods manufactured at Unit-II, where the materials indicated in the DBK-I statement(s) have not been used for manufacture of export-goods. Further, the DBK-II statement(s) has also been filed by the appellants in respect of Unit-II. The said DBK-II statement(s) is meant for accountal of stock of input goods, whether imported or indigenous, used in the manufacture of export-goods. Under the facts involved in the present matter, such duty paid goods have not been used in the manufacture of export goods in Unit-II. Such goods have, infact, been used in the Unit-I for manufacture of intermediate goods. It is apparent on record that identity of the imported goods has been lost owing to manufacture of intermediate goods in Unit-I. The said intermediate goods used in the manufacture of export-goods in Unit-II cannot be identified as the same imported goods in respect of which claim of drawback under brand rate has been filed.....

Since the input-goods in respect of which drawback claim under Brand rate has been filed, have been used in Unit-I of the appellants for manufacture of intermediate goods, which have been subsequently cleared to Unit-II, on payment of duty for further manufacture of export goods, it is apparent that manufacture of the goods under claim of drawback, has been effected in two separate units (Unit-I and Unit-II) of the appellants (which are presumably registered separately under Central Excise). Therefore, the nexus and co-relation of inputs-goods used in Unit-I with the final export goods manufactured in Unit-II cannot be established. No technical and accounting co-relation between the said input goods and final export product have been placed on record. I observe that co-relation and nexus between the input-goods, in respect of which drawback claim has been filed, and final export-goods are essential necessities, among others, for the grant of drawback claim under brand rate. Since the DBK statements have been filed for Unit-II, therefore, verification cannot be extended to Unit-I to account. for use imported goods in Unit-I as part of manufacturing process and manufacture of export-goods in Unit-II. The appellants are required to indicate true and correct statements in the drawback. Any failure thereto cannot be termed as procedural because it is a factual mis-statement of fact by way of indicating use of imported component in DBK statements in Unit-II.....

Apart from above, I also find that the copies of ARE-1 documents placed on record have specifically indicated in the declaration of the said ARE-ls, about the availment of cenvat credit. From the proviso to Rule 3 of Drawback Rules, 1995 it is apparent that Duty Drawback shall not be available to the extent of the amount of cenvat credit availed by the appellants. Since the copies of ARE--I documents show availment of cenvat credit, the appellants are not entitled to claim Drawback.

As regards the rejection of the excess claim of drawback on additional components than those certified by the Chartered Engineer in his certificate dated 24.09.2010, the Commissioner (Appeals) in his impugned Order observed as under:

The appellants have stated that the certificate of the Chartered Engineer has mistaken in accounting the quantum of raw material correctly. Therefore the said certificate *of the chartered Engineer cannot be relied upon.*

I observe that the certificate issued by the Chartered Engineer is an authentic document duly recognized for all accounting purposes, which cannot be ignored, without having factual evidence of mistake in the contents of the said certificate. Further the said certificate of Chartered Engineer has been submitted by the appellants themselves in support of their claim and therefore it is not understood as to why they are disputing the authenticity of the said certificate. The Show Cause Notices have relied upon the certificates issued by the Chartered Engineer, in reducing the quantum of components, which are stated in excess in the DBK statements filed by the appellants. I therefore do not find anything wrong in relying upon the said certificate of the Chartered Engineer, in the absence of any documentary evidence to the contrary. The appellants have further contended that the components, covered in the DBK. Statements but not in the certificates of Chartered Engineer, are the vital components of export-goods. This contention of the appellants cannot be accepted in the absence of any documentary evidence. The exercise of verification conducted by the Departmental Officers, as required under Rule 10 of Drawback Rules, 1995, in the present case has been restricted to verification of records only as the goods have already been exported. The verification reports accordingly are not supposed to indicate use of said vital component parts in the manufacture of said export-goods. In this connection, I rely upon the decision of the Hon,ble Tribunal in the case of Terri Films Pvt. Ltd. Ws' Commissioner of Customs, New Delhi, as reported in 2010(261) ELT 226, wherein the Hon'ble Tribunal has acknowledged that where the goods have already been exported, physical verification for fixation of brand rate is practically impossible. Therefore, reliance placed on the verification by the Department to establish correctness of the quantity of components mentioned in the DBK statements cannot be accepted.

16. Government also observes that the applicant in their further submissions filed on the date of the personal hearing has inter alia stated that:

a) the applicant has two different units separately registered under the Central Excise i.e. M/s Manugraph India Ltd. (Unit-I) and M/s Manugraph India Ltd. (Unit-II). That both the unit are carrying manufacturing activity of same types of products but different in specifications. The IEC Code for both the units are also same as IEC No. 0388003944 which is allotted to M/s Manugraph India Ltd,

b) the Parent company i.e. M/s Manugraph India Ltd. had obtained a Purchase Order from their overseas buyer for manufacturing and export of "Web Offset Printing Press", which was decided to manufacture in Unit-II However, a major intermediate part of the said machine i.e. "Folder" which carries operation of Folding the Paper in specific folds after its printing was manufactured in the premises of Unit-I due to urgent meet of the Order,

c) the Parent company had decided to import the major components under advance license which was required for manufacturing of export goods i.e. "Web Offset printing Press". Hence, obtained Advance license No.0310557933 dt. 01.02.2010 from Directorate General of Foreign Trade,

d) on the other hand the "Folder" was manufactured in the Unit-I by using imported as well as domestic procured materials. However, the imported materials were actually imported by the Parent company M/s Manugraph India ltd. and for the proof of the same applicant are enclosing herewith some relevant B/E's copies.

e) after completion of manufacturing of the "Folder" the same was transferred from Unit-I to the applicant i.e. Unit-II under Central Excise procedures i.e. under Central Excise invoicing, which was further exported with the "Web Offset Printing Press",

f) that after export taken place of "Web Offset Printing Press" the applicant applied for the Brand rate of Drawback towards the Basic Customs Duty paid on the imported materials which were used in the manufacturing of said "Web Offset Printing Press" and "Folder" which was a part of the said machine exported,

g) It is admitted by the Department while adjudicating the matter that the imported raw materials appeared at Sr. No.1 to 191 of DBK-I which were procured by their unit No.1 were used for manufacture of the "Folder". They have availed Cenvat Credit of C. V. D. only paid on their imported raw materials at Unit No.I and sold the finished goods (Folder) manufactured out of these imported raw materials on payment of duty to the Unit No.II i.e. applicant in the instant case,

h) It is important to note that the spirit of the Drawback scheme is when goods are exported there shall be relief of duties suffered by those goods including inputs used in the manufacture of those exported goods. The whole purpose is that taxes should not be

exported and taxes have to be neutralizes by granting rebate/refund of taxes. Technically it is termed as "Zero rating" of exports. The idea is that exports should not be burdened with Customs/Excise duties /Service taxes,

i) It is important to note that while import of the materials used in the manufacture of the "Folder" in Unit No-1, the Unit No.1 could only avail Cenvat of Additional Customs Duty paid on the same. However, the "Basic Customs Duty" paid on the imported materials used in the manufacturing of "Folder" was never and could not be claimed through the Cenvat Credit Scheme. However, while transferring the "Folder" from Unit-I to the applicant i.e. Unit-II, the only Cenvat Credit availed towards Additional Customs Duty on import could be utilized for the payment of Central Excise duty which could be subsequently availed as Cenvat by the applicant i.e. Unit-II. Hence, in all the transaction the Basic Customs Duty paid while import of materials used in the manufacturing of "Folder" could not be claimed through Cenvat Credit, hence the applicant has claimed the same through Brand Rate of Drawback as the Basic Customs duty paid on imported materials used in Folders are to be considered as duty paid on imported materials used in the manufacture of intermediate products which are used in the manufacture of exported goods i.e. "Web Offset Printing Press".

j) they are reiterating the provision of Sub Rule 2(c) of Rule 3 of Customs, Central Excise duties and Service Tax Drawback Rules, and after close reading of Sub Rule 2(c) of Rule 3 of Customs, Central Excise duties and Service Tax Drawback Rules, 1995, we may find that under the Drawback Scheme while declaring the AIR the Government also considers the amount of duties paid on imported materials used in the manufacture of intermediate products which are used in the manufacture of exported goods. However, in the present case, the "Folder" manufactured in Unit No.I is intermediate product for the applicant which was manufactured out of Imported materials on which Basis Customs duty was paid by parent company and not neutralized by any means than the brand rate application filed by the applicant.

k) the imported materials which were used in the manufacturing of "Folder" by Unit-I which was ultimately used in the export product "Web Offset Printing Press" by Unit-II, falls under the purview of the inputs of "Web Offset Printing Press" as the same were indirectly

used in the manufacturing of export goods i.e. "Web Offset Printing Press". Hence, it cannot be said that the imported materials used in manufacturing of Folder is not inputs for "Web Offset Printing Press".

l) the applicant relied upon the judgment made by Hon'ble Karnataka High Court in the matter of M/s Bhandari Powerline Pvt. Ltd. Vs. Union of India [2011 (270)ELT 173(Ker.)] which is applicable to this case. In the aforesaid judgment the applicant has applied for Brand Rate of Drawback on export of Insulated Copper Strip and rectangular paper covered conductors. The two raw materials which go into the manufacture of these products are insulation paper and copper. Insulation paper required for manufacture of this item is imported by the petitioner. But, copper which goes into the manufacture of those items is procured by the petitioner from local manufacturers. However, the department has rejected their claim towards the copper stating that the materials used for manufacturing of copper are not imported by the applicant. Subsequently the Hon'ble High Court has allowed the Appeal of Applicant stating that the copper used in the manufacturing of export goods by the petitioner is deemed to be imported,

m) It is important to note that, if Drawback towards Basic Custom duty paid on the imported materials will not be allowed which were used in the manufacturing of Folder, the spirit of the Drawback scheme to neutralize All the Customs duty paid on export goods (Web Offset Printing Press) by the exporter i.e. M/s Manugraph India Ltd. will be defamed and in that case the applicant have to face financial loss towards the goods exported, value of which were quoted to the buyer by taking consideration (exemption) of all the Customs, Central Excise duties and Service Tax payable on the said goods.

17. In regard to the second grounds taken by the department, the applicant has interalia stated as under:

a) the Drawback scheme provides neutralization of the duties paid on the imported/excisable materials which is actually used in the manufacturing of exported goods. However, in the present cases, the applicant has claimed the Brand rate of Drawback on the quantity of imported inputs which is actually used in the manufacturing of exported goods (Web Offset Printing Press). However, the department is relying upon the certificate issued by

the independent Chartered Engineer under which the Chartered Engineers has indicated the quantity of components used in the manufacturing of exported goods other than the components imported under Advance License.

b) That the certificate issued by the Chartered Engineer were issued only for the purpose of Advance Authorization which was to be submitted before the DGFT, department to show that the exported goods were manufactured from Domestic as well as duty free imported materials and certificate towards the same was to be issued by the independent Chartered Engineer. However, DGFT department only relying upon the Chartered Engineer Certificate issued towards the duty free imported materials under Advance license and other certificate towards the domestic procured materials are only relied for completing the documentation.

c) That the certificate which was relied by the Central Excise department was issued by Chartered Engineer on pro-rata basis because at the time of manufacturing of the relevant export goods another "Web offset Printing Press" were also under process of manufacturing under which some common inputs/components were used. Hence, it was not possible to conclude actual utilization at that time. However, after completing the manufacturing of all the goods the applicant conclude the quantity of materials actually utilized for the manufacturing of relevant export goods and on the basis of the same the applicant has applied for the fixation of Brand Rate of Drawback. In some cases the Chartered Engineers has also not covered the items which were actually used in the manufacturing of export goods.

d) The applicant had also submitted copy of BIN Card Extract of Receipt & Issued, which is part of stock maintained by the applicant at factory premises under which actual use of the materials, has been shown. However, the said details was verified by the department while scrutinize the Drawback Application of the applicant.

e) For satisfaction of the Revisionary authority we are giving following example of difference between the Chartered Engineers Certificate and Actual consumption which are as under:

i) For the import Item Sr. No.214 of Annexure of DBK I.T.M. "Photo Electric Sensor (Items Code NE062/55)" (See Page 92 of

RA), the applicant has claimed Drawback under which quantity used shown as 42. However, the said item is not covered by the CE certificate enclosed at Page No.55 of RA. Under the BIN Card, the same items may be found at Page No.35 of RA under which it is shown as used 42 Nos. for the export products.

ii) For the import items Sr. No.273 of Annexure of DBK i.e. "Thrust Washer TRA 2031 (Items Code V900428/ 004)" (See Page 94 RA), the applicant has claimed Drawback under which qty. used shown as 150. However, the said items is covered at Sr. No.40 of CE certificate (See Page No.56). Under the BIN Card at Page No.49 of RA said goods has been shown as Used total 156 Nos. (with 4% spares). However, the certificate issued by the CE is based on Pro-rata basis as the total qty. of Thrust waster purchased for the manufacturing was 570 Nos. and at that time 4 different machines were manufacture out of that. On the pro-rata basis the consumption come to 142.50, hence, the CE has shown consumption as 140 Qty. for one Machine (2.5 Nos as spare).

f) In view of the above explanation, it can be found that the CE certificate could not be relied upon for sanctioning of Brand Rate of Drawback as the same was issued on pro-rata basis not actual used basis. However, the drawback scheme provides neutralization of the duty paid on the materials actually used in the manufacturing of exported goods.

g) It is very important to note that the actual use has been verified by the Central Excise officer by visiting the factory premises personally but instead of relying upon the actual use of the materials, they relied upon the Chartered Engineer Certificate issued for the purpose of Advance license, which is arbitrary in nature.

h) It is also important to note that the fact of actual use of so much quantity of the materials as sought by the applicant is not disputed by the department while reducing the claim. The department is only reducing the claim of the applicant as they found himself bound by the Qty. shown by Chartered Engineer certificate. However, under the Central Excise Act, 1944 and India Customs Act, 1962, there is no such provision contained under which such type of restriction has been imposed on the officer for following the Chartered Engineer certificate in any case. Hence, the adjudicating authority

is very much capable to decide the claim of the applicant on actual use basis by verifying their excise records.

That both the lower authority has not denied the fact of clearance of goods from factory, duty paid nature of export goods and subsequent its exports. The allegation taken for rejection of the drawback claim is only technical in nature on the basis of which the substantive benefit of Drawback cannot be denied. When the core aspect of Rule 6(1)(a) of Customs Central Excise Duties and Service Tax Drawback Rules, 1995 is completed by the applicant, the duty paid on imported materials used for the manufacturing of the exported goods should be refunded. The applicant relied upon the following judgment in support of the view taken above:

a) UNION OF INDIA vs. SUKSHA INTERNATIONAL & NUTAN GEMS & ANR. Reputed under 1989 (39) E.L.T. 503 (S.C.) Interpretation of Statute - Beneficial provision - Interpretation unduly restricting the scope of a beneficial provision to be avoided so that it may not take away with on hand what the policy gives with the other.

b) Govt. Of India Order No. 267/05 dated 30.06.2005 passed by Hon'ble Joint Secretary in the matter of M/s Bhagirath Textile Ltd., Nagpur vide the above judgment it has been decided that Rebate/ drawback etc. Are exported-oriented schemes and unduly restricted and Technical interpretation of procedure etc is to be avoided in order not to defeat the very purpose of such schemes which serve as export incentive to boost export and earn foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given is case of any technical breaches.

18. Government observes that entitlement of duty drawback is subject to fulfillment of the following three substantive conditions:-

(i) Duty/ Service Tax has been paid on the goods and input services.

(ii) Such Goods and Input Services have been used in the manufacture of exported goods in the factory of manufacturer/ exporter.

(iii) Goods are exported in accordance with the procedure prescribed under relevant laws from the factory of manufacturer/ exporter.

19. Government observes that in the instant case the export of the final product viz. 'Web Offset Printing Press Model, Hiline Express" has taken place from Unit no. II of the applicant. It is further observed by the Government that Unit-I has already availed Cenvat Credit of duty paid on the imported inputs used in the manufacture of "Folder" which have been subsequently cleared to unit-II on payment of Central Excise duty for further manufacture of export goods. Government observes that one of the essential conditions for grant of drawback under Rule 6 of Drawback Rules, 1995 read with Section 75 of the Finance Act, 1962, is manufacture of export-goods in the factory of manufacturer/exporter, from where exports have been effected, either on payment of duty or under Bond under Rule 18 and Rule 19 of Central Excise Rules, 2002 respectively. However, in the present case, the exports of final goods under drawback claim have been effected from Unit-II of the applicant whereas the imported inputs in respect of which drawback claim has been filed had been used for manufacture of Folder in the Unit No. 1 of the applicant. In view of this, the Government is in full agreement with the observations of the Commissioner (Appeals) in his impugned Order that the nexus and co-relation of inputs-goods used in Unit-I with the final export goods manufactured in Unit-II cannot be established and since the DBK statements have been filed for Unit-II, therefore, verification cannot be extended to Unit-I to account for use of imported goods in Unit-I as part of manufacturing process and manufacture of export goods in Unit No. II. Government also notes that duty paid inputs used for the manufacture of intermediate product "Folder" in unit No. 1 cannot be identified as the same imported goods in respect of which claim of drawback under the brand rate has been filed by Unit No.-II.

20. It is pertinent to note here that both Unit No.I and Unit No.II of the applicant are located at different places and are having different Central Excise Registrations. The product 'Folder', though manufactured by the Unit No. I of the applicant by using imported inputs, the same were cleared / sold to Unit No. II by issuing Central Excise invoice and paying Central

Excise duty on the transaction value. Thus, the very nature of the product "Folder" changes to indigenously manufactured excisable product and hence as contented by the Original authority in its Order on Original, the imported material has not been utilized by the applicant directly in the manufacture of product exported from Unit No. II. Therefore, Government observes that DBK-I statement which is the Bills of Materials used in the manufacture of export goods of Unit No.II shall not apply where the materials indicated in DBK-1 have not been used for manufacture of goods exported by Unit No. II.

21. The applicant has relied on the decision by Hon'ble High Court in the case of CCE V/s L.T.Karle & Co. 2007(207)ELT-358(Mad.) wherein it is held that "Drawback claim of DTA unit on duties suffered on their inputs cannot be denied on the ground that goods were manufactured by 100% EOU for DTA unit especially when there was no dispute to their entitlement and such denial was capricious, arbitrary and defect intention of legislature". Government observes that in this case DTA unit had imported raw materials for the purpose of manufacturing ladies garments viz., ladies 100% cotton woven blouse/shirt and for exporting the same thereafter and as there was no manufacturing facility available with them, they sent the raw materials imported to their 100% EOU, for converting the same into finished goods, viz., ladies 100% cotton woven blouse/shirt, which were subsequently exported directly by the 100% EOU .Thus in this case the Drawback was claimed by the DTA unit on duties suffered on their inputs and the only ground for denial of the drawback was that the finished goods were exported thereafter on behalf of the DTA unit by its 100% EOU, without sending them back to DTA unit. Whereas in the instant case, the imported material inputs were used in the production of 'Folder' by Unit No. I of the applicant, which was cleared on payment of duty to unit No. II of the applicant, and after the export of the Web 'Offset Printing Press Model Hiline Express' from Unit No. II, Unit No. II claimed the drawback of the said inputs used by Unit No. I in the manufacture of 'Folder'. Hence, ratio of the aforementioned case

law relied upon by the applicant cannot be applied to the facts and circumstances of the present revision applications.

22. In view of the foregoing discussion, Government holds that the drawback claims in respect of imported inputs mentioned at Sr. No.1 to 251 of the claim (as mentioned at para 5.1 of OIO no. 01/ ADC/ CEX/ Tech. BRU/2011 dated 03.06.2011) and Sr. No. 1 to 191 of the claim (as mentioned at par 5.1 of OIO no. 02/ ADC/CEX/ Tech. BRU / 2011 dated 03.06.2011) are rightly held as inadmissible to the applicant.

23. As regards the rejection of the excess claim of drawback on additional components than those certified by the Chartered Engineer in his certificate dated 24.09.2010; Government observes that both Original authority as well as Commissioner (Appeals) have contended that the applicant has not brought forward any documentary evidence contrary to the Chartered Engineers Certificate to prove that they have actually used /consumed inputs the quantities of list of inputs mentioned at Sr. No. 252 to 276 of the claim(as mentioned at para 5.2 of OIO no. 01/ADC/CEX/Tech.BRU/2011 dated 03.06.2011) and the quantities of list of inputs mentioned at Sr. No. 192 to 284 of the claim (as mentioned at para 5.2 of OIO no. 02/ ADC/ CEX/Tech.BRU/2011 dated 03.06.2011) in the manufacture of export goods. Government observes that the applicant in its submissions has submitted copy of BIN Card Extract of Receipt & Issued Material, which is part of stock maintained by the applicant at factory premises under which actual use of the materials, has been shown. Moreover, the applicant has also narrated instances with example showing difference between the Chartered Engineers Certificate and Actual consumption. (Para 17 (e) supra).

24. In view of the above, Government observes that, prima facie, the applicant's contention in so far as use of additional imported components other than those certified by the Chartered Engineer in his certificate dated 24.09.2010, appears satisfactory and requires verification at field level.

25. Accordingly, Government remands the matter back to the original adjudicating authority to consider the aforesaid contention of applicant on merits and thereafter to decide the issue of merits within a period of eight weeks from the date of receipt of this order after granting an opportunity of personal hearing to the applicant. The applicant is directed to produce all the evidence which they rely upon before the original adjudicating authority.

26. The impugned orders-in-appeal are partially modified to above extent and revision applications are also succeed partially to above extent.

27. The revision applications are disposed of in terms of above.

28. So ordered.

Attested

6/8/18

एस. आर. हिरूलकर
S. R. HIRULKAR
(A.C)

8/6/18

(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

To,
M/s. Manugraph India Ltd.,
Unit 2, Kodoli, Taluka Panhala,
District- Kolhapur -416114.

ORDER No.181-182/2018-CUS (WZ) /ASRA/Mumbai DATED 08/06/2018.

Copy to:

1. The Commissioner of Central Goods and Service Tax, Kolhapur,
2. The Commissioner (Appeals-II) of Central Goods and Service Tax & Customs, GST Bhavan, 41/A Sassoon Road Pune-411 001.
3. The Deputy / Assistant Commissioner, Division –II, (Kolhapur-I) Central Goods and Service Tax, Kolhapur
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.