

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. 195/76/DBK/WZ/2017-RA / 186 D Date of Issue: 27.03.2023

ORDER NO. 187/2023-CX (WZ) /ASRA/MUMBAI DATED 27.03.23 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT,1944.

Applicant : M/s. Apar Industries Ltd.
A-201/202, Bezzola Complex,
2nd Floor, Sion-Trombay Road,
Chembur, Mumbai – 400 071.

Respondent: Commissioner of Central Excise, Belapur.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. PK/158/Bel/2017 dated 27.04.2017 passed by the Commissioner(Appeals-II), Central Excise, Mumbai-II.

ORDER

This revision application has been filed by M/s. Apar Industries Ltd., A-201/202, Bezzola Complex, 2nd Floor, Sion-Trombay Road, Chembur, Mumbai 400 071(hereinafter referred to as "the applicant") against Order-in-Appeal No. PK/158/Bel/2017 dated 27.04.2017 passed by the Commissioner(Appeals-II), Central Excise, Mumbai-II.

2. M/s. Apar Industries Ltd., had filed their Application for fixation of Brand Rate on 11.03.2016 in respect of Export goods ie. 'Transformer Oils of various grades' exported vide 80 Shipping Bills. Assistant Commissioner, Belapur-IV Division on the basis of Range Superintendent's report informed that "DBK application has been filed on 11.03.2016 i.e. well after 3 months from the date of 1st shipment dated 26.06.2012 and as per provisions of Rule 6 & 7 of the Customs and Central Excise Duties Drawback Rules, 1995 an exporter can file an application for fixation of Brand Rate or Special Brand Rate, as the case may be, within 90 days of let export date. The central Government can allow a further extension of period of 3 months by AC/DC and another 6 months be the Commissioner. Thus, the claim appeared to be time barred and liable for rejection." Accordingly, Additional Commissioner, Central Excise, Belapur vide order cum letter F. No. VIII/Cus/DBK/27/Apar/89/Bel/15-16 dated 10.10.2016 rejected the application dated 11.03.2016.

3. Based on the rejection order cum letter dated 10.10.2016 issued by the Additional Commissioner, Central Excise, Belapur the applicants preferred appeal before the Commissioner(Appeals-II), Central Excise, Mumbai-II. The Commissioner(Appeals) also rejected and dismissed the appeal vide Order-in-Appeal No. PK/158/Bel/2017 dated 27.04.2017.

4. Aggrieved by the order of the Commissioner(Appeals), the applicant filed revision application on the following grounds:

4.1 The Respondent & the First Appellate Authority had illegally and wrongly rejected the application for the fixation of Brand Rate in respect of the manufactured goods exported, namely, "Transformer Oil" purely on the ground of time bar, despite of the fact that the original shipping documents required for the fixation of DBK Brand Rate were not received by the Applicants in time or delay in issuing the original shipment document is caused only by the Custom Authority. Within a week from the date of receipt of the original documents from the customs, the Applicants had filed an application for fixation of DBK Brand Rate and therefore there is no delay in filing the application or there is no fault of the Applicants and hence the rejection of the claim of the Applicants is totally illegal and arbitrary. In fact, the Board has already clarified that the claim filed under the situation beyond the purview and control of the appellant /claimant, cannot be treated as time barred and hence the same may considered or treated as being filed within time, and Authority below be directed to fix the DBK expeditiously.

4.2 Despite having the documentary evidence on record for the delay, entirely on the part of the custom authority and in spite of a written communication from the customs vide its letter dated 02.03.2016, addressed to the jurisdictional excise authority to consider the request of the Applicants for fixation of DBK Brand rate/ grant of DBK, the approach and decision of the Respondent Authority that it is beyond her jurisdiction is against the law and laid down instructions of the Board/CBEC.

4.3 This facts of delay in receipt of the original shipment documents from customs was also not referred to in the impugned OIA or dealt with purposely by the First Appellate Authority. The delay, if any, was solely due to non-receipt of original documents from Customs, despite close

follow-up by the Applicants. The First Appellate Authority has summarily rejected the appeal by making obvious statement that "the DBK application was filed beyond time. But why there was "delay", has not been examined at all. There is no finding as to whether the Applicants had "contributed to delay" or whether the Applicants were in any manner responsible for delay. Without such a finding how can the Department Punish the Applicants? Rejecting the vested right to get legitimate benefit as an Exporter is contrary to the well settled principles of law that a substantial benefit due to person cannot be denied on any procedural trapping or technical irregularities. The impugned OIA is, therefore, ex-facie illegal and contrary to settled law and needs to be quashed.

4.4 Moreover, the First Appellate Authority had also not referred to or dealt with the issue that Adjudicating Authority/Brand Rate Fixation Authority had affirmed & confirmed that the power to relax, in the situation covered in the present case, under Rule 17 of the DBK Rules, 1995 is with the Central Government. As a corollary, when the Adjudicating Authority was exercising "jurisdiction" to fix the DBK Rate under the Rules, as delegate, she was also entitled to exercise those powers of "relaxation of rules" under Rule 17 of the DBK Rules, 1995. When the Adjudicating Authority "admits" that she had 'jurisdiction & powers to fix the DBK Rate" (as a "delegatee" a person designated to act for or represent another or others) then by the same logic she had the Authority to use other powers under those very Rules to effectively exercise her jurisdiction to pass appropriate orders. In other words, she cannot selectively exercise "jurisdiction" in a limited sense, and deny to herself powers to "relax the rigors of rules, when the circumstances mentioned in Rule 17 are brought to her notice. The expression "the Central Government in Rule 17 of the DBK Rules, 1995 does not mean ONLY the Central Government, but it means & includes those other Authorities to whom the functions are delegated by general or special order. If the terms used in the DBK Rules, 1995 have to be literally

construed, then the power to fix the DBK rate is with the Commissioner of central Excise and not with the Additional Commissioner.

Therefore, in both the situations, the Learned Additional Commissioner ought to have "transferred the File to the Commissioner of central excise or for "relaxation of rules under Rule 17 of the DBK Rules, to the Central Government". If she had no "jurisdiction", then the OIO becomes null & void. Though this issue was arising out of the OIO it was not dealt with.

4.5 Rule 17 of the Drawback Rules, 1995 empowers the Central Government & the Responding Adjudicating/DBK Fixation Authority is deemed to be included therein, to relax the period of limitation in relation to the exports of any goods, if the exporter has for reasons beyond his control, failed to comply with any of the provisions of these rules, and has thus been entitled to drawback. The Central Govt/ Respondent Authority may, after considering the representation, if any, made by the exporter and for reasons to be recorded in writing exempt such exporter from the provisions of such rule and allow drawback in respect of such goods. Despite of these clear cut rulings in the rules itself, it is illegal on the part of the Respondent Authority to refrain from performing its statutory obligation & duty and passing on to higher authority by stating that it is beyond her jurisdiction and authority.

4.6 CBEC /Board vide its Circular No.82/98-Customs dated 29.10.1998 as amended time to time, has clarified that "Rule 15/17 of the DBK Rules, 1971/1995 also empowers the Central Government to relax any of the provisions of the said rules on being satisfied that the exporter, for reasons beyond his control, failed to comply with any of the provision of the said rules".

4.7 They relied on the following decisions:

- i. Karnataka High Court in case of Wipro Infotech Ltd. Vs. UOI [2001 (130) ELT 27 (Kar.)]
- ii. Bombay High Court in case of Phil Corporation Ltd. Vs. UOI [2004 (168) ELT 24 (Bom.)]

4.8 In the present case, the applicability of 90 days of limitation period or extended period of 3 months or further extension of 6 months will be applicable only from the date of receipt of original Shipping Bills from the customs. Moreover, the custom authority has by its letter dated 02.03.2016 had directed the Applicant to claim DBK on all the shipping bills referred therein and under which all the original shipment documents were returned /issued to the Applicant by the Custom Authority.

5. A Personal hearing held on 07.10.2022. Shri Prakash Shah, Advocate appeared online and submitted that their claim for drawback cannot be held to be time barred as their application for conversion of Shipping Bills from Drawback to Advance License was pending with the Department. He submitted copy of judgement 2008 (221) E.L.T. 328 (Guj.) on the subject.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal. Government finds that the issue involved in the present case is limited to deciding whether the adjudicating authority had rightly rejected the brand rate application filed by the applicants after 3 months from date of shipment or otherwise.

7.1 The applicant has contended that immediately after export and on receipt of shipping bills for the period from 25th June, 2012 to 31st October, 2012 since they had intended to claim Advance Authorization benefits in place of Duty Drawback Benefits and hence applied to

Customs on 08/10-12-2012 for the conversion of Shipping bills. The applicant has made a lot of effort and correspondence in follow up with the Customs Authority for conversion of shipping bills. Finally, after expiry of advance authorization they requested to return the original documents and on 02.03.2016 the original documents (Shipping Bills) were returned by Customs with a direction to claim DBK benefit if eligible. Accordingly applicant submitted relevant original documents for fixation of DBK rate on 11.03.2016 which is within the period of limitation under Rule 17 of the Customs, Central Excise and Service Tax Drawback Rules, 1995.

7.2 If the Customs authorities fail in the conversion of shipping bills and delay in parting with the shipping bill, the applicant cannot be put to a disadvantage on the ground of limitation when applicant is not in a position to make a claim for fixation of DBK without accompanying documents.

7.3 The original shipping documents required for the fixation of DBK Brand Rate were not received by them in time or released by the Customs in time and they, within a week from the date of receipt of the original documents from the customs, had filed an application for fixation of DBK Brand Rate and therefore there is no fault from them.

8. Government accordingly, sets aside the impugned order-in-appeal No. PK/158/Bel/2017 dated 27.04.2017 passed by the Commissioner(Appeals) and allows the revision application.

9. Government directs the original authority to carry out necessary verification on the basis of documents already submitted to the department as claimed by the applicant with the various export documents and also verifying the documents relating to relevant export

proceeds and decide the issue accordingly within eight weeks from the receipt of this Order. The applicant is also directed to submit the documents, if any, required by the original authority. Sufficient opportunity to be afforded to the applicant to present their case.

10. The Revision applications are disposed off on the above terms.


(SHRAWAN KUMAR)

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

ORDER No. 187/2023-CX (WZ) /ASRA/Mumbai DATED 27-03-23

To,

M/s. Apar Industries Ltd.
A-201/202, Bezzola Complex,
2nd Floor, Sion-Trombay Road,
Chembur, Mumbai - 400 071.

Copy to:

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