

SPEED POST



F.No. 375/08-10/DBK/2017- R.A. C. Ex.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110066

Date of Issue..10/10/19...

Order No. 19-21/19-Cus dated 10-10-2019 of the Government of India, passed by Smt Mallika Arya, Principal Commissioner & Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Applications filed under Section 129DD of the Customs Act, 1962 against the Orders-in-Appeal No. DDN/ Excus/ OOO/ Appl-I/ 275/ 16-17 dated 27.12.2016, DDN/ Excus/ OOO/ Appl-I/ 276 / 16-17 dated 27.12.2016 AND DDN/ Excus/ OOO/ Appl-I/ 351/ 16-17 dated 22.02.2017 passed by Commissioner of Central Excise (Appeals-I), Meerut.

Applicant : M/s Amber Enterprises Private Limited

Respondent : Commissioner of Central Excise, Customs & Service Tax,
Meerut

ORDER

Three Revision Applications Nos. 375/ 08-10/ DBK/ 2017- R.A. C. Ex dated 05.04.2017 have been filed by M/s Amber Enterprises Private Limited, (hereinafter referred to as applicant) against Order-in-Appeal Nos. DDN/ Excus/ OOO/ Appl-I/ 275/ 16-17 dated 27.12.2016, DDN/ Excus/ OOO/ Appl-I/ 276 / 16-17 dated 27.12.2016 and DDN/ Excus/ OOO/ Appl-I/ 351/ 16-17 dated 22.02.2017 passed by Commissioner of Central Excise (Appeals-I), Meerut wherein the requests of the applicant for filing applications for fixation of the brand rate under Rule 7 (1) of the Drawback Rules have been rejected.

2. The brief facts leading to the present proceedings are that the applicant is a supporting manufacturer for M/s Panasonic India Private Limited and had received orders for supply of air conditioners for export. The applicant is availing area based exemption under Notification no. 50/ 2003- CE dated 10.06.2003. The revision application has been filed on the grounds that M/s Panasonic India Private Limited availed only the customs portion, i.e. 1.9%, of drawback and, therefore, the applicants are eligible for brand-rate for Central Excise portion. The respondent had denied the brand rate fixation on the pretext that the merchant exporter has already availed the All Industry Rate. Since the drawback schedule mentions the rate of 2%, this is only the customs portion of drawback as per Notification No. 110/ 2015- Cus (NT) dated 16.11.2015 (condition no. 7) in notes and conditions. Therefore, they are entitled for brand rate for the Central Excise portion of drawback in respect of the export goods. The commissioner (Appeals) rejected the appeal of the applicant on the ground that para 3 of the Board's circular no. 13/ 2014- Cus dated 18.11.2014 clearly states that where the drawback claim is filed with reference to All Industry rate, an application for fixation of brand rate under Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 shall not be admissible.

3. Personal hearing was fixed on 25.09.2019. Mr. R. K. Hasija, Advocate and Ms. Kiran Garg, Head (Accounts), M/s Amber Enterprises Private Limited appeared on behalf of the applicant. They reiterated the grounds of appeal and stated that the department had denied the brand rate fixation on the pretext that the merchant exporter has availed All Industry rate (AIR) of 1.9%. Since the drawback schedule mentions the rate of 1.9%, this is only the customs portion of drawback as per Notification No. 110/2015- Cus (NT) dated 16.11.2015 (condition 7) in notes and conditions. Therefore, they are entitled for brand rate for the Central Excise portion of drawback in respect of the export goods. Since no one appeared on behalf of the respondent and neither any written submission have been received nor any request for any other date of personal hearing was has been made, the case is being taken up for final disposal.

4. Government has examined the matter and it is observed that the main issue in the present proceeding is whether the drawback as per brand rates can be given to an exporter even after he has already availed drawback as per All Industry Rate (AIR). In this regard Government finds that Rule 7 provides for a situation where an application for fixation of brand rates can be made with the Central Excise Commissionerate even when the All Industry Rate is claimed in respect of exported goods. The situation warranting the above is that the Drawback as per AIR should be less than four-fifth of duties or taxes actually paid on inputs etc. used in the manufacture of export goods. However, in the said Rule 7 itself it is clearly stipulated that the exporter cannot file any application for fixation of brand rate where a claim for drawback as per AIR has already been filed under Rule 3 or 4 of the Customs, Excise & Service Tax Drawback Rules, 1995. It is not the applicant case that AIR is less than four fifth of the duties or taxes actually paid on inputs meriting fixation of brand rate. Further, an exporter is debarred from filing any application for fixation of brand rate where AIR drawback has already been claimed even when it is found later that the AIR of drawback was less than four-fifth of the duties/taxes paid on the inputs. Since in the instant case the merchant exporter has already claimed AIR of drawback at the time of export of goods which has already been sanctioned

the applicant is not eligible to file an application for fixation of brand rate with the erstwhile Central Excise Commissionerate , Meerut, subsequently under the provisions of Rule 7 of the Customs, Central Excise and Service tax drawback Rules, 1995.

5. The applicant has also referred to Notes and Conditions no. 7 of Notification No. 110/ 2015- Cus (N.T.) dated 16.11.2015 which read as follows:

*"The figures shown in the said Schedule under the drawback rate and drawback cap appearing below the column heading Drawback when Cenvat facility has not been availed refer to the total drawback (Customs, Central Excise and Service Tax component put together) allowable and those appearing under the column heading Drawback when Cenvat facility has been availed refer to the drawback allowable under the Customs component. The difference between the two columns refers to the Central Excise and Service Tax component of drawback. **If the rate indicated is the same in both the columns, it shall mean that the same pertains to only Customs component and is available irrespective of whether the exporter has availed of Cenvat facility or not.**"*

The applicant's contention that the merchant exporter had availed the Customs portion of drawback and therefore the applicant is eligible for the drawback of the Central Excise portion under brand rate fixation under Rule 7 is not tenable. Rule 7 clearly stipulates that in case the exporter has already availed All Industries rate (AIR) irrespective of the fact whether it is only in respect of the customs portion or the Customs, Central Excise & Service tax portion together no application under Rule 7 for the fixation of brand rate can be filed. Moreover, the para 7 of the above said notification quoted by the applicant only relates to the All Industries rates of drawback and has nothing to do with the fixation of brand rate under Rule 7 of the Drawback Rules. These are two independent provisions and can not be linked to claim benefit which is not due. The scope of Notes and condition no. 7 (supra) is thus limited to granting of

Customs portion of drawback even when Cenvat facility is availed. It nowhere stipulates that Customs portion and Central Excise portion can be availed separately and that too by two different entities.

The applicant referred to the judgment of Hon'ble High Court of Bombay in the case of Alfa Laval (India) Limited vs. UOI [2014 (309) ELT (Bom.)], wherein the court has held that there is no bar in the rules to claim brand rate of drawback where all industry rate has been claimed. Since the Notification No.109/2014-Customs (N.T.) dated 17.11.2014 has been issued subsequent to the above judgement the same will apply to the facts of this case.

5. In view of the above discussions, the Revision applications are rejected.

Mallika Arya
(MALLIKA ARYA)

Additional Secretary to the Government of India

1. M/s Amber Enterprises Private Limited, A-1/1, UPSIDC Industrial Area, Selaqui, Dehradun

G.O.I. Order No. 19-21/19-C. dated 10-10-2019

Copy to:-

1. Commissioner of Central Excise, Customs & Service Tax, (Appeals), E-Block, Nehru Colony, Haridwar Road, Dehradun-248001. [erstwhile Commissioner of Central Excise (Appeals-I), Meerut.
2. Commissioner of Central Excise, Customs & Service Tax, E-Block, Nehru Colony, Haridwar Road, Dehradun-248001. [erstwhile Commissioner of Central Excise, Customs & Service Tax, Meerut].
3. P.S. to A.S. (Revision Application)
4. Guard file.

S. *Spare Copy*

ATTESTED
Nirmla Devi
10/10/19
(NIRMLA DEVI)
SO (R.A.)