REGISTERED
SPEED POST

सत्यमेव जयते

F.No.375/30/DBK/2013-RA
F.No.375/31/DBK/2013-RA
F.No.375/32/DBK/2013-RA
F.No.375/33/DBK/2013-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 2/3/16

ORDER NO. 21-24/2016-CUS DATED 26.02.2016 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision applications filed, under Section 129 DD of the Customs Act, 1962 against the Order-in-Appeal No. JAL-EXCUS-000-APP/099 to 102/2013 dated 06.09.2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Chandigarh-II

Applicant : M/s National Industrial Corpn. Ltd, Derabassi

Respondent : Commissioner of Central Excise, Chandigarh-II

******

ORDER

These Revision Applications are filed by M/s National Industrial Corporation Ltd, Derabassi (hereinafter referred as Applicant) against the Order-in-Appeal No. JAL-EXCUS-000-APP/099 to 102/2013 dated 06.09.2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Chandigarh-II with respect to OrderNo. VIII/48/Tech/DBK/NIC/66/08/358 dated 20.04.2012, VIII/48/Tech/DBK/NIC/31/09/354 dated 20.04.2012, IV(16)Tech/Hqrs/CHD-II/DBK/66/09/356 dated 20.04.2012 and IV(16)Tech/Hqrs/CHD-II/DBK/92/12/201 dated 11.04.2012 passed by the Additional Commissioner (Tech), Central Excise Commissionerate, Chandigarh-II.

2. Brief facts of the case are that the applicants are engaged in the manufacture of various brands of liquor–Rum., Whiskey, Brandy, Gin, Vodka etc which are not chargeable to Central Excise Duty. From 16.10.2008 to 22.01.2010 the applicants exported the impugned goods for which they filed applications along with DBK-I,II,III, IIIA statements, copies of shipping bills and invoices of inputs, for fixation of brand rate of duty drawback under Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules 1995 on the basis of incidence of duty paid on the inputs used in the manufacture of impugned goods. The applicants have claimed the duty drawback on duty paid on inputs namely whiskey concentrate/raw distillate, glass bottles, P.P. caps, corrugated boxes/cartons and molasses. The drawback sanctioning authority fixed the brand rates in all these four cases vide Order No. VIII/48/Tech/DBK/NIC/66/08/358 dated 20.04.2012, VIII/48/Tech/DBK/NIC/31/09/354 dated 20.04.2012, IV(16)Tech/Hqrs/CHD-II/DBK/66/09/356 dated 20.04.2012 and IV(16)Tech/Hqrs/CHD-II/DBK/92/12/201 dated 11.04.2012 but disallowed drawback on the declared input molasses on following two grounds:-

(i) As per proviso (ii) to Rule 3 of the Drawback Rules, no drawback is allowable on the excisable materials in respect of which duties or taxes have not been paid and applicant have not provided evidence of direct duty payment on molasses.

(ii) The applicants have been procuring Extra Neutral Alcohol (ENA) and not the molasses. Also no evidence of duty payment on ENA has been submitted.

3. Being aggrieved by the impugned Order-in-Original, the applicant filed an appeal before the Commissioner (Appeals), who rejected the same vide Order-in-Appeal No. JAL-EXCUS-OOO/APP-099 to 102/13-14 dated 06.09.2013.

4. Thus, the applicant filed these revision applications under Section 129DD of Customs Act, 1962 before the Central Government on the following common grounds:

4.1. That the impugned order is against law and contrary to the facts on records.

4.2. That the appellate authority has erred in rejecting the appeal of the applicant in as much as failing to take cognizance of the fact that the applicant had produced

evidence supporting the payment of duty on the molasses procured and used in the manufacture of ENA which had been supplied to the applicant. That the said authority also erred in rejecting the contention of the applicant that nowhere in the Drawback Rules, it has been provided that the documents evidencing the payment of Central Excise Duty should be in the name of the manufacturer of the export product. That the only requirement is that the product used as an raw material in the manufacture of export products should have suffered Central Excise Duty irrespective of the fact that whether the documents supporting such evidence is in the name of exporter or not. That the appellate authority without assigning any reason as to why the evidence produced regarding payment of duty on molasses used in the manufacture of ENA, rejected the contention on this account ignoring the proviso (ii) to Rule 3 of Drawback Rules which lays down that no drawback shall be allowed if the export goods are produced or manufactured using imported materials or excisable materials or taxable services in respect of which duties or taxes have not been paid. That the said proviso does not speak about that whether payment of duty as referred to in the proviso should be direct evidence or not. That as per note 5 of DBK I statement proof of payment of Central Excise Duty has to be shown and it has no where provided that invoices evidencing payment of duty should be in the name of the claimant, when evidence regarding duty payment has been provided by way of certificate at the time of supply of ENA by the distiller satisfying requirement that the product used should have suffered Central Excise duty.That the department has not contested the payment of duty on the molasses used in the manufacture of ENA. That payment of appropriate duty on molasses is not in dispute and therefore rejection of claim on molasses in fixation of brand rate is not correct.

4.3. That the Commissioner (Appeals) as well as the competent authority fixing the brand rate have also failed to take into cognizance of the fact that supply of molasses to the distilleries is under the strict supervision of the State Excise Authorities exercising control over the manufacture and sale of liquor whether for domestic consumption or export.That the appellate authority has taken erroneous view in the matter leading to denial of correct brand rate fixation.

4.4. That the department has not specified the provisions of law, which provide that drawback claim under Section 75 of the Customs Act, 1962 cannot be allowed unless, it is established that export goods were manufactured or produced out of excisable goods. That in the present case, All Industrial Rates of Drawback on ENA had been determined by the Central Government under Section 75 (2) of the Customs Act, 1962, Section 37(2) of the Central Excise Act, 1944 and Section 93 A (2) of the Finance Act, 1994. That provisions of the laws do not provide that the exporter has to establish one to one correlation of the duty paid goods with the export goods. That the appellate authority has neither disputed the said submission of the applicant nor has noted the provisions of law which specify the requirement that exporter must prove the use of duty paid goods in the manufacture of export goods. That the brand

rate fixing authority while fixing the brand rate had given clear findings that applicants had produced documentary evidence regarding consumption and duty paid character of inputs used in the manufacture of export goods. That the findings of the appellate authority is totally against the factual position on the record and that merits to be ignored and All Industrial Rate on ENA be allowed for computation of brand rate.

4.5. That Circular No. 42/2011-Cus dated 22.09.2011, the Board under Para 10 of the said circular clarified that:-

> *'In 2010-11, the description ENA (Extra Neutral Alcohol) was incorporated in the heading 207. There has been some confusion that claims made prior to the notification of last year were not covered under the new description and there was request for clarification. It is clarified that ENA is otherwise covered under the heading 2207 as ethyl alcohol and would cover all periods, including those prior to 20th September, 2010."*

4.6. That it was contended before the appellate authority that when the competent authority had decided to disallow the actual incidence of duty suffered by the raw materials used in manufacture of ENA on the basis of certificate issued by the supplier of ENA mentioning there in the quantity of molasses used in the manufacture of ENA supplied along with incidence of duty in fixation of the brand rates, never the less the rates fixed under the schedule of All Industrial Rates should have been considered while fixing the brand rate under Rule 7. That the Customs Circular No. 83/2003 dated 18.09.2003 deals with the applicability of All Industrial Rates of Duty Drawback in brand rate of duty drawback. That the said circular states that the All Industrial Rates of the products mentioned in the schedule should be taken into account while computing the brand rate of drawback even if the said products are exempt from Central Excise Levy as various inputs used in processing/manufacturing of finished product have suffered levy of Central Excise Duty and duties paid on these inputs remains unrelieved as the finished products are not subject to CentralExcise Levy. That taking into account the law laid down in the board circular no. 83/2003-Cus , the All Industrial Rates fixed for ENA should have been taken into account while computing the brand rates on various brands of whisky/brandy as the Central Excise Duties paid on the inputs (molasses) used in the manufacture of ENA remains unrelieved as ENA is not subject to Central Excise Levy.

4.7. That the appellate authority rejected the appeal on the ground that the applicant have failed to produce the evidence of actual consumption of ENA in the manufacture of export products which is factually is incorrect in as much as extra neutral alcohol is the basic raw material without which the export products cannot be manufactured.

4.8. That the appellate authority has erred in arriving to conclusion that the applicant in their drawback application had neither declared ENA as one of their input

nor have shown receipt. That the applicant had declared molasses as one of the input for manufacture of ENA, then the question of misstating the facts of receipt of stock and consumption norms of molasses is irrelevant and has been alleged just to side tract the issue and reject the claim on ENA.

4.9. That the appellate authority while passing the impugned order had tried to justify the order passed by the brand fixing authority without following principles of natural justice on the ground that drawback rules are a complete code in itself laying down not only the procedure for fixation and payment of brand rate of drawback and also the further course of action that the exporter has to adopt in case he is not in agreement with the brand rate filed by the drawback sanctioning authority and has also roped in the provision of Rule 15 of the Drawback Rules regarding filing of supplementary claims within a period of 3 months from the date of communication of determined rate of duty drawback.That principles of natural justice invariably have to be followed in each and every case where the claim of the applicant is to be rejected. That the orders passed without following principles of natural justice have been held to be bad in law by the various courts including the Apex Court. That the impugned order in appeal merits to be quashed and the case be remanded to original brand fixing authority for examining the case in light of the submissions of the applicant.

4.10. That in absence of any show cause notice having being issued before rejecting the claim on molasses, the applicant were prevented from defending their case before the appropriate authority and as such the principles of natural justice have been violated.

5. Personal hearings in the matter was fixed on 03.08.2015, 02.09.2015, 15.09.2015 and 05.10.2015. None from Department attended. On 05.10.2015 hearing was attended by Shri G.L. Sawhney, Consultant and Shri Kuldeep Kumar, Account Manager on behalf of the applicant and submitted a written submission pleading therein:-

5.1. That the appellate authority rejected the claim of the applicant on the following two grounds:-

a. That the applicant did not produce any invoice confirming receipt of ENA of minimum strength of 94.5% of ethyl alcohol in their factory of production.

b. That the norms of consumption of ENA in the manufacture of the final product have not been produced.

5.2. That it is on record that the applicant have purchased ENA against proper invoices and have maintained a proper records prescribed by the State Excise Department showing receipt of each and every consignment duly verified on its receipt in the factory and properly accounted for in the stator books of accounts maintained under the authority of the State Excise Department and invariable return of one copy of invoice in token of receipt and accounted of goods in their records.

5.3. That the norm of consumption quantity of ENA used in the manufacture of final product they are maintaining a proper record of issue of the ENA used as an input and final product the liquor showing the recovery percentage of liquor from ENA. The applicant submitted the detailed chart of all invoice showing particulars of the ENA and its strength in terms of V/V 94.5% and details of shipping bill wise export pertaining to the period in question.

5.4. That the applicant is in possession of all the invoices showing strength of the ENA purchased, therefore is eligible for all industry rate of drawback claimed and impugned order deserves to be set aside.

6. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Orders-in-Appeal.

7. On perusal of case records, Government observes that the applicant engaged in the manufacture of various brands of liquor filed applications along with DBK-I,II,III, IIIA statements, copies of shipping bills and invoices of inputs, for fixation of brand rate of duty drawback under Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules 1995 on the inputs used in the manufacture of impugned goods. The applicant have claimed the duty drawback on duty paid on inputs namely whiskey concentrate/raw distillate, glass bottles, P.P. caps, corrugated boxes/cartons and molasses. But the drawback sanctioning authority allowed the drawback on all the inputs except molasses. The applicant requested for the appealable orders and the drawback sanctioning authority intimated to the applicants that drawback on the declared input molasses was disallowed on following two grounds:-

(i) As per proviso (ii) to Rule 3 of the Drawback Rules, no drawback is allowable on the excisable materials in respect of which duties or taxes have not been paid and applicant have not provided evidence of direct duty payment on molasses.

(ii) The applicants have been procuring Extra Neutral Alcohol (ENA) and not the molasses. Also no evidence of duty payment on ENA has been submitted.

Being aggrieved by the impugned Order-in-Original, the applicant filed an appeal before the Commissioner (Appeals), who rejected the same vide Order-in-Appeal No. JAL-EXCUS-OOO/APP-099 to 102/13-14 dated 06.09.2013. Now the applicant has filed these Revision Applications on the grounds mentioned at Para 4 above.

8. Government further observes that the applicable statutory provision under reference is Rule 2 (a) and Rule 3 of the Drawback Rules which reads as under:-

Rule 2 (a) of the Drawback Rules-"Drawback" in relation to any goods manufactured in India and exported, 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 such goods and excisable materials as

per Rule 2 (c) of the Drawback Rules means any material produced or manufactured in India subject to a duty of excise under the Central Excise Act, 1944.

Rule 3 of the Drawback Rules-Drawback may be allowed on the export of goods at such amount, or at such rates, as may be determined by the Central Government provided that where any goods are produced or manufactured from imported materials or excisable materials or by using any taxable services as input services, on some of which only the duty or tax chargeable thereon has been paid and not on the rest, or only a part of the duty or tax chargeable has been paid, or the duty or tax paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962 and the rules made thereunder, or of the Central Excise Act, 1944 and the rules made thereunder, or of the Finance Act, 1994 and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty or tax paid or the rebate, refund or credit allowed.

Provisio (ii) to Rule 3 lays downs that no drawback shall be allowed if the said goods are produced or manufactured using material in respect of which duties have not been paid.

9. Further Government observes that the applicants are required to file drawback statement I,II,III, III-A giving thereunder details of inputs used and incidence of duty paid thereon. In drawback-I statement the applicant had claimed duty drawback on input molasses. As per Note 5 of this statement only those raw materials/components etc are to be indicated for which proof of payment of Customs/Central Excise duty is shown. In the said statement they are also required to certify that raw materials are actually consumed in the factory of production and that the duty paying documents in respect of inputs furnished in the brand rate application have not been used or partially used in any previous application. In this case, the applicant failed to comply with the procedure laid down under the relevant rules.

10. As per condition no. 5 of statement DBK-III, the invoices (in original) evidencing payment of Central Excise duty are required to be attached. On perusal of records, Government finds that the applicant have not furnished any documents in respect of their input molasses instead they have admitted before the appellate authority that they have not even procured declared input i.e. molasses on which they had claimed duty drawback. Instead they had claimed duty drawback rate on Extra Neutral Alcohol(ENA), which has not been declared as in input of the impugned goods by applicant in their duty drawback application. Also they failed to produce any evidencing payment of duty by them on the ENA let alone any invoices for procurement of ENA.

11. Government further observes that as per Rule 2(a) of the Drawback Rules, the word 'drawback', means the rebate of duties and taxes chargeable on excisable materials and input services used in the manufacture of impugned goods. Proviso (ii) to Rule 3 of the Drawback Rules categorically provides that no drawback shall be allowed on the excisable material in respect of which duty or taxes have not been paid. The applicants are required to file DBK statements I, II, III, III-A, giving thereunder details of inputs used and incidence of duty paid thereon. In DBK-I statement, the applicants had claimed duty drawback on input molasses. As per Note 5 of this statement, only those raw materials / components etc. are to be indicated for which proof of payment of Customs / Central Excise Duty is shown. In DBK-I statement they are also required to certify that raw materials are actually consumed in the factory of production and that the duty paying documents in respect of inputs furnished in the brand rate application have not been used or partially used in any previous application. As per condition no. 5 of statement DBK-III, the invoices (in original) evidencing payment of Central Excise Duty are required to be attached.In DBK-III(A) statement they are to furnish documents relating to payment of Central Excise duty on stocks of indigenous material lying with them from the date, three months prior to the date of first shipment. As such the brand rate of duty drawback are computable on the basis of actual duty payment on the inputs used for manufacture of export goods which is to be verified from the original duty paying documents. However, in the present case the applicants have not furnished any such document in respect of their input molasses and have admitted that they have not even procured declared input i.e. molasses on which they had claimed duty drawback. The applicants had also claimed that duty drawback rate could have been computed on the incident of payment of duty on the ENA procured by them. Government notes that the ENA has not been declared as an input of the impugned goods by the applicants in their duty drawback application. The applicants have not produced any document evidencing payment of duty by them on the ENA. They have also not produced any incoming invoice showing receipt of ENA in their manufacturing premises. Further, the applicants had the option of filing supplementary drawback claim under Rule 15 of the Drawback Rules, 1995 which has to be filed within 3 months of payment or settlement of the original drawback claim by proper officer which the applicants have failed to do so. As such under the provisions of Drawback Rules, brand rate of duty drawback are not applicable to the applicants.

12. Government also observes that the applicant has contended that All Industry Rate of ENA be allowed to them as per Board's Circulars No. 19/2005-Cus dated 21.03.2005 and 83/2003-Cus dated 18.09.2003. It has been noted that Board's Circular No. 19/2005 clarifies that fixation of All Industry Rate of Duty Drawback is not to be probed by the field formations and the Circular No. 83/2003 is applicable to All Industry Rate of Duty Drawback brand rate fixation in respect of three finished products viz Leather Articles, Bicycle and Complete Bus. It also provides as a requirement the production of invoices confirming receipt of ENA indicating its local

price and the consumption norms thereof. Therefore the contention of the applicant for allowing All Industry Rate of ENA to be allowed is not applicable.

13. Further, Government notes that the applicants have also contested that the principles of natural justice stand violated in their case as no show cause notice was issued before rejecting their claim with regard to inclusion of incidence of duty payable on molasses. Government observes that the Commissioner (Appeals) has rightly held that Drawback Rules are a complete code in itself laying down not only the procedure for fixation and payment of brand rate of duty drawback but also the further course of action that the exporter is to adopt in case he is not in agreement with the brand rate fixed by the drawback sanctioning authority. As per Rule 15 of the Drawback Rules, where any exporter finds that the amount of drawback paid to him is less than what he is entitled to, he may prefer a supplementary claim within a period of three months from the date of communication of determined rate of duty drawback. Government finds that the Drawback sanctioning authority has abided with the legal requirement of fixation of brand rate of duty drawback for the impugned goods.

14. In view of above discussions and findings, the Revision Application is thus rejected being devoid of merit.

15. So, ordered.

(**RIMJHIM PRASAD**)
Joint Secretary to the Government of India

M/s. National Industrial Corporation Ltd.
Ambala Chandigarh Road,
Derabassi.

ATTESTED

ORDER NO. 21-24/2016–CUS DATED 26.02.2016

Copy to:

1. The Commissioner of Central Excise , Chandigarh-II
2. The Commissioner (Appeals), Central Excise, Chandigarh-II, C.r. Building, Plot No. 19, Sector 17-C, Chandigarh.
3. The Additional Commissioner(Tech), Central Excise Commissionerate, Chandigarh-II
4. Guard File.
5. PA to JS (RA)
6. Spare Copy

ATTESTED

(Shaukat Ali)
Under Secretary (Revision Application)