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SPEED POST

F.No.380/164/DBK/2016-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue.....

Order No. 212/2018-Cus dated 4-12-18 of the Government of India passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/CUS(PORT)/SS/209/2016 dated 19.07.2016, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Commissioner of Customs (Port), Kolkata

Respondent : M/s Heinen & Hopmen Engineering (I) Pvt. Ltd.

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**ORDER**

A Revision Application No. F.No.380/164/DBK/2016-RA dated 26.10.2016 has been filed by the Commissioner of Customs (Port), Kolkata (hereinafter referred to as the applicant) against the order in Appeal No. KOL/CUS(PORT)/SS/209/2016 dated 19.07.2016, passed by the Commissioner of Customs (Appeals), Kolkata .

2. Brief fact of the case are that M/s Heinen & Hopman Engineering (I) Ltd (herein after referred to as the respondent) had filed three supplementary claims for drawback on the basis of brand rates fixed by the jurisdictional Central Excise authorities which were rejected by the Assistant Commissioner of Customs (Drawback), Kolkata, on the grounds that the respondent had filed the shipping bills for All Industries Rates (AIR) of Drawback, drawback as per AIR was already sanctioned to the respondent, no drawback at the brand rates was ever claimed under CTH 9801 and the respondent had filed the brand rate fixation application before the jurisdictional Central Excise authorities under Rule 6 of the Drawback Rules, 1995 which was not applicable in the case. Aggrieved with the said order of the Assistant Commissioner (Drawback), the respondent filed an appeal before the Commissioner (Appeals) which is allowed with all the consequential relief vide above cited Order-in-Appeal. Now the department has filed the instant revision application against the Order-in-Appeal on the grounds that the respondent was not eligible to file the applications for brand rate fixation before the jurisdictional Central Excise authorities under Rule 6 of the Drawback Rules, 1995 as All Industries rate was available for the exported goods, drawback under rule 7 also could not be sanctioned since the respondent had already availed AIR drawback and, therefore, the Order-in-Appeal sanctioning drawback as per brand rates fixed by Central Excise is erroneous.

3. Personal hearing in this case was fixed on 19.09.2018. But the applicant and

the respondent did not appear for personal hearing on the said date. Therefore, 2nd hearing was fixed on 10.10.2018 which was attended by Sh. De, Assistant Commissioner, Kolkata Custom House, for the applicant who reiterated the grounds of revision already pleaded in their revision application. The respondent, vide their letter dated 08.10.2018, requested for another date of hearing for the reason that they had received the copy of revision application on 05.10.2018 only. Accepting their request, third hearing was fixed on 24.10.2018. But the respondent did not avail the hearing on this date also and requested for another date of hearing on the ground that their office was closed during the period 16.10.2018 to 23.10.2018 on account of Durga Puja. From non availment of the hearing by the respondent on the last three occasions for different reasons it is evident that the respondent is not interested in availing the personal hearing and accordingly the Government has considered it appropriate to decide the matter on the basis of available records.

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 had already availed drawback as per 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 if AIR is already fixed for the exported goods. The said situation is that the DBK as per AIR should be lesser than four-fifth of duties or taxes actually paid on inputs etc. used in the manufacturing of exported 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 was already claimed under Rule 3 or 4 of the Drawback Rules. Thus, an exporter is debarred for filing any application for fixation of brand rate where AIR drawback is already claimed even when it is found later on that the AIR drawback was lesser than four-fifth of the duties/taxes paid on the inputs. Since in the instant case the respondent had already claimed AIR drawback at the time of export of goods and the same had been sanctioned by the Custom House, they were not eligible to file an application for fixation of brand rate with the Central Excise Commissionerate subsequently under the aforesaid Rule 7. But despite of their ineligibility, they still filed the

application for fixation of brand rate before the Central Excise Commissionerate under Rule 6 of the Drawback Rules as per which the brand rate application can be filed only where AIR is not fixed in respect of the exported goods. Whereas in this case it is evident that AIR had already been fixed in respect of the exported goods and the respondent had also availed the drawback in their Shipping Bill. Therefore, application under Rule 6 was entirely unwarranted and by filing the application under Rule 6 the respondent certainly misled Central Excise authorities to believe that AIR based drawback of duty was not available in respect of the exported goods in this case. Accordingly brand rates were wrongly fixed by the Central Excise. The gist of matter is that the respondent was not eligible for brand rate of drawback under Rule 6 as well as 7 of the Drawback Rules and a gross error has been committed by the Commissioner(Appeals) by allowing the drawback of duty to the respondent in respect of the exported goods despite they had already claimed and availed drawback of duty as per AIR.

5. In view of the above discussions, the Government set aside the Order-in-Appeal and allow the revenue revision application.

4.12.18

(R.P.Sharma)

Additional Secretary to the Government of India

The Commissioner of Customs (Port),
15/1 Strand Road,
Custom House,
Kolkata-700001.

ATTESTED

(Nirmla Devi)
SECTION OFFICER (REVISION APPLICATION)

Order No. 212/18-Cus dated 4-12-2018

Copy to:

1. Heinen & Hopman Engineering (I) Pvt Ltd, 79, Barrackpore Trunk Road, Panihati, Kolkata-700114

2. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata, 700001.

3. Assistant Commissioner, (Drawback), (Port), 15/1 Strand Road, Custom House, Kolkata, 700001.

4. PS to AS(RA)
5. Guard File.
6. Spare Copy