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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F. No. 373/256/DBK/14-RA / 114 Date of Issue : ~~12.2020~~ 06.01.2021

ORDER NO 217/2020-CUS (SZ) / ASRA / MUMBAI/ DATED 21.12.2020  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY  
TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE  
CUSTOMS ACT, 1962.

**Applicant** : M/S.Veejay Lakshmi Engineering Works Ltd.

**Respondent** : Commissioner of Customs, No.1, Williams Road,  
Tiruchirapalli-620001.

**Subject** : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal  
No.CMB-CEX-000-APP-039/2014 dated 27.03.2014  
passed by the Commissioner of Customs Central  
Excise and Service Tax (Appeals), Coimbatore-641018.

ORDER

The Revision Application is filed by M/s. Veejay Lakshmi Engineering Works Ltd, Unit-III, Sengalipalayam, N.G.GO., Colony (post), Coimbatore-641022 (hereinafter referred to as 'the applicant') against the Order in Appeal No.CMB-CEX-000-APP-039/2014 dated 27.03.2014 passed by Commissioner of Customs, Central Excise and Service Tax (Appeals),Coimbatore in respect of Order in Original No.1 to 11/2013 dated 30.12.2013passed by the Deputy Commissioner of Central Excise, Tirupur Division.

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2. ~~Brief facts of the case are that the applicant had filed 11 applications with the Deputy Commissioner of Central Excise, Tirupur Division for fixation of special brand rate of drawback under Rule 6 of drawback rules for the supplies made as DTA unit to the SEZ Unit, M/s. New Minerva Mill, Hasan. Show-cause Notices dated 04.11.2013 were issued to the applicant as to why their applications should not be rejected as 'time barred' since the applications submitted were beyond the stipulated period of 3 months under Rule 6 of the Drawback Rules, 1995. The applicants replied that the delay in filing applications for brand rate fixation was due to procedural compliance and therefore they withdraw the brand rate application and however, requested for sanctioning of drawback at All Industry Rate (AIR) under Rule 3 of the Drawback Rules, 1995. The said applications were rejected as time barred for non-compliance with the provisions of Rule 13 of Drawback Rules read with Section 75 of the Customs Act, 1962.~~

3. Aggrieved by the rejection of their claims for All Industry Rate of drawback, applicants filed an appeal with the Commissioner (Appeals), Coimbatore. The said appeal was rejected by the Commissioner.

4. The Commissioner (Appeals) Order is contested by the applicants in the instant Revision Application with the following submissions:

4.1 The rejection of All Industry Rate of Drawback on time limit is totally unjustified as Shipping Bill itself is a drawback claim and therefore, there was no delay in their drawback claim. They have further submitted that in terms Rule 13 of Customs, Central Excise Duty and Service Tax Drawback Rules, 1995, the triplicate copy of the Shipping Bill for export of goods under a claim of drawback shall be deemed to be a claim for drawback filed on the date on which the proper officer of customs makes an order permitting clearance and loading of goods for exportation under Section 51 and said claim for drawback shall be retained by the proper officer.

4.2 The delay in filing brand rate applications was due to their mistaken filing and perusal of the same with the DGFT authorities.

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4.4 The CBEC circular No.10/2003-customs dated 17.02.2013 clarifies that All Industry Rate of drawback may be granted to the exporter even when brand rate fixation applications are pending finalisation. Original adjudicating authorities refused to grant any time for the applicants to rectify the mistake in the DGFT certificate and passed the impugned Order.

4.5 The Superintendent of Customs vide report dated 7.10.2013 stating that there is no time limit prescribed for claiming All Industry Rate of drawback was ignored by the lower authorities.

4.6 The Commissioner (Appeal)'s findings in the impugned order that there is no pendency of Special Brand Rate application with the department and so the question of permitting All Industry Rate of drawback does not arise is beyond the scope of Show Cause Notice and findings of the Original Authority.

5. Personal Hearing was held on 31.10.2018. Due to change in Revision Authority another personal hearing was scheduled on 16.12.2020. Shri. M. Saravanan, Consultant and Shri. D.

Ranganathan, Whole Time Director of the company, appeared through video conferencing on behalf of the applicant on both the hearings and reiterated the submissions made in Revision Application and pleaded for allowing the All Industry Rate of drawback.

6. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the applicant's submissions.

7. The main issue to be determined is whether separate claim is required to be filed for availing All Industry Rate of drawback under Rule 3 of the Drawback Rules, 1995 and time limit for filing any such claim.

8. In the instant case, the applicants are a Domestic Tariff Area (DTA) unit and supplied goods to an SEZ Unit i.e. M/s. New Minerva Mill, Hasan under 11 Shipping Bills, as detailed in the Order-In-Original No.1 to 11/2013 dated 30.12.2013. Since the All Industry Rate (AIR) of drawback fixed for the exported product i.e. Automatic Cone Winding Machines was less than 4/5<sup>th</sup> of the actual duties, the applicants submitted applications for brand rate fixation under Rule 6 of the Drawback Rules, 1995 after a lapse of more than 9 months from the date of export. When the department issued Show Cause Notices proposing to reject the brand rate applications for delay in submission beyond the statutory period allowed under Rule 6 of the Drawback Rules, 1995, the applicants vide their letters dated 12.08.2013 have requested for sanctioning All Industry Rate of Drawback, instead of brand rate.

9. The Government finds that the Original Authority rejected the brand rate applications under Rule 6 as well as the applicants request for sanctioning AIR of drawback under Rule 3 of Drawback Rules on grounds that the applications for drawback were filed after the stipulated time mentioned in the drawback rules. All the applications

were rejected for non-compliance of Rule 13 of the Drawback Rules, 1995 read with Section 75 of the Customs Act, 1962.

10. The ascertainment of requirements for availing AIR drawback and the time limits for any such claim requires critical examination of Rule 3 and Rule 13 of Drawback Rules, 1995.

11. Rule 13 of the Drawback Rules, 2005 is reproduced below for easy reference.

“Rule 13. Manner and time for claiming drawback on goods exported other than by post. -

(1) Triplicate copy of the Shipping Bill for export of goods under a claim for drawback shall be deemed to be a claim for drawback filed on the date on which the proper officer of Customs makes an order permitting clearance and loading of goods for exportation under section 51 and said claim for drawback shall be retained by the proper officer making such order.

(2) The said claim for drawback should be accompanied by the following documents, namely:-

- (i) copy of export contract or letter of credit, as the case may be,
- (ii) Copy of packing list,
- (iii) Copy of ARE-1, wherever applicable,
- (iv) Insurance certificate, wherever necessary, and
- (v) copy of communication regarding rate of drawback where the drawback claim is for a rate determined by the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be under rule 6 or rule 7 of these rules.

(3) (a) If the said claim for drawback is incomplete in any material particulars or is without the documents specified in sub-rule (2), shall be returned to the claimant with a deficiency memo in the form prescribed by the Commissioner of Customs within 10 days and shall be deemed not to have been filed for the purpose of section 75A.

(b) Where the exporter resubmits the claim for drawback after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed

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under sub-rule (1) for the purpose of section 75A.

(4) For computing the period of two months prescribed under section 75A for payment of drawback to the claimant, the time taken in testing of the export goods, not more than one month, shall be excluded.

(5) Subject to the provisions of sub-rules (2), (3) and (4), where the exporter has exported the goods under electronic shipping bill in Electronic Data Interchange (EDI) under the claim of drawback, the electronic shipping bill itself shall be treated as the claim for drawback.

12. The Government, therefore, finds that Rule 13 unequivocally clarifies that triplicate copy of the shipping bill itself is treated as claim for drawback. Further, the date of such claim is the date on which the proper officer makes an order for clearance and loading of the goods and all such claims shall be retained with the proper officer.

13. The Government observes that drawback rules prescribes time lines for drawback applications/claims under Rule 6, 7 and Rule 15 of the Drawback Rules, 1995. The same is amply clear from the Board Circular 13/2010 dated 24.06.2010 which liberalises time lines for making application under the above mentioned Drawback Rules. Rule 6

and 7 deals with fixation of Brand Rate, in cases where no amount of drawback is determined or where the drawback determined is less than  $4/5^{\text{th}}$  of duties suffered by the exported product.

14. The Government observes that time lines so specified, therefore, will not affect the exporter's entitlement to avail All Industry Rate of drawback determined by the issuance of Notifications, and the basic criteria for availing All Industry Rate of drawback is export of goods and the date of consideration is the date on which the proper officer permits clearance and loading of goods. Since the date of Let Export Order is the date for determination of rate of drawback, the applicants cannot be denied All Industry Rate of drawback on the grounds that their brand rate application are filed beyond the time limit. Applications for brand rate are generally filed in cases where the rates determined under AIR are less than the actual duties suffered by the goods. In the instant case, applicants have filed application for brand rate for reasons that the AIR rate is less than  $4/5^{\text{th}}$  of duties incurred by the exported product. The applications for fixation of brand rate are rightfully rejected for submission of the same beyond the prescribed time lines. However, the lower authorities decision to deny AIR on limitation of time is unjustified and without any merit.

15. The Government further observes that in normal course All Industry Rate of drawback sanctioning authorities and brand rate fixation authorities are different. However, in the instant case both being the same, it appeared that the authorities have denied both the claims without distinguishing the criteria and time limits for these two different claims. Since, time limits prescribed under the drawback rules are not applicable for All Industry Rate of drawback, the applicant's exports as detailed in the Order-In-Original merits consideration for drawback at All Industry Rate of drawback prevailing at the material time and accordingly, the Commissioner (Appeals) order is liable to be set aside.

16. In view of the above discussion and findings, the Government sets aside the Commissioner (Appeals) order and directs the Original authority to consider the applicants claims for All Industry Rate of drawback (AIR) prevailing at the material time for the exports found mentioned under the impugned Order-in-Original.

17. Revision Application is allowed on above terms.

*Shrawan*  
*21/12/2020*  
(SHRAWAN KUMAR)

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

ORDER No 217/2020-CUS (SZ) /ASRA/ DATED 21.12.2020

To,

M/S. Veejay Lakshmi Engineering Works Ltd,  
Unit-III, Sengalipalayam, N.G.GO., Colony (post),  
Coimbatore-641022.

Copy to:

1. The Commissioner of GST & Central Excise, Coimbatore Commissionerate, GST Bhavan, 6/7, A.T. Devaraj Street, Race Course, Coimbatore, Tamil Nadu, 641 018.
2. The Commissioner of GST & Central Excise (Appeals), Coimbatore Commissionerate, GST Bhavan, 6/7, A.T. Devaraj Street, Race Course, Coimbatore, Tamil Nadu, 641 018.
3. Assistant Commissioner of GST & Central Excise, Tirupur Division, 1<sup>st</sup> floor Kumaran Shopping Complex, Kumaran Road, Tirupur-641601.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard File.
6. Spare Copy.