

REGISTERED
SPEED POST



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.371/36/DBK/14-RA / 6132

Date of Issue: 20/10/2021

ORDER NO. 256 /2021-CUS (WZ) /ASRA/MUMBAI DATED 30.09.2021
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 JCB India Ltd. Pune

Respondent : Commissioner of Central Excise, Pune-I.

Subject : Revision Applications filed, under Section 35EE of Central
Excise Act, 1944 against Order-in-Appeal No. PUN-EXCUS-
001-APP-195-13-14 dated 10.02.2014 passed by the
Commissioner(Appeals), Central Excise, Pune-I.

ORDER

This Revision Application is filed by the M/s JCB India Ltd., Talegaon Floriculture & Industrial Park, Village Ambi & Navlakh Umbare, Tal.-Malval, Talegaon, Dabhade, Dist. Pune -410 507 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. PUN-EXCUS-001-APP-195-13-14 dated 10.02.2014 passed by the Commissioner(Appeals), Central Excise, Pune-I.

2. The facts of the case in brief, are that the Applicant, manufacturer had filed an application dated 23.03.2011 for fixation of Brand Rate of Duty Drawback under Rule 6(1)(a) of the Duty Drawback Rules, 1995 and drawback amount Rs. 18,48,561.77. They had declared the export viz Excavator under Tariff Item No. 84295200 and had claimed that the product is covered under Sl.No. 8429B of the Duty Drawback Schedule. Even though the All Industry Rate of Drawback @1% on FOB is available, the Applicant had applied for Fixation of Brand Rate under Rule 6(1)(a) of Duty Drawback Rules, 1995 stating the reason that the All Industry Rate of Drawback is not determined on the Shipping Bill.

(i) The Joint Commissioner(BRU), Central Excise, Pune-I Commissionerate Order/Letter F.No. PI/BRU/D-1/JCB/18/2011 dated 30.05.2011 rejected the application on the grounds that the Brand Rate Duty Drawback under Rule 6(1)(a) of the Duty Drawback Rules, 1995 can only be determined in respect of goods where All Industry Rate of Drawback is not prescribed under Rule 3 of Duty Drawback Rules, 1995.

(ii) Aggrieved, the Applicant filed appeal with the Commissioner(Appeals), Central Excise, Pune-I. The Commissioner (Appeals) vide Order-in-Appeal No. PI/RKS/123/2011 dated 26.08.2011 upheld the Order/Letter

F.No. PI/BRU/D-1/JCB/18/2011 dated 30.05.2011 issued by the Joint Commissioner and rejected their appeal

- (iii) Subsequently, the Applicant vide letter dated 02.01.2011 resubmitted the same application with a request for reconsider of the same under Rule 7(1) of the Drawback Rules. The Additional Commissioner(BRU), Central Excise, Pune-I Commissionerate Order/Letter F.No. PI/BRU/D-1/JCB/18/2011 dated 08.03.2013.
- (iv) Being aggrieved by the impugned letter dated 08.03.2013, the Applicant filed appeal with the Commissioner(Appeals), Central Excise, Pune-I. The Commissioner (Appeals) vide Order-in-Appeal No. PUN-EXCUS-001-APP-195-13-14 dated 10.02.2014 rejected the appeal on the grounds that the Applicant's application dated 23.03.2011 stands settled under the adjudicating and appeal proceedings. As such the application dated 02.02.2013 is to be treated as fresh application and cannot be treated in continuation of their earlier application dated 23.03.2011. Accordingly, the claim was time barred and did not find any reason to interfere with the Additional Commissioner(BRU), Central Excise, Pune-I Commissionerate Order/Letter F.No. PI/BRU/D-1/JCB/18/2011 dated 08.03.2013.

3. The Applicant, filed the current Revision Application on the following grounds:

- (i) The rejection of the drawback application by the Additional Commissioner(BRU) is clearly against the basic intention of Section 75 of Customs Act of granting refund of duties & taxes to exporters after the fulfilment of given condition therein.
- (ii) Under Rule 6 and 7 of Duty Drawback Rules, Circular No. 14/2003 and Notification No. 49/2010-Cus(NT) dated 17.06.2010, procedure for the application and fixation of Brand Rate of Duty Drawback has

been stipulated. The Applicant had filed their application well within the stipulated time limits, The application had been primarily rejected for the reason that it was filed under Rule 6(1) instead of Rule 7. The rectification of the same does not amount to a fresh application as envisaged by the BRU. Therefore, the application are in conformity with the provisions of Section 75 of the Customs Act, Duty Drawback Rules, Notifications and Circulars issued there under.

- (iii) Since the Applicant are using duty paid imported material in the subject exported products, they have been filing the Duty Drawback Application under Rule 6(1) so far as the subject shipments have been made under Brand Rate under Drawback Tariff Heading 9801. However, they have rectified the said application of duty drawback and have made it now under Rule 7(1) for "Special Brand Rate" as per Drawback Rules, 1995.
- (iv) The LEO date of the first Shipping Bill is 27.09.2010 and the application for fixation under Rule 6 had been filed on 23.03.2011 for total drawback amount of Rs. 18,48,561.77 which was well within the stipulate time as per Circular No. 13/2010-Cus dated 24.06.2010 and Notification No. 49/2010-Cus(NT) dated 17.06.2010. Since the original application was filed in time and was defective only in respect of the Rule under which it was submitted only needs rectification to that effect. Therefore, the Applicant had rectified and resubmitted the said application under Rule 7(1) of Drawback Rules, 1995 and had said that the application was in continuation of the first drawback application which was filed under Rule 6. No where it is stipulated that any rectification/amendments/corrections in such application, should be tread as fresh application. Hence, the resubmission of application with rectification does not amount to a fresh application and should be accepted by BRU. In this, they placed reliance on the decision of CESTAT in case of Cummins (India) Ltd. Vs Commr. of Customs, Pune [2012 (282) ELT 92 (Tri-Mumbai)] and Teri Overseas Ltd. Vs Commr. of Customs, Kolkatta [2002 (141) ELT 394 (Tri-Kolkatta)]

- (v) The Applicant was not issued with any Show Cause Notice proposing to reject the application for fixation of brand rate of duty drawback filed by the Applicant. Further they were also not granted any personal hearing before the impugned decision passed by the Addition Commissioner. Hence the impugned decision is violative of the principles of natural justice.
- (vi) Additional period beyond prescribed time of 90 days given under Drawback Rules and extended by MOF, New Delhi for submission of application of Brand Rate of duty drawback as per Notification No. 49/2010 dated 17.06.2010 and CBEC Circular No. 13/2010-Cus dated 24.06.2010. The referred notification does not specify any time limit for submission of any rectification /revise the application which are already filed.
- (vii) It is the policy of the Government that only goods and services should be exported and not the duty and taxes, hence rejection of fixation of brand rate of duty drawback will amount to loss to the Applicant and export product will not be viable in the international market.
- (viii) The Applicant prayed that the Order-in-Appeal be set aside and their revision application be allowed.

4. Personal hearing in the case was fixed for 21.12.2017, 10.02.2021, 24.02.2021, 17.03.2021, 24.03.2021, 06.07.2021 and 20.07.2021. On 20.07.2021, Shri Avinash Foujdar and Shri Milind Kulkarni, representatives of the Applicant appeared online. They submitted that their claim is not time barred as resubmitted date cannot be the relevant date.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. On perusal of the records, Government observes that the Applicant, manufacturer had filed an application dated 23.03.2011 for fixation of Brand Rate of Duty Drawback under Rule 6(1)(a) of the Duty Drawback Rules, 1995 and drawback amount Rs. 18,48,561.77. The Joint

Commissioner(BRU), Central Excise, Pune-I Commissionerate Order/Letter F.No. PI/BRU/D-1/JCB/18/2011 dated 30.05.2011 rejected the application on the grounds that the Brand Rate Duty Drawback under Rule 6(1)(a) of the Duty Drawback Rules, 1995 can only be determined in respect of goods where All Industry Rate of Drawback is not prescribed under Rule 3 of Duty Drawback Rules, 1995. Aggrieved, the Applicant filed appeal with the Commissioner(Appeals), Central Excise, Pune-I who vide Order-in-Appeal No. PI/RKS/123/2011 dated 26.08.2011 upheld the Order/Letter F.No. PI/BRU/D-1/JCB/18/2011 dated 30.05.2011 and rejected their appeal. The Applicant vide letter dated 02.01.2013 resubmitted the same application with a request for reconsider of the same under Rule 7(1) of the Drawback Rules. The Additional Commissioner(BRU), Central Excise, Pune-I Commissionerate Order/Letter F.No. PI/BRU/D-1/JCB/18/2011 dated 08.03.2013 rejected the application as time barred. Being aggrieved, the Applicant filed appeal with the Commissioner(Appeals), Central Excise, Pune-I who vide Order-in-Appeal No. PUN-EXCUS-001-APP-195-13-14 dated 10.02.2014 rejected the appeal.

7. Government observes that the Applicant, had filed an application for fixation of Brand Rate of Duty Drawback under Rule 6(1)(a) of the Duty Drawback Rules, 1995 and drawback amount and the same was rejected by the lower authorities on the ground that the Brand Rate Duty Drawback under Rule 6(1)(a) of the Duty Drawback Rules, 1995 can only be determined in respect of goods where All Industry Rate of Drawback is not prescribed under Rule 3 of Duty Drawback Rules, 1995. Thereafter, the Applicant vide letter dated 02.01.2013 (received by the department on 18.01.2013) resubmitted the same application with a request for reconsider of the same under Rule 7(1) of the Drawback Rules.

8. Government finds that the Applicant had availed and exhausted the appellate remedy available to them under the statute and it is only thereafter the Applicant has chosen to refile their drawback claim under Rule 7 of the Drawback Rules, 1995. Therefore, Government is in agreement with the findings of the Commissioner(Appeals) that the application dated

02.01.2013 is to be treated as fresh application and cannot be treated in continuation of their earlier application dated 23.03.2011 and hence the claim is time barred.

9. In view of the above, Government upholds the impugned Order-in-Appeal No. PUN-EXCUS-001-APP-195-13-14 dated 10.02.2014 passed by the Commissioner(Appeals), Central Excise, Pune-I as proper and legal.

10. The Revision Application is rejected in above terms.

Shrawan
30/9/21
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No.256 /2021-CUS (WZ)/ASRA/Mumbai DATED 30.09.2021

To,
M/s JCB India Ltd.,
Talegaon Floriculture & Industrial Park,
Village Ambi & Navlakh Umbare,
Tal.-Malval, Talegaon, Dabhade,
Dist. Pune -410 507

Copy to:

1. The Commissioner of Central Excise & CGST, Pune-I, GST Bhavan, I.C.E. House, Opp. Wadia College, Pune - 411 001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.
4. Spare Copy