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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

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F.No. 371/315-318/DBK/2018-RA/२००४ Date of Issue: ०३-०५-२०२३

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ORDER NO. 398-401 /2023-CUS (WZ)/ASRA/MUMBAI DATED 29.03.2023  
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. JCB India Limited.

Respondent: Pr. Commissioner of Customs, Pune-I.

Subject : Revision Applications filed, under Section 129DD of the  
Customs Act, 1962, against the Orders-in-Appeal No. Pun-  
Excus-001-1052 to 1054/17-18 dated 29.01.2018 passed by  
the Commissioner (Appeals-I), Central Tax, Pune.

**ORDER**

This Revision Application has been filed by M/s. JCB India Limited (hereinafter referred to as "the applicant"), against the Orders-in-Appeal No. Pun-Excus-001-1052 to 1054/17-18 dated 29.01.2018 passed by the Commissioner (Appeals-I), Central Tax, Pune.

2. Brief facts of the case that the Applicant are registered under Excise and manufacture and export various types of excisable goods. They have the status of a Star Export House and exports the goods under Drawback scheme regularly. They had applied for fixation of brand rate under Rule 7(1) of Customs, Central Excise, duties and Service Tax Drawback rules, 1995, as amended, for the Drawback amount as shown in the table hereunder for the goods "Wheel Loader Shovel & VM Compactor" under Drawback schedule No. 8429 for All Industrial rate of Drawback, which were rejected by the Department.

Sr. No.	OIA	OIO	Drawback claimed
1	Pun-Excus-001-1052 to 1054/17-18 dated 29.01.2018	50/PI/BRU/JCB/MBI/37/2017 dated 21.02.2017	7,90,778/-
2		05/PI/BRU/JCB/MBI/05/2017 dated 28.02.2017	27,32,977/-
3		06/PI/BRU/JCB/MBI/06/2017 dated 28.02.2017	19,34,582/-
4		14/PI/BRU/JCB/MBI/14/2017 dated 13.04.2017	14,14,844/-
5		16/PI/BRU/JCB/MBI/16/2017 dated 15.05.2017	13,37,434/-
6		21/PI/BRU/JCB/MBI/20/2017 dated 08.05.2017	8,47,968/-
7		28/PI/BRU/JCB/MBI/27/2017 dated 02.06.2017	10,46,592/-

Being Aggreived they had preffered appeal before Commissioner (Appeals-I), Central Tax, Pune, who vide impugned OIA rejected the Appeal.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application under Section 129 DD of the Customs Act, 1962 before the Government on the following grounds:

- i. The rejection of the drawback applications (BRU) is clearly against the basic intention of Section 75 of Customs Act of granting refund of duties & taxes in exporters after the fulfillment of given conditions therein.
- ii. The rejection of the drawback application is against the provisions of Duty Drawback Rules and Circulars/Notifications issued there under.
- iii. After issuance of the notification no. 109/2014 dtd. 17.11.2014 (we.1.22.11.2014), the changes have been made in drawback rule 7(1) & it is not allowed to claim the brand rate of drawback if All Industry Rate of Drawback is claimed. Even though the rule 7 has been amended as per the said notification, the drawback under fixation of brand rate is made available under the notification no, 109/2015 did. 16.11.2015 (w.e.f. 23.11.2015) even if all industry rate of drawback is claimed.
- iv. Further, as per notification no. 109 & 110/2015-cus (NT) did. 16.11.2015 (wel 23.11.2015) & circular no. 29/2015-customs dtd. 16.11.2015 changes have been made in the procedure of claiming duty drawback under Rule 7. when provisional duty drawback has been obtained under All Industry Rate of Drawback. Accordingly, It is allowed to claim brand rate of drawback even if all industry rate of drawback is already claimed.
- v. Now the basic intention of drawback rules in line with the order of Hon'ble Bombay High Court vide the Writ Petition No. 1098 of 2013 & 2920 of 2014, (WP IST no. 6392 of2014) and as per the new notification 109 & 110/2015 dtd. 16.11.2015 is the same and the claim for duty drawback filed with reference to the rate in the AIR Schedule, an application for fixation of Brand rate under Rule 7 of the Customs Central Excise and Service Tax Drawback Rules, 1995 shall be made admissible.

- vi. The recent amendment in the notification of Duty Drawback has now stipulated a new procedure to facilitate the payment of AIR duty drawback immediately after the shipment and the supplementary duty drawback under Rule 7(1) as per the separate application for the fixation of brand rate of drawback. A copy of the said notification is enclosed herewith for ready reference. However, as mentioned in the statement of facts, due to the urgency of delivery of export orders in time and due to an oversight, appellant could not mention the provisional drawback scheme under sr. 9801 in the shipping bills covered under the subject application.
- vii. Applicant have obtained certificate of amendment of shipping bills from drawback sr. no, 84298 to 980784298 as per the Sec. 149 of the customs Act, 1962. Appellant accept & regret for the mistake of not declaring the provisional drawback scheme on the shipping bills at the time of shipments and pray for the condon the same.
- viii. Applicant have claimed drawback as per rule 7(1) of Customs, Central Excise duties and Service Tax Drawback Rules, 1995. Though the Rule 7(1) is amended as per the notification no. 109/2014 cus(NT) dtd. 17.11.2014, the words "he may, except where a claim for drawback under rule 3 or rule 4 has been made, within three months" are kept unchanged even after issuance of notification no 109 & 110/2015 cus(NT) dtd. 16.11.2015 wherein new drawback procedure & provisions are stipulated and claim for fixation of brand rate of drawback is allowed even if a claim for drawback under rule 3 or rule 4 has been made.
- ix. Applicant requested to set aside the impugned OIA and to allow brand rate of Duty Drawback.

4. Personal hearing in this case was scheduled on 29.11.2022, Mr. Dastagir Sayyad, Consultant and Mr. Milind Kulkarni, AGM appeared online on behalf of the Applicant and submitted that Shipping Bills were containing only AIR drawback heading, but were later amended. They further

submitted that Appellate Authority had not considered the amended position. In some case, they do not have amendment but relied on judgments of courts. They requested to allow the claims.

5. Government has carefully gone through the relevant case records available in case files, perused the impugned Orders-in-Original, Orders-in-Appeal.

6. Government observes that in this case the applicant had exported certain goods and claimed All Industry Rate (AIR) of Drawback as determined under Rule 3 of the Customs, Central. Excise, and Service Tax Drawback Rules, 1995 (hereinafter referred to as "DBK Rules"), as per sub-Serial No. of the Drawback Schedule as mentioned/claimed in the respective Shipping Bills. After availment of the said Drawback, they subsequently filed application for fixation of Special Brand Rate of Drawback under Rule 7(1) of DBK Rules. The issue to be decided in the present case is that whether Applicant can avail fixation of special Brand Rate when they had already availed the drawback under All Industry Rate based on the AIR headings mentioned in the respective Shipping Bills..

7. Government observes that CBEC issued a notification No. 109/2014-Cus. (N.T) dated 17.11.2014 vide which Rule 7 of the Drawback rules was amended to curtail availment of brand rate of drawback where the exporter has already availed drawback under AIR while exporting the goods. The said Notification is reproduced as:

*"G.S.R. 813 (E). - In exercise of the powers conferred by section 75 of the Customs Act, 1962 (52 of 1962), section 37 of the Central Excise Act, 1994 (1 of 1944) and section 93A read with section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, namely:-*

1. (1) *These rules may be called the Customs, Central Excise Duties and Service Tax Drawback (Amendment) Rules, 2014.*

*(2) They shall come into force on 22nd November, 2014.*

2. *In the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, in rule 7, in sub-rule (1), for the words "he may within three months", the words "he may, except where a claim for drawback under rule 3 or rule 4 has been made, within three months" shall be substituted."*

Government notes that it has been made explicit through the aforesaid Notification that where the claim for Duty Drawback is filed with reference to the rate in the AIR Schedule, 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. It is settled law that unless otherwise expressly specified, notifications come into effect prospectively and since the Notification No. 109/2014-Cus. (N.T) mentions the effective date as 22.11.2014 the amendment will be applicable to the subsequent period. As application for fixation of Special Brand rates in respect of Sr. No. 1 of table mentioned at para 2 relates to period after 22.11.2014 and before the issuance of circular no. 29/2015 dated 16.11.2015, Government holds that Applicant is not entitled for fixation of Special Brand rate under Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 in respect of goods exported under all these shipping bills.

8. In respect of Sr. No. 2 to Sr. No. 7 of table mentioned at para 2, Applicant argued that provisions of Notification No. 109/2014-Cus. (N.T) are not applicable on the shipments made after the issuance of Notification No. 109&110/2015 dated 16.11.2015 and the circular no. 29/2015 dated 16.11.2015. They claimed that vide these notifications/circulars a separate procedure has been stipulated for fixation of brand rate even if drawback has already been claimed under AIR. Relevant portion of the circular no. 29/2015 dated 16.11.2015 is reproduced as:

*"Procedure for export under claim for brand rate under Rule 7 of Drawback Rules*

1. *The exporters opting for claim of brand rate under rule 6 the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 shall continue to declare the figure 9801 as an identifier under the Drawback details in the shipping bills filed.*
2. *For shipping bills filed on or after 23.11.2015, the exporters opting for claim of brand rate under rule 7 of Drawback Rules, 1995 shall declare the figure 9807 (instead of 9801 ) as an identifier in the shipping bill under the Drawback details. Immediately after the said identifier, the tariff item number of goods as shown in column (1) of the Schedule shall be declared followed by the character B . For example, if Tractors (other than tractors of heading 8709) are exported under claim for brand rate under rule 7 and the related Drawback Tariff Item number for such tractors in the AIR Schedule is 8701, the declaration on the shipping bill would be 98078701B . Similarly, for Bicycle pump the related Drawback Tariff Item number in the AIR Schedule is 841403 and the declaration on the shipping bill would be 9807841403B . Such a shipping bill is to be processed by the Customs for payment of provisional drawback amount equivalent to the Customs component ( B column of AIR Schedule consisting of rate and cap) for the said declared Drawback TI of AIR Schedule. This processing is subject to same conditions as applicable to AIR drawback wherein there is claim for only Customs component. Suitable change in EDI is being implemented by DG (Systems)."*

Form the above, it is clear that Applicant can claim fixation of brand rate even if they have already claimed drawback under AIR. For that to avail, the circular stipulates that Exporters have to mention 9807 as an identifier on the shipping bill but the Applicant in the present case, did not mention the same on the shipping bills at the time of Export. However, Applicant has submitted the amendment certificate issued by the Department under the provisions of section 149 of the Customs Act,1962, reflecting the identifier required as per aforesaid circular. In this regard, Appellate Authority has observed that these amendment certificates were issued after one year in most of the cases and four months in some cases. Government observes that Act is not explicit in specifying the time limit for such amendments in shipping bills. Therefore, in absence of the same, it can be implied that once the amendment has been done, denying the brand rate fixation in such amended shipping bills would not be proper. Therefore, wherever appropriate, certificates of amendment have been submitted, fixation of brand rate as per rule 7(1) cannot be denied to the Applicant. However,

Government notes that such amendments of shipping bills are available only for some shipping bills, for the remaining shipping bills no such amendments have been carried out. Thus, in such cases, applicant's claim can not be entertained. Applicant based on the declaration on shipping bills will be entitled to only AIR of Drawback.

9. In view of discussions above, Government holds that fixation of brand rate is allowed only in the cases where amendment certificates are given. This needs to be verified and calculated based on verification by the Original Authority. Thus, Government remands the case back to the original adjudicating authority for doing the needful on the basis of observations made above.

  
(SHRAWAN KUMAR)

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

ORDER No. <sup>98-901</sup> /2023-CUS (WZ)/ASRA/Mumbai DATED 29.03. 2023

To,

1. M/s. JCB India Limited, Talegaon Florculture & Industrial Park, Village Ambai & Navlakh Umbare, Dist. Pune-410507.
2. The Pr. Commissioner of Customs(Pune-I), GST Bhavan, Opp. Wadia College, Pune-411001.

Copy to:

1. The Commissioner of Central Tax(Appeals-I), 41/A, F-wing, 3<sup>rd</sup> Floor, Gst Bhavan, Sassoon Road, Pune-411001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.