

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. 371/336/DBK/2018-RA / 2186

Date of Issue :- 18.04.2023

ORDER NO. 140/2023-CUS(WZ)/ASRA/MUMBAI DATED 17.04.2023  
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 United Spirits Limited.

Respondents : Commissioner (Appeals) GST & Central Tax, Surat.

Subject : Revision applications filed under Section 129DD of the  
Customs Act, 1962, against the Order in Appeal No.  
CCESA-Audit-SRT/VK-160/2017-18 dated 11-09-  
2018 passed by the Commissioner (Appeals), GST &  
Central Tax, Surat.

**ORDER**

This Revision application is filed by M/s United Spirits Limited (hereinafter referred to as the 'applicant') against the Orders-In-Appeal CCESA-Audit-SRT/VK-160/2017-18 dated 11-09-2018 passed by the Commissioner (Appeals), GST and Central Tax, Surat.

2. The Brief facts of the case are that the applicant filed an application for fixation of Brand rate of Drawback (Normal Scheme) against export for the period 28-01-2016 to 26-03-2016 on 24-01-2017. The first shipping bill was generated on 28-01-2016 and hence the claim should have been filed within three months from the let export date (28-01-2016). However Circular No. 13/2010-Customs dated 24-06-2010 allows an applicant to file a drawback claim within 12 months ie condonable delay from the date of LeT export order. The Drawback application dated 24-01-2017 was submitted without required documents. In the said application it had been stated that DBK-II, IIA, III & IIIA statements will be submitted later. The application was rejected by A.C. (Technical) vide his letter F.No.VIII/20-37/CUS/T/DBK/16-17 dated 05-04-2017 on the grounds that the application dated 24-01-2017 had been submitted without enclosing all the documents and the same was submitted vide their letter dated 27-03-2017. Hence the application dated 27-03-2017 can only be treated as fresh application which is more than 12 months old and hence the condonation of delay is beyond the power of Commissioner.

3. Aggrieved by the aforesaid letter dated rejecting the application filed for fixation of Brand rate of Drawback, the applicant filed an appeal before the Commissioner (Audit/Appeals), GST & Central Excise, Surat with a request to set -aside the impugned decision and allow the Appeal of the Applicant.

4. The Appellate Authority vide OIA No. CCESA-Audit-SRT/VK-160/2017-18 dated 11-09-2018 held that Authority was not vested with power to condone the

delay beyond 12 months in filing the application for brand rate fixation. The intention of the law for giving power of condonation of delay upto 12 months is to give the applicant abundant time to file their application and arrange all the required documents in which the applicant had failed and hence rejected the appeal.

5. Aggrieved by the aforesaid Order in Appeal dated 11-09-2018, the Applicants preferred this Revision Application on the following grounds: -

5.1. That the Respondent had totally erred in law by rejecting the application of the Appellant for fixation of Brand Rate in respect of the manufactured exported goods "Indian Made Foreign Liquor" purely on illegal and wrongful ground of time barred, especially when original application was filed on 24/27.01.2017 with all the required documents. It is only the Annexure-I (for the column item No.8, 15 to 18 of the application) and DBK-III A was remained to be submitted for which a deficiency letter dated 03.02.2017 was issued by the Authority, where there was no mention of rejection of claim/application was stated. In fact, it was clearly stated that these requisite statement are necessary, in the absence of which the brand rate application cannot be processed. But, never stated that the application rejected or deemed to be rejected.

5.2. That Principles of natural justice was not followed by the Authority in as much as the Applicant was not given a personal hearing before rejecting the claim/application.

5.3. Further, it is the general principle of law and the ruling of the higher forum that when an application for rebate/ refund/DBK Claim is filed and acknowledged and any further submission of documents in compliance to the deficiency letter, the claim must be treated as filed on the date of initial filing of the original application. In the present case, original application was filed on 24/27.01.2017, which falls well within the permissible / condonable period of limitation and submission of further documents on 25.03.2017 in compliance to the deficiency letter dated 03.02.2017, do not get switch over/shifted original date of filing the claim from 24/27.01.2017 to 25.03.2017. The original date of filing the application for fixation of DBK Rate remains the same as 24/27.01.2017 and hence the application of the Appellant is well within the period of limitation.

5.4. The reason for delay in obtaining consumption data and duty paying documents due to taking over of the company M/s. United Spirits Ltd., by M/s. Diageo Group was also absolutely correct. Taking over evidence of the unit was already provided to the Department in the past.

5.5. The applicant relied on the following judgements:

- a) Commissioner of Central Excise Vs. M/s.Arya Exports: Reported in 2005-TIOL-41-HC-DEL-CX.;
- b) M/s.Bhiwadi Cylinders Ltd. Vs. CCE, Jaipur; Reported in 2011-TIOL-469-CESTAT-DEL;
- c) M/s Kafila Forge Ltd Vs CCE, Rohtak; Reported in 2011-TIOL-499-CESTAT-DEL;
- d) Commissioner of Service Tax New Delhi Vs. M/s. HMA Udyog Pvt. Ltd.: reported in 2010-TIOL-924-CESTAT-DEL;
- e) Commissioner of Customs & Central Excise, Hyderabad Vs. M/s.GTN Industries Ltd...A.P.; reported in 2010-TIOL-345-CESTAT-BANG;
- f) M/s. Duraline India Pvt. Ltd, Vs. Commissioner of Central Excise, Goa: Reported in 2008-TIOL-1996-CESTAT-MUM;
- g) Commissioner of Service Tax Mumbai Vs. Reliance Communication Ltd.: reported in 2008-TIOL-1511-CESTAT-MUM.

5.6. In view of the above, the applicant requested to set aside the impugned Order in Appeal dated 11.09.2018 and the Applicants Appeal be allowed.

6. Personal hearings were scheduled on 15-11-2022, 29-11-2022, 04-01-2023 and 18-01-2023. However, no one appeared before the Revisionary Authority for personal hearing on any of the appointed dates for hearing. Since sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the available records.

7. Government has carefully gone through the relevant case records available in case file, written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

8. On perusal of records, Government observes that the application for the fixation of drawback under Rule 7 of the Drawback Rules filed by the applicant was rejected by the department vide letter F. No F.No.VIII/20-37/CUS/T/DBK/16-17 dated 05-04-2017. The Government observes that the issue in the case is whether the application for fixation of drawback under Drawback Rules, is hit by the time limit stipulated under procedure. The impugned claims were filed by the claimant on 24-01-2017 wherein they had submitted that they would be submitting DBK-II, DBK-III, and DBK-IIIA statement later. The department issued a deficiency letter on 3-02-2017 and then the applicant submitted all the documents vide their letter dated 24-03-2017. The application was rejected by the Assistant Commissioner on the grounds that the application is time barred as all the documents were submitted only on 24-03-2017.

9. The Government finds that the applicant had exported goods vide Shipping bills for the period from 28-01-2016 to 26.03.2016, and filed for fixation of brand rate without submitting required documents. These documents were submitted only on 24-03-2017.

10. The Government notes that the Customs Circular No-13/2010 dated 24.6.2010 prescribes the time limits for filing applications for fixation of Brand Rate of Drawback, supplementary claims of Drawback and for claiming drawback under section 74 of the Customs Act, 1962. The same are as under:

*“2. The time limits for filing applications for fixation of Brand Rate of Drawback, supplementary claims of Drawback and for claiming drawback under section 74 of the Customs Act, 1962 have been revised as under:*

<b>Type of claim</b>	<b>Previous time limits</b>	<b>Revised time limits</b>
<i>Brand rate claim(Rules 6 and 7 of Customs, Central Excise &amp; Service Tax</i>	<i>The claim was required to be filed within 60 days from the date of Let Export Order. This time limit could be extended by 30 days by the Commissioner if</i>	<i>The claim may be filed within 3 months from the date of Let Export Order. This time limit may be extended by 3</i>

Drawback Rules, 1995)	he was satisfied that the exporter was prevented by sufficient cause from filing the application within the aforesaid time period.	months by the AC / DC and by another 6 months by the Commissioner.
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3. It may be seen from the above that under the amended rules an exporter can file an application for fixation of Brand Rate of Drawback under Rule 6 and 7 **within a maximum period of 1 year including the extensions.** Similarly, he can file supplementary claim of drawback within a maximum period of 18 months including extensions and a claim of drawback under Section 74 of the Customs Act, 1962 within a maximum period of 1 year including extensions.

4. In all the above cases, the AC/DC or the Commissioner may grant the extension on the basis of an application and after making such enquiry as they think fit. In case, the AC/DC or the Commissioner decide not to grant extension, they may do so after recording in writing the reasons for such refusal and the same may be communicated to the applicant through a speaking order.”

The documents to be attached along with the Brand rate has been specified by the Board vide Circular No. 14/2003-Cus dated 06.03.2003 in the Checklist. They are as follows:

**“CHECK-LIST**

*(of documents to be attached along with Brand Rate application )*

1. Brand Rate application: *(in the format specified for the Normal Scheme in the Drawback schedule).*
2. DBK-I, DBK-II/IIA and DBK-III/IIA Statements *( specified in the Drawback Schedule)*
3. Letter seeking condonation of delay in case the application is filed beyond the time-limit(i.e; 60 days) *prescribed under the Rules.*
4. Attested photocopies of the Drawback Shipping Bills/Export Promotion Copies, Bills of Lading. *In case, more than one item has been exported under a Shipping Bill, f.o.b. value must be shown separately for each export item.*
5. Invoices showing sale-price of wastage sold as scraps.
6. Legible photocopies of duty paying documents mentioned in DBK-II/IIA and DBK-III/IIIA Statements.

- 7. In case, any Bill of Entry/Central Excise Invoice has been assessed provisionally, the reason for provisional assessment may be specified. Besides, a Declaration not to claim revision of Brand Rate of drawback in case the duty is upwardly assessed in final.*
- 8. Disclaimer Certificate from the manufacturer in case, the Brand Rate application is filed by a merchant exporter.*
- 9. Drawback Working Sheet.*
- 10. Value Addition Statement.*
- 11. A copy of the Advance Licence.*
- 12. A brief description of the manufacturing process.*
- 13. Declaration regard availment/non-availment of the CENVAT benefit.....”*

11. The Board by Circular No.13/2010-Customs dated 24th June, 2010 has clarified the provisions of the Customs, Central Excise & Service Tax Duties Drawback Rules, 1995 and held that the procedure for filing the drawback application for fixation of Brand Rate has been simplified. The normal period for filing the application for fixation of brand rate has been extended from 60 days to three months from the date of Let Export Order of the Shipping Bill and in case of delay in filing the said application beyond the normal permissible period of 3 months, the same can be condoned and extended by 3 months by the AC / DC and any further delay (beyond the 3 months of delay period) the same can be condoned/extended by another 6 months again by the Jurisdictional Commissioner.

12. Government observes that the applicant should have filed the application for fixation of drawback on or before expiry of three months from the LEO. The LEO in the instant case being 28-01-2016, the applicant should have filed the application on or before 27.04.2016. Further, in case of failure to file the application on due date, the Circular dated 24.06.2010 holds that the delay in filing the application can be condoned by AC/DC by extension of time limit for further three months i.e. up to 27-07-2016 and by another six months by the Commissioner i.e. up to 27-01-2017.

13. In the instant case, the applicant should have filed the application for extension of time period before 27-01-2017. The applicant had filed the

application on 24-01-2017 and it is seen from the covering letter the applicant themselves have submitted that “.....5 DBK-II, DBK-IIA, DBK-III and DBK-IIIA Statement will be submitted later”. This indicates that the application submitted was not complete in terms of Checklist of Circular No. 14/2003-Customs dated 06-03-2003, even though the application was filed at the last moment. The applicant has simply submitted that the documents will be submitted later without giving any reasons for non-submission of the same. The applicant subsequently submitted the documents on 24-03-2017, in compliance to the department’s deficiency memo i.e the complete set of application has been filed only on 24-03-2017 which is after the time limit of one year from LEO.

14. The impugned Circular has clearly specified that the applicant has to file the application within 3 months of the LEO and the same may be condoned by the AC/DC for another three months and by the Commissioner for another six months. Government observes that the Commissioner is the only Authority who can condone the application if filed within one year and in this case as the complete documents were submitted only after one year, there is no provisions for condoning the delay. Commissioner Appeal while deciding the issue has properly held that:

*7. The Circular No. 13/2010-Customs provides time limit to file the application. As per Para 2 of the said circular Brand rate claim (Rules 6 and 7 of Customs, Central Excise & Service Tax Drawback Rules, 1995) can be filed with three (3) months from the date of Let Export Order. This time limit may be extended by 3 months by the AC/DC and by another 6 months by the Commissioner. It may be seen from the above that under the amended rules an exporter can file an application for fixation of Brand Rate of Drawback under Rule 6 and 7 within a maximum period of 1 year including the extensions. But in the present case the appellant filed the completed application on 27.03.2017. The said circular only provides power to condone the delay of 12 months beyond which statute does not provide any power the authorities. The appellant argued that they have filed the Annexure-1 (for the column item No. 8, 15 to 18 of the application) and DBK-IIIA on receipt of deficiency memo dated 03.02.2017 and any further submission of documents in compliance to the deficiency letter, the claim must be treated as filed on the date of initial filing of original application. In this context, I find that they in their original application stated*



that the DBK-II, DBK-IIA, DBK-III, DBK-IIIA statements will be submitted later. They appellants were aware that they were filing their application without prescribed documents. Hence, the plea taken by the appellants that the documents were submitted by them in response of deficiency memo does not hold any water. Further, the cases relied upon by the appellants do not come in the rescue of the appellants as in the instant case the appellants deliberately did not submit the requisite documents.

Given the above, Government does not find any fault with the decision of the Commissioner (A), in the instant case.

15. In view of the above, Government does not find any infirmity in the impugned Order-in-Appeal No. CCESA-Audit-SRT/VK-160/2017-18 dated 11-09-2018 passed by the Commissioner (Audit/Appeals), GST and Central Tax, Surat and upholds the same. The subject Revision Application is rejected.

16. Revision Application is disposed off in above terms.

  
(SHRAWAN KUMAR)

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

ORDER NO. ~~140~~/2023-CUS(WZ)/ASRA/MUMBAI DATED 17.04.2023

To,

1. M/s United Spirits Ltd. (A Diageo Group Company), Regional Profit Centre-South Embassy Heights, 3<sup>rd</sup> Floor, A Block#13, Magrath Road, Bengaluru-560025
2. The Commissioner, GST & Central Excise, Daman, 5<sup>th</sup> Floor, Fortune Square-1, Vapi-Daman Road, Chala, Vapi, Gujarat-396191

Copy to:

1. The Assistant Commissioner, GST & Central Excise, Daman, 5<sup>th</sup> Floor, Fortune Square-1, Vapi-Daman Road, Chala, Vapi, Gujarat-396191
2. The Commissioner (Appeals) GST & C.Ex, Surat, 4<sup>th</sup> Floor, Magnus, Near Atlanta Shopping Centre, Althan-Bhimrad Canal Road, Altan, Surat-395017
3. Sr. P.S. to AS (RA), Mumbai.
- ✓ 4. Notice Board