F.No. 195/1659/12-RA

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GOVERNMENT OF INDIA
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Mumbai- 400 005

F NO. 195/1659/12-RA/1329 Date of Issue: 15.03.2018

ORDER NO. 46/2018-CX (WZ) /ASRA/MUMBAI DATED 15.03.2018 OF THE OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT,1944.

Applicant : M/s Elkay Chemicals Pvt. Ltd.

Respondent: Commissioner, Central Excise, Pune-I

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. P I/MMD/ 163/2012 dated 27.08.2012 passed by the Commissioner (Appeals), Central Excise, Pune-I.

:ORDER:

This revision application has been filed by M/s Elkay Chemicals Pvt. Ltd., Pune (hereinafter referred to as "the applicant") against the Order-in-Appeal No. PI/MMD/ 163/2012 dated 27.08.2012 passed by the Commissioner (Appeals), Central Excise, Pune-I.

2. The case in brief is that the applicant is manufacturer of various chemicals falling under CH 28,29,30,34,38, and 39 of CETA 1985. They are engaged in exporting chemicals such as silicon fluid and related products. The applicant had filed 07 applications under Rule 7 of the Duty Drawback Rules, 1995, for fixation of Brand Rate. After verification of the said applications, it appeared that the applicants at the time of export, have availed the applicable All Industry Rate (AIR) of Drawback for the exports made but have subsequently filed the subject applications for fixation of Brand Rate. Thus, they failed to declare the intention to file application under Rule 7, at the time of export in the relevant Shipping Bills. Rule 7 enables the exporters to seek fixation of Special Brand Rate of Duty Drawback in respect of exported goods for which AIR under Rule 3 has been determined subject to the condition that the inadequacy of the AIR is established by the exporter and the intent to avail fixation of Special Drawback Rate is to be declared in the relevant Shipping Bill at the time of export. The CBEC circular No.10/2003-CUS(NT), dated 17-02-2003, clarified that pending finalization of application under Rule 7 filed by the exporter, he may be permitted the AIR and the differential amount may be sanctioned after the fixation of brand rate under Rule 7. Further the CBEC vide letter No. 606/04/2011-DBK, dated 30-12-2011, has clarified that exporters opting for fixation of Special Brand Rate under Rule 7 are required to make a declaration to that effect on the Shipping Bill itself. The said letter further clarified that failure to declare tariff item No. as 9801 i.e option for claiming fixation of Special Brand Rate under Rule 7 in the Shipping Bill at the time of export shows that the exporter is satisfied by the AIR. Since all the 07 applications were not in conformity with the Drawback Rules, Section

75 of the Customs Act, 1962, and Circulars and instructions issued thereunder, the said applications have been rejected vide letter/ Order dated 10-02-2012 passed by Additional Commissioner (BRU), Central Excise, Pune-I.

3. Being aggrieved by the abovementioned letter/order dated 10-02-2012, the applicant preferred the appeal before Commissioner (Appeals) Pune-I, who upheld the letter/order issued under F.No.P-I/BRU/D-IV/Atlas/47/2011 dated 10-02-2012, issued by the Additional Commissioner (BRU), Central Excise, Pune-I Commissionerate.

4. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government on the various grounds as enumerated in their application. Main grounds of appeal are that;

4.1. In the impugned Order In Appeal Ld. Commissioner (Appeals) neither commented on the main issue for which appeal was filed by the Applicant nor given his findings on the submissions made by the applicant.

4.2. The Board Circular No.10/2003 dated 17.02.2003 is applied to the cases where the brand rate of drawback is claimed at the time of exports and is not applicable in case of applicant, when All Industry Drawback is claimed at the time of exports. Further this Board Circular read with DBK Rules does not states that the exporter can not file the shipping bill under AIR and subsequently applies for brand rate fixation. Circular clearly states that, AIR is available when the brand rate fixation takes time. Further allowing AIR first and then making application for brand rate drawback will result in avoiding delay in disbursal of drawback amount leading to increase in transaction costs of exports. The Board Circular No.10/2003 dated 17.02.2003 also clarifies the same as under:

Quote- 1. Attention is invited to Rule 7 of the Customs and Central Excise Duties Drawback Rules, 1995. According to this rule, if an exporter feels that he is not getting adequate neutralization of the duties of Customs & Central Excise suffered on the inputs used in the manufacture of the export

products, exporter can apply for fixation of brand rate of drawback to the Central Government.

2. There have been representations from the trade that since the procedure of application and issuance of brand rate letters under Rule 7 involves one to two months, they remain out of funds and face financial difficulties.

4.3. This issue has been considered by the Kelkar Committee and based on its recommendations, the Board has decided that henceforth in all those cases, where the exporters have applied for brand rate of drawback, they may be permitted the duty drawback at All Industry Rate as admissible under the relevant S.S. No. of the Duty Drawback Table. Subsequently, when the exporters are issued brand rate of drawback, the differential amount may be sanctioned to them.-Unquote

4.4. In view of above the salient features of the above Board Circular No. 10/2003 is also stated and explained in Para No.14 by Additional Commissioner in the letter / order No. P-I/BRU/D-IV/Atlas/47/2011 dated 10th February 2012 which is totally ignored by Ld. Commissioner. Contents of said para is reproduced below:

14. CBEC issued Circular No.10/2003-Cus(NT) dated 17.02.2003 in respect of sanction of AIR pending fixation of Special Brand Rate of Drawback under Rule 7 of DBK Rules.

The salient features of the said circular are given as under:

- *Procedure for determination of brand rate under Rule 7 involves one to two months. Exporter remains out of funds during that period and face financial difficulties.*
- *Pending finalization of the application filed by the exporter under Rule 7, exporter may be permitted the AIR.*
- *Differential amount may be sanctioned to the exporter after the fixation of brand rate under Rule 7. Exporter should file a declaration for the purpose of availing AIR pending finalization of fixation of brand rate under Rule 7 of DBK Rules.*

4.5 Ld. Commissioner Appeals ought to have appreciated the fact that, he admits that Applicant have filed Drawback Shipping Bill and in some cases they have mentioned 9801 as per procedure laid down in the above referred Board Circulars, but,

he denies the claim of Drawback knowing very well, that what is claimed under Brand rate under Rule 7 of the said Rules, is the differential amount between actual duty incidence suffered in export product less Drawback Claimed under All industry Rates.

4.6. Ld. Commissioner Appeals ought to have appreciated the spirit of the circular that no duties have to be suffered in export product and amount of duty incidence actually suffered should be given back and therefore the procedure was specified in the aforesaid Board Circulars with the intent to get drawback based on All Industry Rate and thereafter claim the differential amount by way of Brand Rate under Rule 7 of the said Rules.

4.7 Ld. Commissioner Appeals failed to understand the Provisions of Rule 7 where, Brand Rate application to be made only when Drawback amount as specified in All Industry Rate is less than 4/5th of actual duty incidence suffered.

4.8. Application of Brand rate is required to be made within specified period after export and after understanding actual duty suffered in the export product vis a vis entitlement of duty drawback under All Industry Rate and actual duty suffered is more than that of duty drawback under All Industry Rate then application under Rule 7 is required to be made.

4.9. Further the provisions of Customs Act, 1962 and Drawback Rules there is no where mention that in case where duty drawback under Rule 3 is claimed, no Brand rate of Drawback shall be permitted under Rule 7.

4.10. Further Rule 15 of The Customs, Central Excise Duties and Service Tax Drawback (amendment) Rules, 2006, states that where the exporter find that the amount of drawback paid is less than what he is entitled to on the basis of the amount or rate determined by the Commissioner of Central Excise, he may prefer supplementary claim.

4.11 Following are the undisputable facts which are also noted in Order In Appeal in para No.8 that:

i) Inputs were procured with due payment of duty and such inputs are of higher duty paid inputs;

ii) The applicant had exported the goods vide shipping bills as mentioned in their application for fixation of special brand rate.

of drawback and claimed AIR as per sub-serial number of Drawback Schedule mentioned / declared in the said shipping bills.

iii) The drawback at AIR as claimed by the applicant has been sanctioned and paid by the Customs Authorities.

iv) The applicant subsequently filed applications for fixation of Special Brand Rate of Drawback under Rule 7 on the ground that the AIR Drawback is less than four fifth of the actual duty suffered on the goods exported.

4.12. Ld. Commissioner Appeals, ought to have gone through / perused the application along with supporting for evidencing actual duty suffered but, no efforts has been made to check the actual duty suffered and therefore Order-in-Appeal suffered with *infirmity*.

4.13. Ld. Commissioner Appeals, ought to have appreciated that mere non mention in declaration on shipping bills for opting for drawback under Rule 7 can not be a ground for rejection of applications for fixation of brand rate. It can be a procedural lapse only and on such procedure lapse no substantial benefit can be denied. In support of this contention Applicant would like to reply on following decisions of Higher Authorities having binding effect:

IN RE : SEMI CONDUCTOR COMPLEX LTD. 2012 (275) E.L.T. 285 (G.O.I.)

IN RE : NILKAMAL LTD. 2011 (271) E.L.T. 476 (G.O.I.)

IN RE : BAROT EXPORTS 2006 (203) E.L.T. 321 (G.O.I.)

SYNTHETICS & CHEMICALS LTD. Versus COLLECTOR OF C. EX., ALLAHABAD 1997 (93) E.L.T. 92 (Tribunal)

5. A personal hearing was held in this case on 29.12.2017. Shri Sanandan Khairnar, Advocate and Shri Mahadeo Pawar, Excise Executive appeared for the hearing on behalf of the applicant. As there was a delay of 3 days in filing the instant revision petition the miscellaneous application for condonation of delay filed by the applicant was taken up for decision. In the said application the applicant stated that they received Order in Appeal on 31.08.2012 and the last date of filing the revision application was 30.11.2012. The applicant had sent the revision application through RPAD

Receipt No. RM235947271IN on 24.11.2012 well before the due date but it took abnormal time and was delivered to the office of the Joint Secretary on 03.12.2012 i.e after 3 days from the due date. Hence the delay 3 days was due to the reason of postal dispatch procedural delay. From the copies of the envelope with mark of Speed Post dispatching the Order in Appeal with inward entry details (Annexure A) and the copy of RPAD track result for receipt No. RM235947271IN (Annexure B) enclosed to the application for condonation of delay, it is observed that the order in appeal was received by the applicant on 31.08.2012 and the revision application was booked with the postal authorities on 24.11.2012 for onward submissions to the office of the Joint Secretary, R.K. Puram, New Delhi. Hence, Government in the interest of justice condones the delay of 3 days in filing and proceeds to examine the case on merits. The advocate reiterated the submission made in Revision Application and compendium of circulars and case laws filed along with submission. In view of the same it was pleaded that the Order-in-Appeal may please be set aside and Revision Application may be allowed.No one was present from the respondent side.

6. 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.

7. 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 (herinafter referred to as "DBK Rules"), as per sub-serial No. of the Drawback Schedule as mentioned/claimed in the respective Shipping Bills for Rs.14,45,572/-. After availment of the said Drawback, they subsequently filed applications for fixation of Special Brand Rate of Drawback under Rule 7(1) of DBK Rules. The said applications filed by the applicants had been rejected by the Additional Commissioner (BRU) vide impugned letter/order, on the ground that they failed to indicate their intention to avail Special Brand Rate of Drawback Rules under Rule 7 at the time of export in the relevant Shipping Bills and hence the applications filed

by them were contrary to the provisions of Drawback Rules as well as Circulars/Clarification issued by the CBEC.

8. Government notes that in this case the applicant had exported the goods vide Shipping Bills as mentioned in their applications for fixation of Special Brand Rate of Drawback and claimed All Industry Rate (AIR) drawback as per sub-serial no. of Drawback Schedule mentioned/declared in the said Shipping Bills. There was also no dispute about the fact that the Drawback @ AIR as claimed by them had been sanctioned and paid to them by the Customs Authorities. The applicants subsequently filed applications for fixation of Special Brand Rate of Drawback under Rule 7 of DBK Rules on the grounds that the AIR Drawback is less than fourth fifth of the actual duty suffered on the goods exported. The main question therefore to be decided in the instant revision application is whether the applicants are eligible to file application(s) under Rule 7 of DBK Rules for fixation of Special Brand Rate of Drawback in cases where they have already claimed / obtained the Drawback @ AIR, as specified in the Drawback schedule.

9. From the parawise comments offered by the respondent deparment vide letter F.No. Tri Cell/OIA 163/1115/12-13 dated 04.03.2013, Government observes that the matter was referred to the Ministry and the Ministry vide letter F.No. 606/04/2011-DBK dated 30.12.2011 clarified that opting for AIR drawback under rule 3 of DBK Rules on the shipping bill disentitles exporter from claiming drawback under Rule 7 of DBK Rules. It is also noted by the Government that the Commissioner (Appeals) in his impugned order also relied on this circular to arrive at a conclusion that the provisions of Drawback Rules do not provide that an exporter can avail the AIR Drawback first at the time of export under specified sub-serial/tariff item no. of the AIR schedule and then file for determination of the Brand Rate under Rule 7.

10. Central Board of Excise & Customs vide letter F.No.606/04/2011-DBK dated 30-12-2011, addressed to the Commissioner, Central Excise, Pune-I, has clarified as under :-

(a) As per Rule 7 of the Drawback Rules, 1995, if the exporter finds that the amount or rate of Drawback determined under notified AIR drawback under rule 3 or 4 is less than four fifth of the duties & taxes suffer on inputs/ input services used in manufacture of export goods, he may within specified period apply before the jurisdictional Central Excise Commissioner for determination of amount or rate of drawback (Brand Rate). Here it must be kept in mind that the AIR drawback determined under Rule 3 or 4 of the Drawback Rules specified in the Drawback Schedule by notification. The exporter can compare this with the facts of his case and decide if it is less than four fifth of the duties & taxes suffered and also whether he wants to apply fixation of Brand rate in his case.

(b) If the exporter chooses to opt for Brand Rate, then the exporter makes declaration in the Shipping Bill mentioning drawback sub serial/ tariff item number as 9801. Then, within the specified time from let export date, the exporter applies for Brand rate of drawback before the jurisdictional Central Excise authority. During the pendency of this application, the exporter may be allowed the facilitation under the Board Circular No.10/ 2003 subject to necessary conditions.

(c) After the jurisdictional Central Excise authority fixes/ sanctions Brand Rate, the matter goes back to the customs at the port of export for making the requisite payment, with reference to the exporter's declaration of having opted for Brand Rate by specifying the drawback tariff item no. as 9801 in the Shipping Bill at the time of export. It is this option that enables the Shipping Bill to be brought back into drawback queue or payment of Brand rate.

(d) Thus, provisions do not provide that an exporter can avail the AIR Drawback first at the time of export under specified sub serial/ tariff item number of the AIR schedule and then file for determination of the Brand Rate under Rule 7. Exporters declaration of tariff item number other than 9801 on the Shipping Bill declaration that he is

satisfied with the AIR rate and opts for it. Any other interpretation would undermine the entire EDI procedure in this respect.

11. Government observes that M/s Alfa Laval (India) Ltd. vide writ petition No. 1098 of 2013 filed before Hon'ble Bombay High Court sought for quashing of the Circular/letter F.No. 606/04/2011-DBK dated 30th December, 2011 issued by the CBEC to the extent that it purported to clarify that an exporter cannot claim the Brand Rate of drawback under Rule 7 of the Drawback Rules after having availed of the All Industry Rate of drawback under Rule 3 of DBK Rules.

12. The facts of this case are that the petitioner M/s Alfa Laval (India) Ltd submitted to the court that they are entitled to the Brand Rate of drawback in terms of Rule 7, if the All Industry Rate of drawback notified under Rule 3 is less than 4/5th (80%) of the actual duties suffered on the inputs. However the applications filed by the Petitioner under Rule 7 of the Drawback Rules were rejected the by the Revenue on the ground that the Petitioner had already claimed drawback at the All Industry Rate under Rule 3 and hence the Petitioner was not entitled to now make applications under Rule 7 seeking determination of the Brand Rate of drawback for the very same exports. The Counsel for the Revenue submitted that once the exporter avails of the All Industry Rate of drawback as notified under Rule 3, he is deemed to be satisfied with the drawback availed of by him and thereafter he is barred from making any application seeking determination of the Brand Rate of drawback under Rule 7 and this was the case even if the All Industry Rate of drawback granted under Rule 3 was less than 4/5th (80%) of the duties and taxes paid on the inputs / input services used in the production or manufacture of the exported goods. He further pleaded that the exporter has to decide at the time of the export of the goods whether he wants to claim drawback at the notified rate under Rule 3, or at the Brand Rate under Rule 7 and once he chooses to claim drawback under Rule 3, he cannot make a claim for the determination of the Brand Rate of drawback under Rule 7.

13. The Hon'ble Bomaby High Court in its Order dated 01.09.2014 [2014(309) ELT 17 (Bom)] at para 23 & 24 observed as under-

"23. On a careful and conjoint reading of the aforesaid Rules, we do not find that there is any prohibition set out in the Drawback Rules which debars an exporter from seeking determination of the Brand Rate of drawback under Rule 7, merely because at the time of export, he had already claimed the All Industry Rate of drawback under Rule 3. In fact, to our mind, the Rules seem to suggest otherwise. Firstly, Rule 3 which deals with "drawback", itself stipulates when drawback is not to be allowed [see second proviso to Rule 3(1)]. Despite specifying certain situations when, drawback is not be allowed, we do not find any provision specified therein barring an exporter from seeking a determination of the Brand Rate of drawback under Rule 7, merely because, at the time of export, he applied for the grant of the All Industry Rate of drawback under Rule 3. Secondly, Rule 7 categorically provides that where in respect of any goods, the manufacturer or exporter finds that the amount or rate of drawback determined under Rule 3 is less than 4/5th of the duties or taxes paid on the inputs/input services used in the production or manufacture of said goods, he may make an application within sixty days for determination of the amount or rate of drawback thereof under Rule 7, disclosing all the relevant facts and subject to the other conditions stipulated under Rule 7. The word "finds" appearing in Rule 7 after the words "manufacturer or exporter", ex facie indicates that it is only once the manufacturer or exporter comes to the conclusion that the amount or rate of drawback determined under Rule 3 is less than 4/5th of the duties or taxes paid on the inputs/input services used in the production or manufacture of the exported goods, can he make an application for determining the Brand Rate of drawback under Rule 7. There could certainly be instances where the manufacturer or exporter would not, at the time of export, be able to determine and/or come to the conclusion that the rate of drawback determined under Rule 3 for the specified exported goods is in fact less than 4/5th of the duties or taxes paid on the inputs/input

services used in the production or manufacture of the said exported goods. To cover this difference, Rule 7(1) allows the manufacturer or exporter to make an application in this regard and claim the difference, provided the rate of drawback determined under Rule 3, is in fact less than 4/5th of the duties or taxes paid on the inputs/input services, used in the production or manufacture of the said exported goods. In other words, if the rate of drawback as determined under Rule 3 is more than 4/5th (80%) of the duties or taxes paid on the inputs/input services used, then the application made under Rule 7(1) would have to be rejected.

24. In arriving at the above conclusion, we also get assistance by what is stated in Rule 7(3). Sub-rule (3) of Rule 7 inter alia provides that where a person applies for determination of the Brand Rate of Duty Drawback under Rule 7(1), then pending the application, he may provisionally apply for being granted duty drawback as determined under Rule 3 subject to executing a bond as stipulated therein. This position is even accepted by Mr. Jetly. If we were to accept the submission of the Revenue, that once an exporter or a manufacturer was to apply for drawback at the All Industry Rate under Rule 3, he would be debarred from seeking determination of the Brand Rate of drawback under Rule 7, then no exporter at the first instance, would ever apply for drawback at the All Industry Rate determined under Rule 3, and would always apply under Rule 7(1) for seeking determination of the Brand Rate of drawback, along with an application under Rule 7(3) for the grant of provisional duty drawback at the All Industry Rate as determined under Rule 3. This could not have been the intention of the Legislature or the Central government at the time of bringing into force the Drawback Rules. There is nothing else that has been brought to our notice, either in the Customs Act, 1962 or the Drawback Rules, that could even impliedly spell out the prohibition, as sought to be contended by Mr. Jetly. We therefore hold that the manufacturer or exporter is not barred from seeking a determination of the Brand Rate of drawback under Rule 7 merely because, at the time of export, he had applied for

and granted drawback at the All Industry Rate as determined under Rule 3. Our view also finds support in the language of the First proviso to Rule 3(1) and far from any prohibition in applying for Drawback in terms of Rule 7. Rule 7 comes into play only in cases where the amount or rate of drawback is low and not otherwise".

14. In the matter of the Board Circular/letter F.No. 606/04/2011-DBK dated 30th December, 2011, the Hon'ble High Court at para 26 of its order observed that –

26. On reading the Circular, and particularly Paragraph (d) thereof, it is clear that the Circular seeks to interpret the Rules to mean that an exporter once having availed the All Industry Rate of drawback at the time of export, cannot file an application for determination of the Brand Rate of drawback under Rule 7. As discussed earlier, on a plain reading of the Drawback, Rules, we do not find any such prohibition as is sought to be culled out by the C.B.E. & C. in its Circular dated 30th December, 2011. The C.B.E. & C. whilst clarifying the said Drawback Rules, has imposed limitations/restrictions which are clearly not provided for in the Rules, and has the effect of whittling down the Drawback Rules. Under the grab of clarifying the Rules, the C.B.E. & C. cannot incorporate a restriction/limitation, which does not find place in the Drawback Rules. In Clause (d) of the Circular cannot be reconciled with Clauses (b) and (c) thereof. Hence, read together and harmoniously it will have to be held that the Circular cannot override the Rules and particularly Rules 3 and 7 of the Drawback Rules and the sub-rules thereunder. This being the case, Clause (d) of the said Circular is clearly unsustainable and has to be struck down. On the same parity of reasoning, and more so because the orders/letters impugned herein, rely upon the said Circular to reject the applications of the Petitioner seeking determination of the Brand Rate of drawback under Rule 7, even the said impugned orders/letters will have to be set-aside.

27. In view of our discussion in this judgment, Clause (d) of the said Circular dated 30th December, 2011 issued by the C.B.E. & C. as well as the impugned orders dated 27th September, 2012 issued by Respondent No. 3, and the orders/letters dated 19th April, 2012, 11th June, 2012 and 24th July, 2012 issued by Respondent No. 5, cannot be sustained.

15. Government also notes that Board vide Circular No. 1063 /2/2018 – CX dated 16.02.2018 issued on " **Orders of Supreme Court, High Courts and CESTAT accepted by the Department and on which no review petitions, SLPs have been filed",** has issued a list of cases accepted by the department. Para 13 of the said Circular is reproduced below:

13. Decision of the Hon'ble High Court of Bombay dated 03.11.2014 in WP No. 2920/2014 in the case of JCB India Ltd vs UOI & Ors and WP No. 9431/2014 in the case of Sandvik Asia Pvt. Ltd vs UOI.

13.1 Department has accepted the aforementioned order of the Hon'ble High Court where the Hon'ble Court disposed of the Writ Petitions by relying on its earlier decisions dated 01.09.2014 in case of M/s Alfa Laval (India) Ltd and M/s Sandvik Asia Pvt. Ltd.

13.2 The issue that was examined was whether prior to 22.11.2014, statutory provisions did not prevent the party to first claim the benefit of AIR Drawback and thereafter claim Brand Rate Drawback.

16. As such Hon'ble Bombay High Court's order dated 01.09.2014 in the case of Alfa Laval (India Ltd.) has attained the finality.

17. Thus, it is evident that the issue involved in this Revision Petition is squarely covered by the ratio of aforesaid Hon'ble Bombay High Court's order dated 01.09.2014 in the case of Alfa Laval (India) Ltd.[reported in 2014 (309) ELT 17 (Bom)], in favour of the applicant and has attained finality as discussed supra. Therefore, Government holds that the applicant is eligible to file applications under Rule 7 of DBK Rules for fixation of Special Brand Rate of Drawback in cases where they have already claimed / obtained the Drawback @ AIR, as specified in the Drawback schedule.

18. In view of above discussion, Government sets aside impugned Order-in-Appeal and remand the case back to original authority with a direction to accept the applications of the applicant for fixation of Brand Rate and process the same as per the provisions of Rule 7 of the DBK Rules.

19. Revision application succeeds in above terms, with consequential relief.

20. So, ordered.

15.3.2018

(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 46/2018-CX (WZ) /ASRA/Mumbai DATED 15.03.2018.

To,
M/s. Elkay Chemicals Pvt. Ltd.,
J-152-153, MIDC, Industrial Estate,
Bhosari, Pune-411 026.

True Copy Attested

15.3.18
एस. आर. हिरूलकर
S. R. HIRULKAR
(A.C)

Copy to:

1. The Commissioner of GST & CX, Pune-I .
2. The Commissioner, GST & CX, (Appeals) Pune.
3. The Additional Commissioner (BRU), GST & CX Pune-I.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.