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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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. 380/59/DBK/14-RA/4354 **Date of Issue: 30 .06.2023**

ORDER NO. 503/2023-CUS(WZ) /ASRA/MUMBAI DATED 28.06.2023 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 : The Commissioner of Central Excise, Pune-III.

Respondents : M/s L.G. Electronics India Pvt. Ltd.,
Plot No. A-5, MIDC, Ranjangaon,
Taluka Shirur, Pune – 412 220.

Subject : Revision Application filed, under Section 35EE of Excise Act, 1944 against the Order-in-Appeal No.PUN-EXCUS-003-APP-354-13-14 dated 29.01.2014 [Date of issue: 07.02.2014] passed by the Commissioner (Appeals), Pune-III.

ORDER

This order is issued subsequent to submissions filed by M/s. L.G. Electronics India Pvt Ltd (Respondent) as per the directions of the Hon'ble Bombay High Court remanding the case back to the Revisionary Authority, issued vide Order in Writ Petition No. 3474 of 2021 filed by the Respondent against Revision Order No. 644/2020-CX(WZ)/ASRA/MUMBAI dated 15.09.2020 passed by the Government of India.

2. Brief facts of the case are that M/s L.G. Electronics India Pvt. Ltd., Shirur, Pune (hereinafter referred to as 'the Respondent') are manufacturer of Refrigerators. The components required for manufacturing the said goods were either manufactured by them or were purchased from other suppliers and after completion the goods were exported from their Pune Unit. The Respondents availed the Duty Drawback under Section 75 of the Customs Act, 1962. The Respondent had filed applications for fixation of Special Brand Rate in respect of the refrigerators exported by them in terms of Rule 7 of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995. On the basis of the data provided by the Respondent, the drawback sanctioning authority issued three brand rate letters. Subsequently revised brand rate were fixed and letters were issued as the Respondent had claimed the All Industry Rate (AIR) on 'Compressors' used in the manufacture of the refrigerators on the basis of Circular No. 83/2003-Cus dated 18.09.2003 and the department opined that the said circular is not applicable in these cases.

3. Aggrieved by the said revised Brand Rate Fixation Letters, the Respondent filed an appeal before the Commissioner of Central Excise (Appeals), Pune-III on the following grounds: -

3.1. That no reason was provided as to why Circular No. 83/2003-Cus dated 18.09.2003 was not applicable to them.

3.2. That the brand rates re-fixed in the instant case were inconsistent with the provisions of law. No review orders had been passed by the Commissioner

of Central Excise as per the provisions of Section 35E of the Central Excise Act, 1944.

3.3. That the Circular No. 83/2003-Cus allows for situations where the actual duties suffered were not known or could not be ascertained.

3.4. That they were eligible for fixation of brand rate for the compressors whereas due to physical constraints, they had taken recourse to the AIR of drawback for fixing brand rate of the goods exported i.e. Refrigerators.

4. The Appellate Authority vide impugned Order-in-Appeal set aside the three decisions amending the corresponding Brand Rates fixed earlier and allowed the appeal filed by the Respondent. The Appellate Authority while passing the impugned Order in Appeal observed that :-

4.1 The circular No. 83/2003-Cus dated 18.09.2003 show that the purpose of Brand Rate Fixation under Rule 7 of the Drawback Rules is to achieve full neutralisation of duty and taxes in respect of the inputs used in the export products and the AIR is a valid method to arrive at the average quantum of duty suffered on certain inputs used in the export products.

4.2 The above view is supported by the clarification issued by CBEC vide letter F. No. 609/55/2008-DBK dated 02.02.2009.

4.3 The contention of the department that if Drawback at AIR is included for the said compressors, it would amount to double benefit/ unjust enrichment as the Respondent had already taken CENVAT credit of the duty paid on the said compressors is flawed as the AIR for compressors is only to neutralise the duty burden in respect of inputs of compressors and not in respect of the Central Excise duty paid on the complete compressors manufactured in India.

4.4 The entire AIR of Drawback for compressors of refrigerators is for Customs components only i.e. to neutralise the Customs duty burden on the imported components.

4.5 The AIR is the average value and is admissible without the need of verification of actual duty paying documents in respect of inputs used in the exported goods.

4.6 Rule 16 of the Drawback Rules, 1995 shall come into operation only when any amount of drawback or interest has been paid erroneously.

4.7 CBEC Circulars No. 14/2003-Cus dated 06.03.2003 and 83/3003-Cus dated 18.09.2003 provide for review of the Brand Rate at the appropriate level.

4.8 The power to revoke (withdraw) the Brand Rate have been conferred upon the Central Government under Rule 7(4) of the Drawback Rules.

5. Being aggrieved by the impugned Order-in-Appeal, the department has filed the Revision Application under Section 35EE of the Central Excise Act, 1944 on following grounds:-

5.1 That the Duty Drawback Scheme envisaged under the Customs, Central Excise Duties, Service Tax, Drawback Rules, 1995 was to offset the duty paid, whether customs duty or excise duty, on inputs used in the manufacture of finished goods that are exported, in keeping with the universal principle that no taxes shall be exported;

5.2 That the drawback availment and cenvat credit facility are mutually exclusive;

5.3 That the Circular No. 83/2003 dated 18.09.2003 could not be made available to all inputs, which may have an All Industry Rate prescribed, and are used in the manufacture of the final product which has been exported, especially if credit of duty paid has been availed on them;

5.4 That in the instant case, the compressors, on which the All Industry Rate of drawback was being claimed, had been manufactured and cleared by M/s L.G. Electronics, NOIDA on payment of relevant Central Excise duty and the same have been received by M/s L.G. Electronics, Pune who had availed the Credit of the duty paid thereon. There is nothing on record to indicate that the compressors have been manufactured by M/s L.G. Electronics, Noida

using imported inputs and no verification of Bill of Entries has been made possible;

5.5 That drawback if any, on the compressors would have been eligible for the Noida unit and not the Pune Unit of the assessee. In other words, had the supplier and the assessee been two different entities, the drawback, whether Brand Rate or AIR, on the compressors, would not accrue to the assesse;

5.6. That since the credit had already been availed of on the duty paid on the compressors, the Respondent was ineligible for availment of drawback;

5.7 That the application of the Circular No. 83/2003 dated 18.09.2003 would result in double benefit of credit availment as well as drawback claim and shall be in total conflict with the scheme of duty drawback;

5.8 That the Drawback Rules are silent regarding the re-fixation of Brand Rate allowed under Rule 6/7 ibid;

5.9 That the Appellate Authority ought to have followed judicial discipline in interpreting the scope of Rule 14 of the Drawback Rules, 1971 (now Rule 16 of the Drawback Rules, 1995);

5.10 That by interpreting Rule 14 (now Rule 16), the Hon'ble Bombay High Court laid down the principles that the authority that fixes the brand rate also has an inherent authority to re-fix the same. Therefore, when the re-fixation of brand rate was delegated to the competent authorities by the Government, the power to re-fix the same was also implicitly delegated to the same authority;

5.11 That the Appellate Authority failed to appreciate that Rule 7(4) of the Drawback Rules empowers the Central Government either revoke the rate of drawback or amount of drawback or to withdraw the rate of drawback or amount of drawback determined. Both the powers conferred do not speak of re-fixing of the amount of drawback;

6. The then Revisionary Authority, vide Order No. 644/2020-CX(WZ)/ASRA/MUMBAI dated 15.09.2020, set aside the Order-in-Appeal No PUN-EXCUS-003-APP-354-13-14 dated 29.01.2014, placing reliance upon

Circular No. 83/2003-Cus dated 18.09.2003 and allowed the revision application filed by the Department. The Revisionary Authority held that the Para (c) of Circular No 83/2003-Cus dated 18.09.2003 clarifies that Commissioner of Central Excise and the officers under his control have been invested with powers to rectify mistakes through issuance of any amendment, addendum or corrigendum to the brand rate letters issued and that the deduction of inadmissible AIR claimed by the Respondent by the department was just and proper. The Revisionary Authority upheld the contentions of the Department both on merits as well as on jurisdiction.

7. Aggrieved by the order dated 15.09.2020 of the Revisionary Authority, the Respondent filed Writ Petition No. 3474 of 2021 before the Hon'ble Bombay High Court. The Hon'ble Bombay High Court, vide order dated 25.01.2023, set aside the order of the Revisionary Authority dated 15.09.2020 and remanded the matter for de-novo adjudication after considering the issue of the powers of the Additional Commissioner of Central Excise to re-fix or revise the brand rates fixed under Rule 7 of the Rules of 1995 and if the power exists and was properly utilized, then whether on merits, such re-fixation of brand rates was necessary. The Hon'ble Bombay High Court observed that situation under clause 3(d) of the Circular dated 18.09.2003 does not arise in the present case as the re-fixation of brand rates has not been carried out by the Ministry upon any complaint or on investigation.

8. In deference to the order of the Hon'ble Bombay High Court remanding the matter to the Revision Authority, personal hearing was granted on 06.04.2023 or 20.04.2023. Shri Sriram Sridharan, Advocate appeared for the personal hearing on 06.04.2023 on behalf of the Respondent. He referred to the High Court order remanding the matter to Revision Authority for fresh consideration and submitted compilation of circulars, Notifications and judgements in the matter. He further submitted that the only issue is consideration of AIR on compressors while calculating brand rate of refrigerators exported. He contended that department can not refuse AIR on any component while calculating brand rate. He referred to Boards circulars in

this regard. Regarding the jurisdiction, he further submitted that authority fixing brand rate can not refix the same without direction of Central Government. He handed over two compilations on the matter. He sought time to submit additional written submissions. No one attended for the personal hearing on behalf of the department.

9. The Respondent submitted two compilations comprising of relevant portions of the Customs Act, Drawback Rules, 1995 as it stood on 01.10.2011, schedule to Drawback Rules pertaining to Refrigerators and compressor, Drawback Rules, 1971, Drawback Rules, 1995, Drawback (Amendment) Rules, 2006, CBEC Circular Nos. 93/2003-Cus, 14/2003-Cus, No. 93/2003-Cus, No. 97/2003-Cus, No. 83/2000-Cus, No. 24/2001-Cus, No. 19/2005-Cus, Circular No 609/55/2008-DBK dated 02.02.2009. The compilations also comprised of the following case laws:

(i) CC, Mumbai vs. Toyo Engineering India Ltd [2006(201) E.L.T 513(SC)]
(ii) CIC vs. State of Manipur [2012(286) E.L.T. 234(Mad)]
(iii) Indian leaf Tobacco Development Co. Ltd & ITC Ltd vs UOI [1984(16) E.L.T 234(Mad)]
(iv) Collector of Central Excise, Kanpur vs Flock India Pvt Ltd [2000 (120) E.L.T 285(SC)]
(v) Order of Commissioner (Appeals), Mysore in the case of Tata Motors
(vi) ITC Ltd vs. CCEx., Kolkata-IV [2019(368) E.L.T 216(SC)]
(vii) Mehur Metal Industries vs. GOI [1988(36) E.L.T. 252(Bom)]
(viii) Chemicals & Fibres Of India Ltd vs. UOI [1991(54) E.L.T 3(SC)]
(ix) In RE: Trident Ltd [2014(312) E.L.T. 934(GOI)]
(x) In Re: Sarda Energy and Mineral Ltd [2012(286) E.L.T. 451(GOI)

10. Government has carefully gone through the relevant case records, written submission and perused the impugned Order-in-Original and Order-in-Appeal and in the light of the directions of the Hon'ble Bombay High Court and fresh submissions made by the Respondent in the case, the Government takes up the case for reconsideration of its Revision Order No. 644/2020-CX(WZ)/ASRA/MUMBAI dated 15.09.2020 issued in the matter.

11. On perusal of records, Government observes that the Original Authority allowed the drawback at the rate indicated therein on the product viz. Refrigerators exported by the Respondent under various shipping bills during

period from 15.03.2011 to 14.03.2012. However, the brand rates so fixed were revised by the Original Authority vide Revised BRL No. 234/MBI/PIII/BRU/210/11-12 dated 28.06.2013 as the Authority came to the conclusion that the AIR on compressors were claimed in the Brand rate applications on the basis of Circular No. 83/2003-Cus dated 18.09.2003 by the Respondent and the said Circular was not admissible to them. The appeals filed against the revised brand rate letters by the Respondent were allowed by the Appellate Authority vide impugned Order-in-Appeal.

12. Government observes that the following two issues are basically involved in the instant revision application: -

a) Jurisdiction of the Additional Commissioner for re-fixing or revising of the brand rate, decided or fixed earlier by the department.

b) The applicability of Circular No. 83/2003-Cus dated 18.09.2003 to compressors used in the manufacture of the exported refrigerators.

13.1 Government observes that pursuant to decentralization of work relating to fixation of Brand Rate of Drawback under Rule 6 and Rule 7 of the Drawback Rules, to the jurisdictional Commissionerates of Central Excise, Circular No 14-Customs/2003 dated 06.03.2003 was issued by Ministry of Finance & Company Affairs, Department of Revenue, prescribing broad parameters for discharging the work pursuant to decentralization of fixation of Brand Rate of Drawback. Further Circular No 83/2003-Cus dated 18.09.2003 has been issued for removal of difficulties pertaining to fixation of duty drawback under Rule 6 (Brand Rate) is in respect of export products which do no figure in the AIR of the drawback table or under Rule 7 (Special Brand Rate) where the exporters apply for fixation on account of inadequate rebate of input stage duties through AIR and among other issues examines with illustrations relating to fixation of Brand Rate for Leather Articles, Bicycles and Buses.

13.2. As regards the jurisdiction of the department in respect of re-fixation of Brand Rates, broad parameters are mentioned in the Circular No. 83/2003-

Cus dated 18.09.2003 and Circular No 14-Cus/2003 dated 06.03.2003 and the relevant portions of the same are reproduced below for reference.

(a) **Circular No. 83/2003-Cus., dated 18-9-2003**

F.No. 603/32/2003-DBK

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(c) Fixation and approval of brand rate of duty drawback as laid down in para 3(d)(i) of Circular No.14 /2003 vis-a-vis the provision of post-audit prescribed in para 3(d)(ix).

The function of the post-audit is to safeguard the revenue by pointing out errors whether in the nature of calculation mistake or wrong application of rules/regulations, etc. Based on the same, the Commissioner of Central Excise and the officers under his control have been invested with powers to rectify such mistakes through issuance of any amendment, addendum or corrigendum to the brand rate letters issued. However, as a matter of further decentralisation, for the convenience of the trade and for speedier issuance of the brand rate letters, it has been decided that proposals for fixation of brand rate involving duty drawback of more than Rs. 5 lacs, shall be approved by the Additional/Joint Commissioner of Central Excise without any limit. In other words, no proposal for fixation of brand rate of drawback shall be submitted to the Commissioner of Central Excise for approval.

(d) Scope of rules 6(3) and 7(4) of the Customs and Central Excise Duties Drawback Rules, 1995.

It is clarified that the powers of Ministry expounded in rules 6(3) and 7(4) of the Customs and Central Excise Duties Drawback Rules, 1995 are envisaged to be exercised on rare occasions. Only in those cases, where the Ministry gets the information through some complaints or pursuant to an investigation that the drawback rate has been incorrectly determined or the rate letter has been improperly or irregularly issued, the Ministry, in such cases, shall suo motu proceed to revoke the rate letters in question and order recovery of duty drawback amount.

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(b) ***Circular No 14-Customs/2003 dated 06.03.2003***

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(d) .....

(viii) Time limit for filing Brand Rate application

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Sometimes, various components/ vendor items of the export goods, like those in the Automobile Industry are manufactured in the jurisdictions of more than one Central Excise Commissionerate. In such cases, Brand Rate application is required to be filed within the stipulated period in the Headquarters of Central Excise Commissionerate having jurisdiction over the manufacturing unit wherein the finished/ final export goods are manufactured/ assembled. In such cases, the applicant is required to specify the components/ vendor items which are manufactured in the jurisdiction of other Central Excise Commissionerates and submit the requisite data subsequently in the Headquarters of the concerned Commissionerates of Central Excise having jurisdiction over the units wherein such components/ vendor' items are manufactured. The Commissionerate in which the original Brand Rate application has been filed will get the data (pertaining to its Commissionerate) furnished in the application verified and fix the Brand Rate. This Brand Rate may be subsequently revised on the receipt of the Verification Reports in respect of the components/ vendor items from the concerned Central Excise Commissionerates.

(ix) Internal Audit: *After issue of Brand Rate letters, all cases involving drawback amount of more than Rs.1 lakh may be subjected post-audit by Internal Audit Unit of the Commissionerate. Further 20 % of the cases involving drawback amount of less than Rs.1 lakh may also be selected by the Internal Audit Unit for post-audit at random basis. Requisite follow-up actions may be taken immediately to review at the appropriate level and if necessary to amend/revoke the Brand Rates in case the audit objection is found to be sustainable....."*

14.1. Government notes that Para 3(d) (viii) of Circular No 14/2003-Cus dated 06.03.2003 deals with the time limit for filing Brand Rate Application. The said para also deals with fixation of Brand Rate in a situation where the components/vendor items of the export goods are manufactured in the jurisdiction of more than one Central Excise Commissionerate.

14.2. The said para clearly allows revision on the receipt of verification reports in respect of components/vendor items from the concerned Central Excise Commissionerate.

14.3. Government notes that in the instant case the revision in the drawback rates are on account of issue of drawback on compressors which have been manufactured at the Noida unit of the Respondent whereas the exports are by the Pune unit.

14.4. Further Para 3(d) (ix) of Circular No 14/2003-Cus dated 06.03.2003 and Para 3(c) of Circular No 83/2003-Cus dated 18.09.2003 allows for brand rate to be amended/revoked pursuant to errors whether in the nature of calculation mistake or wrong application of rules/regulations etc. coming to light pursuant to verification. Government observes that the Internal Audit is not the only mechanism to identify errors/mistakes and to cause the Brand rates to be amended/revoked. The concerned authority can suo moto or from other inputs coming to his notice can decide to amend or reverse the original brand rate. The moot point and motive of the same is to safeguard revenue arising out of errors in the fixation of brand rate and Government notes that the nomenclature of 'Post Audit' refers to verifying the correctness of the Drawback letters issue with reference to mathematical calculation and application of Rules.

14.5. In the instant case it is clear from the Brand Rate letter dated 28.06.2013 that refixing of brand rates has been done pursuant to observations that the AIR on compressors claimed in the Brand Rate

application on the basis of Circular No 83/2003-Cus dated 18.09.2003 being inadmissible in the case of compressors exported in refrigerators by the Respondent. Government notes that the observations point towards the errors in application of Rules and Circulars, the remedy of which is by way of refixing of the Brand Rates. The relevant portion of the said Brand Rate letter is reproduced as under:

> *"Government notes that a cursory look at the refixed brand rate states that "on further observations, it was found that the AIR on compressors were claimed in the Brand Rate application on the basis of Circular No 83/2003-Cus dated 18.09.2003. This Circular appears to be inadmissible in your case of Compressors exported in Refrigerators....."*
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> *".....The contention of the party is not acceptable as the Board Circular No 83/2003-Cus dated 18.09.2003 is not applicable in the instant case. Therefore, the BRL is amended as below after deduction of Compressors from the Brand Rate already fixed"*

14.6. It is observed that the clarification given in the para (c) of circular No. 83/2003 dated 18.09.2003 undoubtedly states that the Commissioner of Central Excise and the officers under his control have been invested with powers to rectify such mistakes through issuance of any amendment, addendum or corrigendum to the brand rate letters issued. As such, the interpretation of the relevant portion of the above circular spelled out in the impugned Order-in-Appeal is flawed and improper. It is, therefore, held that as far as the jurisdiction is concerned, the Additional Commissioner was competent to refix or revise the brand rates in the instant case.

14.7 Government relies on the judgement of the Hon'ble High Court of Bombay in the case of Mehur Metal Industries vs GOI [1988(36) E.L.T. 252 (Bom)]. The Hon'ble High Court at Para 8 has stated as under

> *"8. It was next argued that the rate of Rs. 60.30/Rs. 60.80 had been fixed after a verification, and, that in any case there was no provision for a review thereof. This contention is at variance with the amplitude of the power conferred under rule 14. That power can be invoked where the amount so paid is the result of an error or in excess of the claimant's entitlement. That there can be a demand for repayment of a drawback paid wrongly or in excess of the entitlement, presupposes the existence of a power to reconsider the amount determined upon an application*

made under rule 7. Therefore, it is not correct to say that refixation of the drawback was illegal. Once this conclusion is reached, it follows that the order for adjustment fits into the purview of rule 14. The petitions fail and hence the order :-
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15.1. After deciding the first issue regarding competency of the Additional Commissioner to re-fix the brand rates, Government moves on to examine the correctness of re-fixing of the brand rates by the Additional Commissioner in the instant case.

15.2. Government notes that in the instant case the Brand rates have been re-fixed on the grounds that the All Industry Rate on 'compressors' were claimed in the Brand Rate Application on the basis of Circular No. 83/2003-Cus dated 18.09.2003, and that the contents of the said Circular were not applicable in the instant case.

15.3. Government notes that Circular No 83/2003-Cus dated 18.09.2003 has been issued for removal of difficulties pertaining to fixation of duty drawback under Rule 6 (Brand Rate) in respect of export products which do no figure in the AIR of the drawback table or under Rule 7 (Special Brand Rate) where the exporters apply for fixation on account of inadequate rebate of input stage duties through AIR and among other issues examines with illustrations relating to fixation of Brand Rate for Leather Articles, Bicycles and Buses. The Circular also addresses the issue of factoring the applicability of All Industry Rates of duty drawback in brand rates of duty drawback and the same has been accepted. Government notes that as per the records, the principles applied in the illustrations mentioned in Circular No 83/2003-Cus dated 18.09.2003 would be applicable to all other commodities as extolled by clarificatory letter dated 02.02.2009 issued by the CBEC vide F. No 609/55/2008-DBK.

15.4. As regards the admissibility of Circular No 83/2003-Cus dated 18.09.2003 on compressors used in refrigerators exported by the Respondent, it is observed that the respondent have procured the input viz. 'Compressors' from M/s L.G. Electronics, NOIDA on payment of Central Excise Duty at

applicable rate and have also availed the Cenvat Credit of the duty paid by these compressors. The Government finds that the Respondent has claimed the AIR on 'Compressors' in the brand rate application on the basis of Circular No. 83/2003-Cus dated 18.09.2003. It is observed that the clarification given in the impugned circular regarding applicability of All Industry Rates of duty drawback in brand rates of duty drawback has exemplified the applicability of All Industry Rates of duty drawback in brand rates of duty drawback and the same having been accepted as per the circular and Government opines that the reduction of drawback by not factoring the duty drawback on account of inputs i.e. 'Compressors' into the total brand rate is flawed.

15.5. Duty Drawback is a relief by way of refund of Custom and Excise duties paid on inputs or raw materials and service tax paid on the input services used in the manufacture of export goods. Also, the drawback rate consists of two components - Customs portion (consisting of basic customs duty, surcharge and SAD) and Excise portion (consisting of basic excise duty, special excise duty and CVD). In the instant case, as can be seen from AIR for Drawback for Tariff Item 841402 of the Drawback Schedule which is in respect of compressors for refrigerators, it is seen that the AIR is 3.4%, irrespective of availment of CENVAT facility, which indicates that the entire AIR of drawback for compressors of refrigerators is for Customs components only, ie. to neutralize the Customs duty burden on the imported components and availment of the cenvat credit of the excise portion would not amount to double benefit. Besides the AIR drawback availed by the Respondent is to neutralize the duty burden in respect of inputs of compressors and not in respect of the Central Excise duty paid on the complete compressors.

16. Government notes that the Appellate Authority in the Order-in-Appeal has already addressed the issue in detail in a lucid manner and arrived at the conclusion that the denial of the drawback at AIR in respect of compressors for fixation of Brand Rates for refrigerators done in June 2012 was correct and the re-fixation of Brand Rates done in June 2013 was incorrect on merits. The Appellate Authority Para 10 and 11 of the OIA has stated as under

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I find that the purpose of fixation of Brand Rate is to compensate an exporter of finished goods by reimbursing the amount of duties or taxes paid in respect of material or components or Input services used in the manufacture of the said export goods. Whereas the All Industry Rate is available to all exporters, without the need of any submission / verification of duty paying documents, the Brand Rate under Rule 7 of the Drawback Rules is fixed after verification of the relevant duty paying documents in respect of materials or components or input services used in the manufacture of the export goods. Thus, the Brand Rate under Rule 7 of Drawback Rules is essentially higher than the All Industry Rate of Drawback available under Rule 3. In fact, there is a condition in Rule 7 that the facility of Brand Rate Fixation is admissible only if the All Industry Rate is less than Four-Fifth of the duties or taxes paid on the materials or components or input services actually used in the manufacture of export goods. After the decentralization of the work of Brand Rate Fixation to Central Excise Commissionerates in March 2003, for clarifying certain issues, the CBEC had issued Circular No. 83/2003-CUS dated 18.09.2003 which contained clarifications in respect of issues relating to fixation of Brand Rates for Leather Articles, Bicycles and Buses. On going through the said Circular it is noticed that the correctness of the principle of factoring the All Industry Rate of duty Drawback in respect of certain inputs / accessories has been accepted in the said Circular for Leather Articles & Bicycles. Similarly, in respect of Buses, it has been stated in the said Circular that since 1988, there has been a practice in the Ministry for factoring a component of 7% of the cost of bus body as duty drawback of bus body, into the total Brand Rate Fixed for the complete buses. It is also mentioned that this percentage is based on average values arrived from the data furnished by certain established bus body builders and the same has been approved by the officers of the Comptroller and Auditor General of India. These illustrations clearly show that the purpose of Brand Rate Fixation under Rule 7 of the Drawback Rules is to achieve full neutralization of duty and taxes in respect of the inputs used in the export products and the All Industry Rate is a valid and useful method to arrive at the average quantum of duty suffered on certain inputs used in the export products. This view is supported by the clarification issued by CBEC vide letter F. No. 609/55/2008-DBK dated

02.02.2009, whereby it was clarified that examples of finished Leather and Bicycles mentioned in the Board's Circular No. 83/2003-CUS dated 18.09.2003 should be treated as illustrations and same principle would apply in case of all other commodities also. Thus, I am of the view that the Appellant were eligible for fixation of Brand Rate in respect of refrigerator by adoption of the All Industry Rate in respect of the compressor used in the refrigerator. In other words, the principle of Circular No. 83/2003 dated 18.09.2003 is applicable in respect of the refrigerators exported by the Appellant."

"11.

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In other words, the entire AIR of Drawback for compressors of refrigerators is for Customs components only, ie. to neutralize the Customs duty burden on the imported components generally used for the manufacture of compressors in India. The Central Excise duty paid by the NOIDA unit of the Appellant, of which CENVAT credit would have been taken by the Appellant in their Pune unit, is for fixation of Brand Rate in the present case. Accordingly, I find that the contention of the Ld. Respondent regarding availability of duty paying documents of compressors (ie. Central Excise invoices issued by NOIDA unit of the Appellant) and availment of CENVAT credit thereon by the Appellant is irrelevant in the present case. Regarding inclusion of actual duty suffered by the components of compressors used in the Refrigerators exported by the Appellant, it has been clearly stated by the Appellant that, if they wanted Brand Rate Fixation in respect of raw materials used in the manufacture of compressors at NOIDA unit, the same would have caused delay in fixation of Brand Rate for their refrigerators and therefore they adopted the AIR of Drawback for the compressors for foxing the Brand Rate for refrigerators. This reason appears genuine and logical in view of the fact that the AIR of Drawback is always on the lower side as compared to Brand Rate and the AIR is fixed by the Ministry after taking into account the average use of inputs - imported and indigenous for any particular item being exported from India by the industry as a whole. In short, the AIR is an average value and is admissible without the need of verification of actual duty paying documents in respect of inputs used in the exported items. To conclude, I find that the denial of Drawback at AIR in respect of compressors for fixation of Brand Rate for refrigerators exported, is not correct. In other words, the initial fixation of Brand Rates for Refrigerators done in June 2012 was

correct and the re-fixation of Brand Rates done in June 2013 was incorrect on merits."

17. In view of the above discussion, Government observes that while holding that the Applicant was competent to refix or revise the brand rates, contrary to the contention of the Appellate Authority, upholds the Order-in-Appeal No. PUN-EXCUS-003-APP-354-13-14 dated 29.01.2014 [Date of issue: 07.02.2014] passed by the Commissioner (Appeals), Pune-III to the extent of holding the reduction of the Brand Rates by way of amending the Brand Rates fixed in June 2012 to be flawed on merits.

18. The Revision Application is disposed in terms of the above

28/6/23

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

ORDER No 503 /2023-CUS(WZ) /ASRA/Mumbai DATED 28 .06. 2023

To,
The Commissioner of CGST, Pune-I Commissionerate,
41/A, ICE House, GST Bhavan,
4th floor, B Wing, Sassoon Road,
Pune- 411 001.

Copy to:

1. M/s L.G. Electronics India Pvt. Ltd., Plot No. A-5, MIDC, Ranjangaon, Taluka Shirur, Pune – 412 220.
2. The Commissioner of CGST (Appeals-II), Pune, 41/A, ICE House, GST Bhavan, 2nd floor, F Wing, Sassoon Road, Pune- 411 001.
3. The Deputy Commissioner, CGST, Division VII-Shirur, 41/A, ICE House, GST Bhavan, 2nd floor, C Wing, Sassoon Road, Pune- 411 001.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Notice Board