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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

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F.No.380/94/DBK/13-RA/1096

Date of Issue 12.03.2021

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ORDER NO.52/2021-CUS (WZ) / ASRA / MUMBAI/ DATED 05.03.2021  
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.

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**Applicant** : The Commissioner of Central Excise, Kolhapur.

**Respondent** : M/s Manugraph India Ltd.  
Unit-2, Kodoli, Tal. Panhala,  
Dist. Kolhapur- 416 114.

**Subject** : Revision Application filed, under Section 129DD of  
the Customs Act, 1962 against the Order-in- Appeal  
No. PUN-CX-002-APP-49-13-14 dated 03.07.2013  
passed by the Commissioner of Central Excise  
(Appeals), Pune-II.

**ORDER**

The Revision Application is filed by the Commissioner of Central Excise & Service Tax, Kolhapur Commissionerate (hereinafter referred to as 'the department') against the Order in Appeal No. PUN-CX-002-APP-49-13-14 dated 03.07.2013 passed by the Commissioner of Central Excise (Appeals), Pune-II in respect of Order in Original No. 01/CEX/AC/DBK/12 dated 08.11.2013 passed by the Assistant Commissioner (Tech.), Central Excise, Kolhapur Commissionerate.

2. Brief facts of the case are that M/s Manugraph India Ltd., Unit-2, Kodoli, Tal. Panhala, Dist. Kolhapur- 416 114 (herein after referred to as 'the respondent') are engaged in manufacture of Printing Machines & parts thereof falling under CH.S.H. No. 84431100 of the Central Excise Tariff Act, 1985 and are availing Cenvat Credit of the duty paid on inputs / input service as well as on the Capital Goods under the provisions of Cenvat Credit Rules, 2004 and the same is utilised for discharging the duty on the finished excisable goods at the time of clearance for home consumption as well as for export. . The applicant had filed a Brand Rate application for fixation of Duty Drawback for "Web Offset Rotary Press Model "Hiline" exported under Shipping Bill No. 9266294 dated 18.01.2011 for Rs. 1,25,691/- (Rupees One Lakh Twenty Five Thousand Six Hundred Ninety One Only) under Rule 6(1)(a) of the Customs & Central Excise Duties & Service Tax Drawback Rules, 1995. After necessary verification, the Brand Rate Letter No. 08/2011-12 dated 30.06.2011 was issued and the claim was restricted to Rs.1,24,976/- (Rupees One Lakh Twenty Four Thousand Nine Hundred Seventy Six Only). During the re-verification, it was found that the claim for Brand Rate of drawback under Rule 6 of the Drawback Rules, 1995 was not admissible under the said rule as the exported goods i.e. "Web Offset Rotary Press Model" falling under CSH No. 84431100 are covered under the Schedule to Notification No. 84/2010 Cus (NT) dated 17.09.2010 & condition No. 10 of the said Notification provides that **"Where the export**

***product is not specifically covered by the description of goods in the said schedule, the rate of drawback may be fixed, on an application by an individual manufacturer or exporter in accordance with the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995.*** As such a Show Cause Notice dated 11.01.2012 was issued to the applicant for revocation and recovery of the drawback claim sanctioned for Rs. 1,24,976/- along with interest. The Adjudicating Authority vide Order in Original No. 01/CEX/AC/DBK/12 dated 08.11.2012 withdrawn the Brand Rate letter No. 08/2011-12 dated 30.06.2011 involving drawback amount of Rs. 1,24,976/- and also ordered the recovery of the said drawback amount having already been disbursed under Rule 16 of the Drawback Rules, 1995. Accordingly, a Demand cum Notice was issued to respondent. Meanwhile, the Deputy Commissioner, JNCH, Raigad vide letter F. No. S/12/-Gen-220/2012 DBK/ JNCH dated 28.01.2013 informed that on verification, it was found that the drawback amount of Rs. 1,24,976/- (under Brand Rate) was sanctioned to the applicant on 22.11.2011, whereas actual drawback amount admissible @ 1% amounted to RS. 1,04,648/-. The respondent vide Challan No. 808 & 809 both dated 18.01.2013, paid the excess drawback amount of Rs. 20,328/- along with interest of RS. 4,251/-.

3. The respondent filed an appeal against the Order in Original No. 01/CEX/AC/DBK/12 dated 08.11.2012 before Commissioner (Appeals), Central Excise, Pune-II. The Appellate Authority vide Order in Appeal No. PUNE-CX-002-APP-49-13-14 dated 03.07.2013 allowed the appeal filed by the respondent by setting aside the impugned Order in Original.

3.1 The issue before the appellate authority was whether the goods exported by the respondent were covered by the entry 844399 under 8443 of the DBK Schedule and accordingly whether the condition under Rule 6(1)(a) of DBK Rules and note 10 of the Notification No. 84/2010 was applicable or otherwise?

3.2 The appellate authority while deciding the classification of the export goods under DBK schedule, has observed that the main entry 8443 (four digit level) of the DBK schedule is to be taken as aligned with the CTH 8443 of Customs Tariff as per Note (1) of the Notification 84/2010 and the comparison of both the entries confirm the same.

4. Being aggrieved by the impugned Order in Appeal, the applicant filed the instant Revision Application on following grounds: -

4.1 As per note (1) of the Notification No. 84/2010 Cus (NT) dated 17.09.2010, the tariff items and descriptions of goods in the said schedule are aligned with the tariff items and descriptions of goods in the First Schedule to the Customs Tariff Act, 1975 at the four digit level only;

4.2 If the first four digit of tariff items and descriptions of goods in DBK Schedule is aligned with CTH of Customs Tariff, then as per Note (1) of the Notification No. 84/2010, irrespective of the fact that whether six digit or eight digit or ten digits are aligned or not, drawback is available to all export goods covered under the first four digits of tariff items.

4.3 Under para 8 of the Circular No. 48/2011- Customs dated 31.10.2011, it has been clarified that so long as the alignment is there at the four digit level, there should not be any difficulty for exporters to claim drawback as per the rate specified in the Drawback Schedule, notwithstanding the fact that there may be difference in the classification of the said item at 6 or more-digit level;

4.4 Without taking cognizance of Note (1) of the Notification No. 84/2010, it is erroneous to conclude in isolation that the tariff item and description of the goods in the DBK schedule are aligned with the tariff item and description of goods in the First Schedule to the Customs Tariff merely on the basis of the fact that the tariff item at

six digit level i.e. 844399 appearing in the DBK Schedule is matching with the tariff item in Customs Tariff and the description of goods appearing against the tariff item 844399 in DBK Schedule as 'others' is also same in Customs Tariff.

4.5 There are many such residual entries in the Drawback Schedule, which are having description of goods as "Others", but are not aligned with the CTH of Customs Tariff and the tariff item, at six digit level, are not in continuation of the previous six digit sub entries.

5. Personal Hearing was fixed on fixed on 06.01.2021, 13.01.2021 and 20.01.2021. No one attended that personal hearing so fixed on above dates. As the sufficient opportunity for personal hearing has been offered, the case is taken up for decision based on the documents and submissions available on record.

6. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the submissions from both sides.

7. The Government notes that the respondent had applied for fixation of Brand Rate under Rule 6 of the Drawback Rules, 1995 for the product exported by them viz. "Web Offset Printing Press Model" falling under C.S.H. No. 84431100 of the Customs Tariff Act, 1975. The department approved the application filed by the respondent and sanctioned drawback vide letter No. 08/2011-12 dated 30.06.2011. However, the drawback sanctioning letter was subsequently withdrawn in view of the Condition No. 10 of the Notification No. 84/2010- Cus (NT) dated 17.09.2010.

8. The core issue involved in the present case is whether drawback claim would be admissible under Rule 6 of the Drawback Rules, 1995 in view of Note 10 of the Notification No. 84/2010-Cus (N.T.) dated

17.09.2010. The relevant text of the Notification No. 84/2010- Cus (N.T.) dated 17.09.2010 is reproduced hereinafter.

*"(10) Where the export product is not specifically covered by the description of goods in the said Schedule, the rate of drawback may be fixed, on an application by an individual manufacturer or exporter in accordance with the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995."*

8.1 The plain reading of the Condition No. 10 to the Notification No. 84/2010-Cus (N.T.) dated 17.09.2010 does not leave any scope for interpretation. It clearly states that the brand rate in respect of exported goods, not covered by the description of goods in the said schedule, may be fixed under Rule 6 of the Drawback Rules, 1995.

8.2 In view of above, it is significant to determine whether the impugned product has been covered under schedule to the Notification No. 84/2010-Cus (N.T.) dated 17.09.2010. The Note (1) to the Notification No. 84/2010-Cus (NT) dated 17.09.2010 is directorial to make decision in this regard. The Note (1) to the said Notification is as under:-

*"(1) The tariff items and descriptions of goods in the said Schedule are aligned with the tariff items and descriptions of goods in the First Schedule to the Customs Tariff Act, 1975(51 of 1975) at the four-digit level only. The descriptions of goods given at the six digit or eight digit or modified six or eight or ten digits are in several cases not aligned with the descriptions of goods given in the said First Schedule to the Customs Tariff Act, 1975."*

The Note (1) as above provides scientific approach to decide whether particular product is covered under the schedule to the impugned Notification or otherwise. It stipulates that

- (i) the description of the goods in the schedule are aligned with the tariff items and description in the first Schedule to the Customs Tariff Act, 1975 at four-digit level only; and

- (ii) the description of goods given at six digit or eight digit or modified six or eight or ten digits are in several cases not aligned with the description of goods given in the First Schedule to the Customs Tariff Act, 1975.

8.3 In view of above, it is observed that the primary entry No. 8443 of the Schedule to the impugned Notification aligns with the CTH 8443 of the Customs Tariff. It is also observed that the entries at six digit level listed in the said schedule do not necessarily have matching / corresponding entries in the Customs Tariff viz. "Facsimile Machines", "Copying Machines" covered in the said schedule do not have aligned entries in the Customs Tariff and these products have been classified under different entries. However, the correct approach to decide entry in the Drawback schedule in respect of these products would be to match the description of these products. On this criteria, these products need to be covered under 8443 of the Schedule to the impugned Notification.

8.4 Now in respect of the entry at Sr. No. 844399 of the Schedule i.e. "others", it is observed that the same also has corresponding entry in the Customs Tariff against CTH 844399. It is therefore opined that the tariff item at entry No. 844399 of the Schedule to impugned Notification would essentially contain the goods that are covered by the corresponding entry in the Customs Tariff. Therefore, the Customs Tariff Entry for 844399 needs to be checked. Therefore, the Customs Tariff item for CTH 844399 is produced below for information.

"8443 99	-- Other--
8443 99 10	-- Automatic documents feeders of copying machines--
8443 99 20	-- Paper feeders of copying machines
8443 99 30	-- Sorters of copying machines
8443 99 40	-- Other parts of copying machines
	--- Parts and accessories of goods of sub-heading 8443 31, 8443 32
8443 99 51	--- Ink cartridges, with print head assembly
8443 99 52	--- Ink cartridges, without print head assembly
8443 99 53	--- Ink spray nozzle--
8443 99 59	--- Other"

8.5 It is evident from the tariff entries as above that the Printing Machines classified under CTH 84431100 of the Customs Tariff are not covered under this heading. The Government, therefore, holds that the Entry No. 844399 of the Drawback Schedule do not cover 'Printing Machines' and also the impugned product exported by the respondent also i.e. "Web Offset Printing Press Model".

8.6 The Appellate Authority at para 14 of the impugned Order in Appeal has concluded as under:-

*"Further, Tariff Item 844399 of the Dbk Schedule cannot be considered as a residual entry for the description of goods mentioned in the main entry 8443 of the Drawback Schedule due to the fact that this entry is aligned with CTH where it is not the residual entry for the goods of the main heading i.e. 8443. Tariff Item 844399 of the Dbk schedule would have been considered as residual entry for description of goods of Tariff Items of 8443 if it was not aligned with the CTH of Customs Tariff and in that case the entry would have been given a modified six digit number in continuation of the previous two sub-entries, e-g as in the case of Tariff Item 8432 of the DBK Schedule where the last Tariff Item is 843205 which is in continuation of the previous four sub-entries and is not aligned with the CTH of Customs Tariff and the description of goods in this Tariff Item is also "Others"."*

The Government finds the justification as above in the impugned Order in Appeal explaining why the impugned product exported by the respondent would not be covered under entry 844399 of the Dbk schedule is just and proper and needs no further clarification.

9. The Government finds that the department has contested the impugned Order in Appeal on the ground that under Para 8 of the Circular No. 48/2011-Customs dated 31.10.2011, it has been clarified that so long as the alignment is there at the four digit level, there should not be any difficulty for exporters to claim drawback as



per the rate specified in the Drawback Schedule, notwithstanding the fact that there may be difference in the classification of the said item at six or more digit level.

9.1. The Government observes that the Adjudicating Authority while issuing Order in Original No. 01/CEX/AC/DBK/12 dated 08.11.2012 did not allude the clarification given under said Circular dated 31.10.2011 in support of his claim. Further, the department had also not made any reference to said circular while defending the appeal filed by the respondent against impugned Order in Original before Appellate Authority. As such, the fresh ground in this regard at this stage cannot be considered.

10. In view of above circumstances, Government finds no infirmity in the impugned Order-in-Appeal and therefore upholds the same.

11. Revision Application is thus rejected being devoid of merit.

  
(SHRAWAN KUMAR)

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

ORDER No. 52/2021-CUS (WZ) / ASRA / MUMBAI DATED 05.03.2021

To,  
M/s Manugraph India Ltd.  
Unit-2, Kodoli, Tal. Panhala,  
Dist. Kolhapur- 416 114.

Copy to:

1. The Commissioner, CGST, Kolhapur Commissionerate, Vasant Plaza Commercial Complex, 4th & 5th Floor, C.S. No. 1079/2 K.H., Rajaram Road, Bagal Chowk, Kolhapur-416001.
2. The office of the Central Tax (Appeals-I), Pune, 'F' wing, 3<sup>rd</sup> floor, GST Bhavan, 41/A, Sassoon Road, Pune 411001.

3. The Deputy Commissioner of CGST, Division -II, Kolhapur, 2<sup>nd</sup> Floor, Ratikamal Complex, Opp. Basant Bahar Talkies, Assembly Road, Shahupuri, Kolhapur.
4. Sr. P.S. to AS (RA), Mumbai
- ~~5. Guard File.~~
6. Spare Copy.