

371/66-71/DBK/2015-RA

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

371/66-71/DBK/2015-RA

Date of Issue :- 13/08/2018

ORDER NO. 610-615/2018-CX (WZ)/ASRA/MUMBAI DATED 31.07.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR METHA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT, 1944.

**Subject** : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.PUN-EXCUS-001-APP-0057-15-16 to PUN-EXCUS-001-APP-0062-15-16 dated 19.08.2015 passed by the Commissioner (Appeals-I), Central Excise, Pune.

**Applicant** : M/s Tata Ficosa Automotive Systems Ltd., Pune-411 057

**Respondent** : Commissioner of Central Excise, Pune-I.

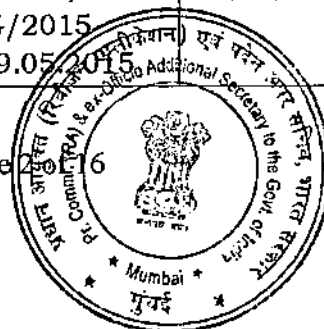


ORDER

These Revision Applications are filed M/s Tata Ficosa Automotive Systems Ltd., Taluka-Mulshi, Pune-411 057 (hereinafter referred as "applicants") against the Order-in-Appeal No. PUN-EXCUS-001-APP-0057-15-16 to PUN-EXCUS-001-APP-0062-15-16 dated 19.08.2015 passed by the Commissioner (Appeals-I), Central Excise, Pune.

2. Brief facts of the case are that the applicant, M/s Tata Ficosa Automoti'c Systems Ltd. are inter alia engaged to manufacture and sale of mirrors, break leavers, etc. Necessary components required for manufacture of the said finished goods are either imported or procured domestically by the appellants on payment of applicable duties. The applicants are importing the inputs either on payment of appropriate customs duty in cash or by the duty credit scrips issued under Focus Product Scheme (hereinafter referred to as "FPS") or Focus market Scheme (hereinafter referred to as "FMS") or Duty Entitlement Pass Book Scheme (hereinafter referred to as "DEPB"). As goods used for export of turbochargers had suffered duty. the applicants had filed various claims of duty drawback under the provisions of Rule 7 Customs, Central Excise duties and Service Tax Drawback Rules. 1995 (hereinafter referred as "DBK Rules". The details of such various claims filed by the applicants are as under:

Sl. No.	Period	Appeal No.	Drawback Letter No. & Date	Total amount claimed as drawback (Rs.)	Amount Rejected (Rs.)
1	March 2013 to June 2013	108/DBK /2015	PI/BRU/D.IV/Tata Ficosa/32/2014 dated 23.12.2014	15,61,585/-	15,61,585/-
2.	July 2013 to Dec.2013	109/DBK /2015	PI/BRU/D.IV/Tata Ficosa/40/2014 dated 23.12.2014	32,05,931/-	32,05,931/-
3.	June 2014 to October 2014	300/DBK /2015	PI/BRU/D.IV/Tata Ficosa/4/2015 dated 29.05.2015	13,53,875/-	13,53,875/-



4.	April 2014 to June 2014	301/DBK /2015	PI/BRU/D.IV/Tata Ficosa/123/2014 dated 27.05.2015	15,62,369/-	15,62,369/-
5.	Jan.2014 to March 2014	302/DBK /2015	PI/BRU/D.IV/Tata Ficosa/137/2014 dated 28.05.2015	14,16,145/-	14,16,145/-
6.	July 2014 to August 2014	303/DBK /2015	PI/BRU/D.IV/Tata Ficosa/138/2014 dated 22.05.2015	3,14,940/-	3,14,940/-

3. The Additional Commissioner (BRU), Central Excise, Pune-I Commissionerate rejected the entire amounts of Drawback vide letters mentioned in aforesaid table, on the following grounds:

- in respect of Letter F.No. PI/BRU/D.IV/Tata Ficosa/MB1/4/2015 dated 29.05.2015 (Appeal No 300/DBK/2015), the Divisional Assistant Commissioner had reported that Claim in respect of Shipping Bill No. 5669534 dated 22.10.2014 for an amount of Rs.20,890/- was withdrawn.
- In respect of Letter F.No. PI/BRU/D.Thergaon/Tata Ficosa/ 137/2014 dated 26.05.2014 (Appeal No 302/2015), the Divisional Assistant Commissioner had reported that Claim amount of Rs 36,723/- in respect of Shipping Bills No. 1047199 and 1862489 was withdrawn.
- Drawback of Basic Customs Duty is debited in the scrip of Focus Product Scheme(FPS) in terms of Clause (vi) of Notification No. 92/2009-Cus dated 11-09-2009 or in the scrip of Focus Market Scheme (FMS) as per Clause (vi) of Notification No. 93/2009-Cus. dated 11-09-2009 or in the scrip of Vishesh Krishi and Gram Udyog Yojana Scheme (VKGUYS) as per Clause (v) of Notification No 94/2009-Cus Dated 11-09-2009, was not admissible.
- Non-fulfilment of condition of Rule 7(1) to the Drawback Rules, viz. the All Industry Rate is more than four-fifth of the amount of duties and taxes of which claim was made.



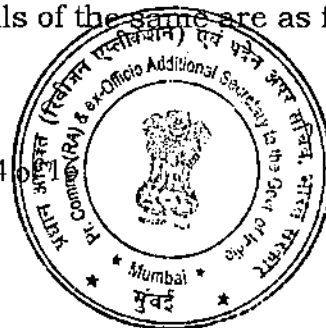
4. Aggrieved by the impugned orders of the Additional Commissioner (BRU), Central Excise, Pune-I Commissionerate rejecting the entire amounts of Drawback, the applicant preferred the appeal before Commissioner (Appeals-I), Central Excise, Pune on various grounds. Further, the applicants also filed an additional submissions vide letter dated 11.05.2015 wherein the applicant requested the Ld. Commissioner (Appeals) to allow at least the All Industry Rate of drawback during the pendency of appeal as per CBEC Circular No. 10/2003-Cus. However, the Commissioner (Appeals) upheld the rejection order of Additional Commissioner (BRU), Central Excise, Pune-I Commissionerate.

5. Being aggrieved by the impugned Orders-in-Appeal, the applicant has filed these revision applications under Section 35EE of Central Excise Act, 1944 before Central Government on the various grounds mentioned in their revision applications.

6. A Personal hearing was held in this case on 27.07.2018 and Shri Subodh S Pillai, Chief Finance Officer, Ms. Srinidhi Ganeshan, Advocate and Shri Jalinder Shinde, Sr. Executive Finance, appeared for hearing on behalf of the applicant. None appeared on behalf of the respondent department. The applicant reiterated the submissions filed in the Revision Applications and written submissions and the case laws filed on the day of the hearing. In view of the same it was pleaded that the Orders in Appeal be set aside and the instant Revision Applications be allowed.

7. In their written submissions dated 27.07.2018 filed on the date of hearing the applicant contended that:

- 7.1 they filed 6 revision applications, challenging the Order-in-Appeal No. PUN-EXCUS-001-0057--15-16 to PUN-EXCUS-001-0062-15-16 dated 19.8. 2015 . Details of the same are as follows:



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Sr. No.	Revision Application No.	Period of Import	Duty Drawback amount claimed/rejected	Drawback claimed is of BCD paid through	Concerned Notifications
1.	108/DBK/2015	March 2013 to June 2013	Rs. 15,61,585/-	FMS, FPS, DEPB Scrips	<b>FPS</b> (Notification No. 92/2009-Cus dated 11.09.09) <b>FMS</b> (Notification No. 92/2009-Cus dated 11.09.09) <b>DEPB</b> (Notification No. 97/2009-Cus dated 11.09.2009)
2.	109/DBK/2015	July 2013 to December 2013	Rs. 32,05,931/-	FMS, FPS, DEPB Scrips	
3.	300/DBK/2015	June 2014 to October 2014	Rs. 13,53,875/-	FMS, FPS, DEPB Scrips	
4.	301/DBK/2015	April 2014 to June 2014	Rs. 15,62,369/-	FMS, FPS, DEPB Scrips	
5.	302/DBK/2015	January 2014 to March 2014	Rs. 14,16,145/-	FMS, FPS, DEPB Scrips	
6.	303/DBK/2015	July 2014 to August 2014	Rs. 3,14,940	FMS, FPS, DEPB Scrips	

7.2 the amount of drawback claim rejected in the present case pertains to "basic customs duty paid on the inputs" (i.e., **duty paid through duty free scrips such as FMS/FPS/DEPB**) used in the manufacture of goods exported. The goods were exported under claim for drawback and in respect of these exports, drawback claim under Rule 7 was filed, for determination of drawback.

7.3 the department has rejected the claim for drawback wherever the duty has been paid (BCD) through duty free scrips. According to the department, no drawback is available for BCD paid using FMS, FPS, DEPB (wrongly referred to in the Order in Appeal as 'VKGUY') scrips.



7.4 The gist of the submissions of the Applicant is as under:

- a. Customs duty paid by debiting FPS/FMS/DEPB scrip is valid payment of Customs duty. It has been repeatedly recognized by Courts and Circulars as equivalent to payment of duty using cash (details set out in paragraphs B3, B8, B.9, D.1 of the Revision applications filed).
- b. There is no bar under the Drawback Rules, against grant of drawback of BCD paid by debiting duty credit scrips, when such duty paid inputs have been used in the manufacture of goods exported out of India.
- c. Imports against duty free scrip is administered by way of an exemption Notification (in the present case, it being Notifications No. 92/2009-Cus, 93/2009-Cus & 97/2009-Cus) too does not bar such grant of drawback.

7.5 **Development subsequent to filing of the Revision Applications**

An identical dispute came up for consideration before the Gujarat High Court [reported at 2016 (339) E.L.T. 509 (Guj.), in the cases of:

<i>Party Name</i>	<i>Application No.</i>	<i>Scripts concerned</i>	<i>Relevant paragraph of Order</i>
M/s. Ratnamani Metals & Tubes Ltd.	SCA No. 8025 of 2015	DEPB	2
M/s. Jayant Agro Organics Ltd.	SCA No. 2753 of 2016	FPS, FMS	4

7.6 Both the exporters had imported various inputs by utilising various duty credit scrips like DEPB, FMS, FPS etc. The imported inputs were utilised by them for manufacturing various end product which were exported. Thereafter, brand rate of drawback



was claimed by the exporters claiming duty paid on the inputs. The duties were paid utilising the duty-free scrips.

- 7.7 The Original authority and the appellant authority denied the grant of drawback of BCD paid using the scrips, on similar grounds raised in the present case.
- 7.8 Aggrieved by the denial of drawback pertaining to the BCD amount, the parties therein approached the Hon'ble High court of Gujarat for relief. After analysing the law pertaining to the issue in detail, the High Court, vide its decision dated 6.5.2016 held as under:
- a. Duty paid by debiting duty scrips is equivalent to payment of duty using cash
  - b. There is no provision under the Drawback Rules prohibiting the grant of drawback on BCD paid by debiting duty scrip;
  - c. The condition in the Notifications governing duty scrips, regarding grant of drawback of CVD, does not bar the grant of drawback of BCD paid by debiting scrip, and thus, drawback of BCD paid by debiting scrips like DEPB/FPS/FMS etc. will be available to the assessee.

The relevant extracts from the decision of the High Court is as follows:

17. As noted, neither Section 75 nor the Rules of 1995, prohibits entitlement of drawback when the basic customs duty has been paid through DEPB scrip. To read such limitation through the clarification issued by the Government of India in various circulars which principally touch the question of eligibility of drawback, when additional duties have been paid through DEPB would not be the correct interpretative process.

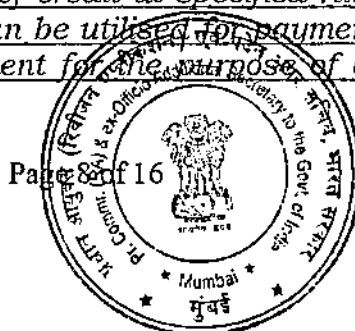
18. We may recall, in the circular dated 28-10-2005 it was clarified that hitherto additional customs duty paid in cash only was adjusted as Cenvat credit or duty drawback and the same paid through debit under DEPB was not allowed as duty drawback. However, with effect from 1-9-2004, Foreign Trade Policy provided that additional customs duty/excise duty paid in cash or through



debit under DEPB shall be adjusted as Cenvat credit or duty drawback as per the rules. It was in this background provided that additional customs duty paid through debit under DEPB shall also be allowed as brand rate of duty drawback. Thus, the Foreign Trade Policy removed restrictions on additional customs duty being adjusted against Cenvat credit or duty drawback, unless paid in cash. A corresponding clarification was issued. This clarification cannot be seen in reverse as to eliminate the facility of draw back when basic customs duty has been paid through DEPB scrip.

19. The case of imports under different other schemes substantially stand on the same footing. Though as is bound to be, terms of each scheme are different. In case of VKGUY, the foreign policy provides for incentive with the objective to compensate high transport costs and offset other disadvantages to promote exports of various products specified therein which include the agricultural produce, minor forest produce, Gram Udyog products, forest based products etc. In case of such exports, the incentive is made available in form of duty credit scrip at the rate of 5% of the FOB value of the exports. Likewise, in case of FMS, it is provided that same is to offset high freight cost and other externalities to select international markets to enhance India's export competitiveness in these markets. Specified product exported to specified countries qualify for such benefits. Duty credit scrip at the specified rate of the FOB value of the exports would be provided. In case of FPS, the objective is to promote export of products which have high export intensity/employment potential so as to offset infrastructural inefficiencies and other associated costs involved in marketing of these products. In this scheme also, exports qualify for duty credit scrip at the rate of 2% or 5% of the FOB value as provided in the notification. It can thus be seen that in all these cases, for different reasons the Government of India provides export incentives at specified rates of the value of the exports. The intention is to make the exports viable, more competitive and to neutralise certain inherent handicap faced by the industry in the specified areas. These export incentive schemes have nothing to do with offset of duty element of imported raw materials or inputs used in export products, unlike as in the case of DEPB.

20. Thus, under these schemes, the Government of India having realised that exports in question require added incentive, provides for the same in form of credit at specified rate of FOB value of the export which credit can be utilised for payment of customs duty. To disqualify such payment for the purpose of duty drawback would



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indirectly amount to denying the benefit of the export incentive scheme itself.

(emphasis supplied)

- 7.9 The Applicant understands that the Department has accepted the aforesaid Order of the High Court and had not challenged the same before a Higher forum.
- 7.10 Further, the Applicant understands that Pune Commissionerate is following the Order of the High Court in the case of *Ratnamani* and is granting drawback to other assessees, of BCD paid by using FPS, FMS, DEPB scrips.
- 7.11 Similarly, in the recent case of M/s Honeywell Turbo Technologies India Pvt. Ltd. vide Order-in-Original No. 01-13/2017-CUS/ASRA/Mumbai dated 08.11.2017 passed by the Hon'ble Revisionary Authority, brand-rate of drawback was allowed in relation to BCD paid on the goods imported using FPS/FMS scrips, by following the decision of *Ratnamani*.
- 7.12 Thus, the ratio laid down in the aforesaid Orders must be followed and drawback sought by the Applicant must be granted. The aforementioned Orders have been passed in respect facts identical to those of the Applicant. It is submitted that equality among assessees should be maintained, and the Applicant should not be discriminated against unfairly. Applicant places reliance on the decision of *Damodar J. Malpani v. Collector of Central Excise*, 2002 (146) ELT 483 (S.C.) to all assessee must be equitably treated.
- 7.13 In the light of the above submissions and in the light of the details submissions given in the Revision Applications, it is humbly prayed that the Revision Applications filed should be allowed.
8. The Government has carefully gone through the submissions made by the applicant in the instant Revision Application and oral submissions made during the personal hearing along with the Order in Appeal, 6 letters referred



to in Para 2 above, Orders in Appeal , and the circulars / relevant judgements cited for and against in this case.

9. Government notes that the main issue involved in the instant revision application is whether the applicants are entitled to drawback against the Basic Customs Duty (BCD) paid through duty free scrips such as Focus Product Scheme (FPS) , Focus Product Scheme (FMS ) and Duty Entitlement Pass Book (DEPB) or not?

10. Government observes that the Additional Commissioner (BRU), Central Excise, Pune - I had denied the drawback claim against Basic Customs duty on the following grounds:

- *On going through again the Notifications it is seen that the exemption is given as follows :-*
  - a) *the whole of the duty of Customs leviable thereon under the First Schedule of the Customs Tariff Act, 1975*
  - b) *the whole of the additional duty leviable thereon under Section 3 of the Customs Tariff Act, 1975*

*And condition no. (vi) of the notification No 92/2009 Cus, No 93/2009 Cus and No 97/2009 Cus and condition No, (v) to the Notification No. 95/2009 Cus states that "the importer shall be entitled to avail the drawback of cenvat credit of additional duty leviable under Section 3 of the Customs Tariff Act against the amount debited in the said scrip".*

*After going through the said Notification it is observed it is a conditional exemption notification exempting certain goods from payment of basic customs duty and additional customs duty if conditions mentioned therein are followed. In other words when any goods are imported by availing benefit of the said notification, those goods are exempted goods i.e. on which customs duty has not been paid. When customs duty has not been paid on the goods, a question of granting drawback in respect of the*



same does not arise. However, by virtue of condition no. (vi)/(v) of the said notifications the importer is entitled to avail drawback / cenvat credit of additional duty leviable under Section 3 of Customs Tariff Act against the amount debited in the scrip.

It is observed that the notification does not grant such a benefit in respect of basic customs duty debited in the scrip. In other words drawback of basic customs duty debited in the scrip is not allowed.

- As regards to other parameters i.e fulfillment of condition to Rule 7(1) to the DBK Rules 1995, it is observed the All Industry Rate for Shipping Bills (mentioned in each letter / order) is more than the 4/5<sup>th</sup> of the amount of drawback, hence Rule 7(1) condition not satisfied.

The decision of the Additional Commissioner (BRU) / Assistant Commissioner (BRU), Central Excise, Pune Commissionerate was upheld by the Commissioner (Appeals-I), Central Excise, Pune as legal and correct vide Order dated 19.08.2015.

11. The Government has carefully examined the contentions of both the sides. The Government observes that an identical issue in Revision Application No. 371/48-60/DBK/2015-RA filed by M/s Honeywell Turbo Technologies India Pvt. Ltd., Pune came up for consideration before this office in recent past and Government vide Order No. 1-13/2017-CUS/ASRA/Mumbai Dated 08.11.2017 allowed brand-rate of drawback in relation to BCD paid on the goods imported using FPS/FMS scrips, by following the decision of Hon'ble Gujarat High Court Judgement [2016(339)ELT 509 Guj] in Ratnamani Metals and Tubes Ltd. While partially allowing the Revision Application filed by M/s Honeywell Turbo Technologies India Pvt. Ltd., Government in its aforesaid order observed as under :



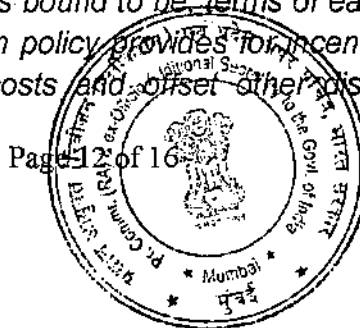
"19. The Government has carefully examined the contentions of both the sides. The Government has noticed that the identical issue came up for consideration before Hon'ble Gujarat High Court in the case of Ratnamani Metals and Tubes Ltd and Jayant Agro Organics Ltd. [reported in 2016(339)ELT 509 (Guj)]. While deciding the issue whether, when an importer utilizes DEPB scrip for the purpose of customs duty on inputs and raw materials, benefit of duty drawback would be available upon export of final product, after hearing both sides, High Court allowed the petitions. The relevant paras of the said judgement (paras 16 and 17) dated 06.05.2016 are reproduced below :-

"16. It can thus be seen that the DEPB scheme aims at neutralising the incidence of customs duty on import component of export product, where upon export, credit would be given at specified rate on the FOB value of the exports. Such credit could be utilised for payment of duty in future or may even be traded. It was in this background that Supreme Court in case of Liberty India v. Commissioner of Income tax reported in 317 ITR 218, had held that DEPB being an incentive which flows from the scheme framed by the Central Government, hence, incentives profits are not profit derived from the eligible business (in the said case falling under Section 80IB of the Income Tax Act) and belong to the category of ancillary profits of the undertaking. Such incentive in the nature of DEPB benefit from the angle of the income tax has been seen as income of the undertaking. Thus when an importer whether imports goods under DEPB scheme or pays customs duty on the imports on purchased DEPB credits, he essentially pays customs duty by adjustment of the credit in the passbook. It would therefore, be incorrect to state that the imports made in such fashion have not suffered the customs duty".

17. "As noted, neither Section 75 nor the Rules of 1995, prohibits entitlement of drawback when the basic customs duty has been paid through DEPB scrip. To read such limitation through the clarification issued by the Government of India in various circulars which principally touch the question of eligibility of drawback, when additional duties have been paid through DEPB would not be the correct interpretative process".

Further, the said judgement also considers the various exports promotion schemes like VKGUY, FMS & FPS on the same footing as that of DEPB Scheme. The relevant paras i.e 19, 20 of the said judgement are reproduced below:-

"19 The case of imports under different other schemes substantially stand on the same footing. Though as is bound to be, terms of each scheme are different. In case of VKGUY, the foreign policy provides for incentive with the objective to compensate high transport costs and offset other disadvantages to promote



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exports of various products specified therein which include the agricultural produce, minor forest produce, Gram Udyog products, forest based products etc. In case of such exports, the incentive is made available in form of duty credit scrip at the rate of 5% of the FOB value of the exports. Likewise, in case of FMS, it is provided that same is to offset high freight cost and other externalities to select international markets to enhance India's export competitiveness in these markets. Specified product exported to specified countries qualify for such benefits. Duty credit scrip at the specified rate of the FOB value of the exports would be provided. In case of FPS, the objective is to promote export of products which have high export intensity/employment potential so as to offset infrastructural inefficiencies and other associated costs involved in marketing of these products. In this scheme also, exports qualify for duty credit scrip at the rate of 2% or 5% of the FOB value as provided in the notification. It can thus be seen that in all these cases, for different reasons the Government of India provides export incentives at specified rates of the value of the exports. The intention is to make the exports viable, more competitive and to neutralize certain inherent handicap faced by the industry in the specified areas. These export incentive schemes have nothing to do with offset of duty element of imported raw materials or inputs used in export products, unlike as in the case of DEPB."

"20 Thus, under these schemes, the Government of India having realised that exports in question require added incentive, provides for the same in form of credit at specified rate of FOB value of the export which credit can be utilised for payment of customs duty. To disqualify such payment for the purpose of duty drawback would indirectly amount to denying the benefit of the export incentive scheme itself'.

20. The office of the Commissioner of Goods and Service Tax, Kutch, Gandhidham vide letter F No. Legal/SCA-01/2015 dated 17.10.2017 has informed that they had proposed filing of SLP before Hon'ble Supreme Court against Hon'ble Gujarat High Court's order dated 06.05.2016 in the case of Ratnamani Metals and Tubes Ltd and Jayant Agro Organics Ltd. However, Senior Analyst, Legal Cell CBEC New Delhi vide letter F.No. 276/178/2016-CX.8A, dated 21.09.2016 informed that with the approval of the competent authority it was decided not to file SLP in the subject case, as the Revenue has been adopting views that lead to conclusion that debit of BCD in the scrip is a mode of payment of that duty in lieu of cash payment of duty, since freely transferable duty credit was given in lieu of cash refund or incentive.

21. In view of the aforesaid clarification of the Legal Cell CBEC, Govt. observes that Hon'ble Gujarat High Court's order dated 06.05.2016 in the case of Ratnamani Metals and Tubes Ltd and Jayant Agro Organics Limited has attained finality.

*[Handwritten signature]*



22. Thus, it is evident that the issue involved in this case is squarely covered by the ratio of aforesaid Hon'ble Gujarat High Court's order dated 06.05.2016 in the case of Ratnamani Metals and Tubes Ltd and Jayant Agro Organics Ltd. [reported in 2016 (339) ELT 509 (Gujarat)], in favour of the applicants.

23. The Government following the ratio of aforementioned judgment of Gujarat High Court which has attained the finality, holds that the applicants' are entitled to drawback against the Basic Customs Duty paid through Focus Product Scheme (FPS) and Focus Product Scheme (FMS) scrip.

24. Government also observes that the applicant has requested that they should be allowed All Industry Rate of drawback by placing reliance in this regard on CBEC Circular No. 10/2003-Cus wherein it was clarified by CBEC that considering the time involved in fixation of Brand Rate of Drawback, the exporter should be sanctioned the All Industry Rate of Drawback to avoid financial hardship on the exporter. That further reliance in this regard is also placed on the decision of Hon'ble Bombay High Court in case of Alfa Laval (India) Ltd. [2014 (309) ELT 17 (Bom.)] wherein the Hon'ble High Court has considered the principle of provisional drawback.

25. In this regard the Government observes that there was no such provision existing at the material time of export for providing payment of provisional drawback in respect of cases under litigation. Government further observes that drawback claims have been rejected for non fulfillment of condition of Rule 7(1) of Customs & Central Excise Duties & Service Tax Drawback Rules, 1995, in as much as the All Industry Rate is more than four – fifth of the amount of duties and taxes of which claim was made. In this connection para 23 of Hon'ble Bombay High Court's, judgement in the case of Alfa Laval (India) Vs Union of India Ltd. 2014 (309) E.L.T. 17 (Bom.) is referred, which reads as under :

*"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.*

26. From the above, the Government observes that application under Rule 7(1) of Customs & Central Excise Duties & Service Tax Drawback Rules, 1995 can be made only when 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. In view of the above Govt. observes that the decision of the Additional Commissioner (BRU) / Assistant Commissioner (BRU), Central Excise Pune-I for rejecting the claim for non fulfillment of condition of Rule 7(1) of Customs & Central Excise Duties & Service Tax Drawback Rules, 1995 i.e. when the All Industry Rate is more than four - fifth of the amount of duties and taxes of which claim was made, is legal and correct and hence is liable to be upheld.

12. As the facts of the case of M/s Honeywell Turbo Technologies India Pvt. Ltd., Pune are identical, Government holds that the ratio of the above judgment will squarely apply to the case in hand.

13. In view of the above facts and circumstances Government

- (i) allows the drawback of the Basic Customs duty paid through duty free scrips , viz. Focus Product Scheme (FPS) and Focus Product Market Scheme (FMS) and Duty Entitlement Pass Book (DEPB) to the applicant claimed under the impugned six applications,

ATTESTED

*[Handwritten Signature]*

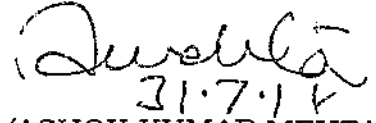


(ii) upholds Order-in-Appeal passed by Commissioner (Appeals-I), Central Excise, Pune rejecting the drawback claim for non fulfillment of condition of Rule 7(1) of Customs & Central Excise Duties and Service Tax Drawback Rules, 1995.

14. The Order-in-Appeal No. PUN-EXCUS-001-0057-15-16 to PUN-EXCUS-001-0062-15-16 dated 19.8.2015 passed by Commissioner (Appeals-I), Central Excise, Pune is modified to the above extent.

15. The revision applications are disposed of in terms of above.

16. So, ordered.

  
31.7.18  
(ASHOK KUMAR MEHTA)

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

ORDER No. <sup>610-615</sup> /2018-CX (WZ) /ASRA/Mumbai DATED, 31.07.2018.

To,

M/s Tata Ficosa Automotive Systems Ltd.,  
Taluka-Mulshi,  
Pune-411 057

Copy to:

1. The Principal Commissioner of CGST, Pune-I Commissionerate, GST Bhavan, ICE House, Opp. Wadia College, Pune 411 001.
2. The Commissioner of CGST (Appeals-I) Pune, GST Bhavan, ICE House, Opp. Wadia College, Pune 411 001
3. The Additional Commissioner (BRU), CGST Pune-I Commissionerate. GST Bhavan, ICE House, Opp. Wadia College, Pune 411 001.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.



**ATTESTED**

  
13/8/18  
**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)