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सत्यमेव जयते

**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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F.No. 371/308/DBK/2021-R.A.

17181

Date of Issue :- 05.10.23

ORDER NO. 698/2023-CUS /ASRA/MUMBAI DATED 28.9.23 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : M/s. Meghmani Dyes and Intermediates LLP.,  
8<sup>th</sup>, Floor, Siddhivinayak Tower,  
B- Block, Near Adani Vidya Mandir,  
Behind DCP office. Off S.G. Raod,  
Makarba, Ahmedabad -380051

Respondent : Pr. Commissioner Customs(Export), Ahmedabad.

Subject : Revision Application filed, under section 129 DD of the Customs Act, 1962 against the Order in Appeal No. AHD-CUSTM -000- APP- 285-21-22 Dated 20-07-2021 passed by the Commissioner of Customs (Appeals), Ahmedabad.

Basic Custom Duty and other cesses, as the AIR ( All Industry Rate) was lower than the duty incidence borne by goods exported.

4.5 Therefore, the finding of the learned appellate commissioner that we have not referred any legal provision to claim Brand Rate on duty so paid by FMS to the extent of Basic Custom duties is factually incorrect and indicates lack understanding. The Impugned order is result of misinterpretation of FMS script utilisation circular 93/2009- Custom Dated 11.09.2009. Notification 93/2009 - Custom dated 11.09.2009 specifically deals with the utilization of FMS license. The notification clearly states that FMS license can be utilized for payment of Basic Custom Duties, Custom Cesses there on and for payment of AED under the Custom Tariff Act, 1975.

5. A Personal hearing was held in this case on 07.06.2023 and Shri Manohar Maheshwari, C.A., appeared online on behalf of the applicant and submitted that his claim for brand rate fixation was rejected as they have paid duty through FMS. He further submitted that Commissioner(Appeals) has erred in not considering their appeal. He requested to allow the application.

6. Government has carefully gone through the relevant case records available in case files, the written submissions and oral submissions made during the personal hearing and also perused the impugned letter referred to in Para 2 above, the Order-in-Appeal and the RA.

7. 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 Market Scheme (FMS ) or not?

8. 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 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.*

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."*

9. 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.

10. In view of the above facts and circumstances, Government allows the drawback of the Basic Customs duty paid through duty free scrips, viz. Focus Product Market Scheme (FMS) to the applicant claimed under the impugned application.

11. As such, Government sets aside the impugned Order in Appeal No. AHD-CUSTOM -000- APP- 285-21-22 Dated 20-07-2021 and allows the revision application.

*Shrawan*  
*28/9/23*

( SHRAWAN KUMAR )

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

ORDER No. *698*/2023-CUS /ASRA/Mumbai DATED, *28.9.23*

To,

M/s. Meghmani Dyes and Intermediates LLP.,  
8<sup>th</sup>, Floor, Siddhivinayak Tower,  
B- Block, Near Adani Vidya Mandir,  
Behind DCP office. Off S.G. Raod,  
Makarba, Ahmedabad -380051

Copy to:

1. Pr. Commissioner Customs(Export), Ahmedabad.
2. Commissioner of Customs (Appeals), Ahmedabad.
3. Sr. P.S. to AS (RA), Mumbai.
4. Spare Copy.