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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. 371/36-A/DBK/2017-RA/12/61 Date of Issue 12.10.18

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ORDER NO. 704 /2018-CX(WZ)/ASRA/MUMBAI/DATED 28.09.18 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

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Applicant : M/s John Distilleries Pvt. Ltd., At Post Chitali Tal. Rahata, Ahmednagar.

Respondent : Commissioner CGST, Nashik.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the letter F.No. VIII (Cus) 35/DBK-16/NSK-II/2015/1831 dated 16.10.2017 issued by Assistant Commissioner (Tech), GST & Central Tax, Nashik.



## ORDER

This Revision Application has been filed by M/s John Distilleries Pvt. Ltd., (hereinafter referred to as 'the Applicant') against the letter F.No. VIII (Cus) 35/DBK-16/NSK-II/2015/1831 dated 16.10.2017 issued by Assistant Commissioner (Tech Hq), GST & Central Tax, Nashik.

2. Briefly stated facts of the case are that the Applicant M/s John Distilleries Pvt. Ltd., had exported the manufactured goods i.e. "India Made Foreign Liquor" of various brands from its supporting manufacturer's factory i.e. M/s. Radico NV Distilleries Maharashtra Pvt. Ltd., Aurangabad, under various shipping bills under Drawback Scheme during the period from 31.05.2016 to 31.01.2017. The Shipping bill No.7976490 dated 31.05.2016, being the first shipping bill, the Applicant had to file the DBK Application for fixation of Brand Rate within three months from the date of Let of Export date of First Shipping Bill or within 1 Year (Twelve Months) of permissible condonable period with the reasons.

3. The Applicant had filed DBK Brand Rate Application dated 18.03.2017 for the above supplies together with all the required documents including DBK-I, DBK-II, DBK-IIA, DBK-III & DBK-IIIA, working sheet, shipping bill, etc. which was acknowledged by the authority (i.e. DBK Brand Rate sanction Authority / Jurisdictional Commissioner) on the same day. The Applicant had also submitted TR6 challan evidencing payment of Rs.2000/- as late fee together with condonation letter payable for the period starting after completion of 90 days of first shipping bill's let export date till the date of filing the application (for 12 months) as prescribed in the provisions of DBK Rules. The Applicant vide its letter dated 18.03.2016 had reminded the authority with the justified reasons with citations for delay in filing the application and requested the authority for fixation of DBK Brand Rate after condoning the delay.

4. The applicant had all of sudden received a rejection letter F.No. VIII (Cus) 35/DBK-16/NSK-II/2015/1831 dated 16.10.2017 issued by Assistant Commissioner (Tech Hq), GST & Central Tax, Nashik, informing them that their application for condonation of delay dated 18.03.2017 is rejected by the competent authority on the reasons that your company is a multinational company having best manpower resources, talent and infrastructure, further there is no valid and specific reasons given for such delay.



5. Being aggrieved by said finding and rejection letter, which was issued without following the principles of natural justice of personal hearing, the Applicant has preferred the present Revision Application before Government on the following grounds that :-

- 5.1 The Respondent had totally erred in law by rejecting the application of the applicant for fixation of Brand Rate in respect of the manufactured exported goods India Made Foreign Liquor" of various brands purely on unreasonable, illegal and wrongful ground. The provision of allowing condonation of delay if made within the condonable period must be allowed and entertained by the Authority without any discretion as this being a trade facilitation measures provided by the Govt. to enhance the exports and the benefits if any accruing thereto must be granted to the exporters.
- 5.2 The law provides that every adjudicating authority had mandatorily follow the principal of nature justice before rejecting any claim / refund / fixation of DBK Brand Rate application. Failure to give a personal hearing to the applicant before rejecting the claim/application, is a serious / great lapse/error on the part of the Respondent and hence on this ground alone the Appeal of the Appellant be allowed and the letter of rejection be set aside.
- 5.3 The Board Circular No.14/2003-Cus. Dated 06.03.2003 clearly provides that "Delay within prescribed time limit, may be generally condoned on receipt of exporter's application", but in the present case, without giving the Appellant an opportunity to be heard, their claim was rejected without speaking order by the competent authority. From the letter issued it is not known who is the competent authority whether Assistant Commissioner or the Principal Commissioner or the Commissioner. There is no whisper of any facts finding in the letter and therefore said letter needs to be set-aside, and the Appellant be sanctioned DBK Brand Rate Application treating the same is filed within permissible condonable prescribed time.
- 5.4 For getting the delay condoned by the Authority, filing of application for condonation of delay within the condonable period is a must. The Appellant has filed DBK application along with application for condonation of delay well within the



prescribed condonable period of 12 months as per the DBK Rules, 1995. When Rule 6 of the DBK Rules, 1995 specifically provides the provision filing applicable for condonation of delay, which is backed by the Board's clarification, the authority must consider the same and entertain the application without any question. Rejection of the application amounts to the denial of legitimate benefits that too without following the principle of natural justice and hence on this ground alone the impugned letter be set-aside and appellant's appeal be allowed.

5.5 The various courts in the following cases have held that "the legitimate export benefits should not be denied to the exporters on technicalities".

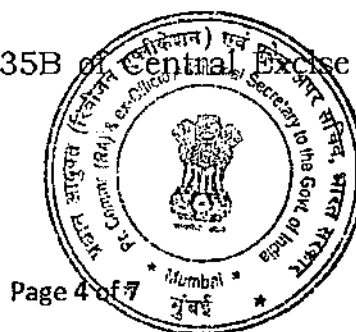
6. A personal hearing in the case was held on 27.09.2018. Shri Roshan, Assistant Manager (Export) attended the personal hearing on behalf of the Applicant. The Applicant reiterated the submissions filed in Revision Application and written submission filed on the date of hearing. It was pleaded that the Order passed by the Commissioner, Goods and Service Tax, Nashik rejecting the condonation of delay in filing Drawback claim (Spl. Brand Rate) be set aside and the Revision Application be allowed.

7. The Government has gone through the case records and submissions made by the applicant.

8. Government observes that in the instant case the Commissioner Goods and Service Tax, Nashik rejected the request of the Applicant for condonation of delay in filing application for fixation of Special Brand rate; which was communicated to the Applicant vide letter F.No. VIII (Cus) 35/DBK-16/NSK-II/2015/1831 dated 16.10.2017 issued by Assistant Commissioner (Tech Hq), GST & Central Tax, Nashik. It is against the said letter of rejection that the Applicant has filed present Revision Application under Section 35EE of the Central Excise Act, 1944.

9. Government further observes that under Section 35EE of the Central Excise Act, 1944, a revision application against the Order of Commissioner (Appeals) passed under Section 35A ibid lies with Government only if such orders relate to cases as mentioned in provision to sub-section (1) of Section 35B of the Act.

Sub-section (1) of Section 35B of Central Excise Act, 1944 reads as under :-



- (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -
  - (a) a decision or order passed by the Commissioner of Central Excise as an adjudicating authority;
  - (b) an order passed by the Commissioner (Appeals) under Section 35A;
  - (c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the Appellate Commissioner of Central Excise under Section 35, as it stood immediately before the appointed day;
  - (d) an order passed by the Board or the Commissioner of Central Excise either before or after the appointed day, under Section 35A, as it stood immediately before that day:

Provided that no appeal shall be to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to -

- (a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;
- (b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;
- (c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;
- (d) credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No. 2) Act, 1998.



Further, Section 35EE of Central Excise Act, 1944 states that

- “(1) The Central Government may, on the application of any person aggrieved by any order passed under Section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of Section 35B, annul or modify such order :

Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.”

10. Government thus finds that the Order passed by the Commissioner, Goods and Service Tax, Nashik rejecting their application for condonation of delay is not of the nature referred to in the first proviso to sub-section (1) of Section 35B of Central Excise Act, 1944. Hence the instant case does not fall within the purview of - ambit and scope of provisions contained for Section 35EE read with proviso to Section 35B(1) of the Central Excise Act, 1944 under which the instant Revision Application has been made. The appeal against the rejection order of Commissioner, Goods and Service Tax and Central Excise, Aurangabad lies to Appellate Tribunal (CESTAT).

11. Government therefore finds that the Revision Application filed before Central Government in terms of Section 35EE of Central Excise Act, 1944 in the present case by the Applicant is beyond jurisdiction. As such, this Revision Application is dismissed for being non-maintainable. The Applicant is at liberty to file an appeal before the appropriate authority under Section 35B of Central Excise Act, 1944.

12. So, ordered.

*Ashok Kumar Mehta*  
28.9.18

(ASHOK KUMAR MEHTA)  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India.

ORDER No. 704 /2018-CX (WZ) /ASRA/DATED 28.09.18.

To,

M/s John Distilleries Pvt. Ltd.  
At Post Chitali Tal. Rahata.,  
Dist . Ahemednagar



**ATTESTED**

*S.R. Hirulkar*  
12-10-18  
S.R. HIRULKAR  
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner, Goods and Service Tax and Central Excise, Nashik, Plot No. 155, Sector P-34, NH Jaistha & Vaishak, CIDCO, Nashik 422008.
2. The Assistant Commissioner (Tech. Hq.) Goods and Service Tax Nashik, Plot No. 155, Sector P-34, NH Jaistha & Vaishak, CIDCO, Nashik 422008
3. Sr. P.S. to AS (RA), Mumbai.
4. ~~Guard File.~~
5. Spare Copy.

Recd original order, COPY  
Parash Chawhan  
@KChawhan  
asanaasq25

**ATTESTED**

**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)

