

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

F. No.371/201/DBK/2022-RA / 28/15

Date of issue: 08.11.23

ORDER NO. 806/2023-CUS (WZ)/ASRA/MUMBAI DATED 31.10.2023
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : M/s. Sandvik Asia Private Limited,
Mumbai-Pune Road,
Dapoli, Pune-411012.

Respondent : Pr. Commissioner of Customs,
New Custom House, Mumbai.

Subject : Revision Applications filed. under Section 129DD of the
Customs Act, 1962, against the Order-in-Appeal No. MUM-
CUS-KV-EXP-84/2021-22 NCH dated: 26.10.2021 passed
by Commissioner of Customs (Appeals), Mumbai Customs
Zone-I.

ORDER

This Revision Application has been filed by M/s. Sandvik Asia Private Limited, Mumbai-Pune Road, Dapodi, Pune-411012 (hereinafter referred to as "the applicant") against Order-in-Appeal No. MUM-CUS-KV-EXP-84/2021-22 NCI dated 26.10.2021 passed by Commissioner of Customs (Appeals), Mumbai Customs Zone-I.

2. The brief facts of the case are that the applicant M/s. Sandvik Asia Pvt. Ltd. applied for Brand Rate fixation for a sum of Rs. 5,43,975.74 against Shipping Bill No. 8804027 dated 21.09.2017 filed under Rule 7(1) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. However, it was observed during scrutiny that the Shipping Bill had not been filed under Rule 7(1) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, as required. Instead, it had been filed under Rule 3 or 4 (AIR Drawback). This discrepancy was due to the absence of the required identifier '9807' before AIR Drawback Sr. No., which was mandated by CBIC Circular No 29/2015-Customs dated 16.11.2015. The Adjudicating Authority sought clarification from the Appellant, and in their response, they explained that they had used duty paid inputs in the manufacturing of the exported product, and the drawback under the brand rate was higher than the AIR drawback. They admitted to the incorrect declaration of the drawback scheme serial number and stated that they had submitted an application for amending the Shipping Bill on 27.11.2018. However, they had not received the amended Shipping Bill by that date and requested the processing of their application and the issuance of the Brand Rate fixation letter. The Adjudicating Authority vide Order-in-Original No. 39/BSM/ADC/BRU/2019-20 dttd. 18.10.2019 rejected the same as the drawback claim against the said Shipping Bill was filed and processed under Rule 3 or 4 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

3. Being aggrieved, the applicant preferred appeal against the Order-in-Original No. 39/BSM/ADC/BRU/2019-20 dtd. 18.10.2019. The Commissioner (Appeals) vide Order-in-Appeal No. MUM-CUS-KV-EXP-84/2021-22 NCH dated: 26.10.2021 rejected the appeal and upheld the Order-in-Original.

4. Aggrieved by the said Order in Appeal applicant has preferred Revision Applications mainly on the following grounds-

4.1 That the rejection of the Appeals by the Hon'ble Commissioner (Appeals), Mumbai Customs, Zone-I is clearly against the basic intention of Section 75 of Customs Act of granting refund of duties & taxes to exporters after the fulfilment of given conditions therein. They relied on the case of Cosmonaut Chemicals v/s. Union of India 2009 (233) E.L.T. 46 (Guj.).

4.2 The interpretation arrived by the Hon'ble Commissioner (Appeals), Mumbai Customs, Zone-I is not tenable in law and against the provisions of Duty Drawback Rules and Circulars / Notifications issued there under.

4.3 The Honorable High Court of Bombay has granted relief in case of Alfa Laval (India) Ltd. v/s. The Union of India and others vide Writ Petition No.1098 of 2013 dtd. 01.09.2014 and has allowed drawback under Brand Rate Fixation under Rule 7 even if All Industry Rate of Drawback(AIR) is already availed under Rule 3/4 Duty Drawback Rules, 2017.

4.4 That the law allows correction of any mistakes that are apparent on the face of the document that do not require any investigation. No time limits are stipulated in either of the said Sections.

4.5. That powers are given to AC/DC as per the Notification No. 35/2017-Cus(NT) dtd. 11.04.2017 for issuing the amendment under Sec.149 of the Customs Act, 1962. The amendment certificate issued by the Assistant Commissioner is valid and in conformity of the Customs Act, 1962 only.

4.6 That in the case of VRA Cotton Mills Pvt. Ltd. [2014 (309) ELT 0100 (Tri. Ahmd.)], the Tribunal held that Section 149 of the Customs Act, 1962 does not prescribe any time-limit for amendment of the document. The only condition is that the document on the basis of which amendment is sought should be available at the time of export. Therefore, the amendment sought cannot be denied on the ground of limitation. They also relied on the case of

- Diamond Engg (Chennai) P. Ltd. [2013(288) ELT 0265 (Tri. Mad.) and
- Parle Products Pvt. Ltd. [2017 (358) ELT 341 (Tri. Mumbai)].

4.7 That, the documentary evidence i.e. Export Invoice is the very much clear evidence for amendment of shipping bill. Also, the Export Invoice no. K750110 dtd. 20.09.2017 is attested by the preventive officer, Indian Customs, Mumbai. In the description column of the said invoice, it is clearly mentioned that, ...under Brand Rate Fixation through Drawback Serial No. 98078474B..

5. The applicant has filed an application for condonation of delay. This delay has been attributed by the applicant was due to Covid condition.

6. Personal hearing in this case was held on 11.07.2023. Mr. Shripad Deshkulkarni, Exim Specialist and Mr. Dastagir Syiad, Consultant duly authorized, appeared on behalf of the applicant and submitted that drawback Sr. No. was correctly mentioned on the invoice and the Shipping Bill has been correctly amended. They further submitted that Notification No. 35/2017-Customs (N.T.) dated 11.04.2017 permitted D.C./A.C. to amend Shipping Bill under Section 149. They contended that non mentioning of drawback Sr. No. on Shipping Bill is a clerical mistake for which they should not be denied substantial benefit. They submitted additional written submission.

7. They submitted additional written submissions Ref. No.: SMRT/RA/DBK-334 dated 11.07.2023 were in they reiterated their earlier

submissions and the M/s. JCB India Limited, case of Government vide Revision Orders No.398-401/2023-CUS dated 29.03.2023 may be taken into consideration while granting duty drawback under brand rate fixation based on the post-shipment amendment certificate.

8. On the issue of condonation of delay, Government notes that the OIA dated 26.10.2021 was issued on 27.10.2021. The applicant has claimed that the OIA was received by him on 10.11.2021. The application has been filed on 20.04.2022. Government notes that during the appealable period, due to the prevalent Covid conditions, the Apex Court had granted a moratorium for filing appeals etc. from 15.03.2020 to 28.02.2022 [Misc. Appln. No. 21/2022]. The applicant has filed the Revision Application on 20.04.2022. Considering the said moratorium period granted by the Apex Court, it is seen that the applicant had filed the revision application within time and therefore, Government hereby, condones the delay and proceeds to decide the case.

9. Government has carefully gone through the relevant case records available in case files, the written submissions and also perused the impugned Order-in-Original, the Order-in-Appeal and the RA.

10. Government observes that the applicants have applied for Brand rate fixation under Rule 7(1) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The point to be decided is whether non-mentioning of prefix 9807 is identifier in Shipping Bill mandated by CBIC Circular No 29/2015-Customs dated 16.11.2015 and amendment Certificate issued in this regard is a valid document for admissibility of the claim.

10.1 Government observes that an identical case, of M/s. JCB India Limited, has been disposed off by Government vide Revision Orders No.398-401/2023-CUS dated 29.03.2023 with the following findings/observations: -

*8. In respect of Sr. No. 2 to Sr. No. 7 of table mentioned at para 2. Applicant argued that provisions of Notification No. 109/2014-Cus. (N.T) are not applicable on the shipments made after the issuance of Notification No. 109&110/2015 dated 16.11.2015 and the circular no. 29/2015 dated 16.11.2015. They claimed that vide these notifications/circulars a separate procedure has been stipulated for fixation of brand rate even if drawback has already been claimed under AIR. Relevant portion of the circular no. 29/2015 dated 16.11.2015 is reproduced as:

Procedure for export under claim for brand rate under Rule 7 of Drawback Rules

1. The exporters opting for claim of brand rate under rule 6 the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 shall continue to declare the figure 9801 as an identifier under the Drawback details in the shipping bills filed.

2. For shipping bills filed on or after 23.11.2015, the exporters opting for claim of brand rate under rule 7 of Drawback Rules, 1995 shall declare the figure 9807 (instead of 9801) as an identifier in the shipping bill under the Drawback details. Immediately after the said identifier, the tariff item number of goods as shown in column (1) of the Schedule shall be declared followed by the character B. For example, if Tractors (other than tractors of heading 8709) are exported under claim for brand rate under rule 7 and the related Drawback Tariff Item number for such tractors in the AIR Schedule is 8701, the declaration on the shipping bill would be 980787018. Similarly, for Bicycle pump the related Drawback Tariff Item number in the AIR Schedule is 841403 and the declaration on the shipping bill would be 98078414038. Such a shipping bill is to be processed by the Customs for payment of provisional drawback amount equivalent

to the Customs component (B column of AIR Schedule consisting of rate and cap) for the said declared Drawback TI of AIR Schedule. This processing is subject to some conditions as applicable to AIR drawback wherein there is claim for only Customs component. Suitable change in EDI is being implemented by DG (Systems)."

From the above, it is clear that Applicant can claim fixation of brand rate even if they have already claimed drawback under AIR. For that to avail, the circular stipulates that Exporters have to mention 9807 as an identifier on the shipping bill but the Applicant in the present case, did not mention the same on the shipping bills at the time of Export. However, Applicant has submitted the amendment certificate issued by the Department under the provisions of section 149 of the Customs Act, 1962, reflecting the identifier required as per aforesaid circular. In this regard, Appellate Authority has observed that these amendment certificates were issued after one year in most of the cases and four months in some cases. Government observes that Act is not explicit in specifying the time limit for such amendments in shipping bills. Therefore, in absence of the same, it can be implied that once the amendment has been done, denying the brand rate fixation in such amended shipping bills would not be proper. Therefore, wherever appropriate, certificates of amendment have been submitted, fixation of brand rate as per rule 7(1) cannot be denied to the Applicant...."

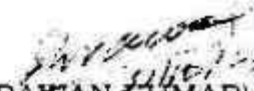
10.2 Government notes that the findings and decision arrived at in the above cited case is squarely applicable to the instant case too. Government holds that fixation of brand rate is allowed as amendment certificate has been submitted by the applicant.

11. In view of above position, Government sets aside Order-in-Appeal No. MUM-CUS-KV-EXP-84/2021-22 NCH dated 26.10.2021 passed by the

Commissioner (Appeals) which has upheld the rejection of the drawback claim and allows the revision application.

12. Government directs the original authority to carry out necessary verification on the basis of documents already submitted to the department as claimed by the applicant with the various export documents and decide the issue accordingly within eight weeks from the receipt of this Order. The applicant is also directed to submit the documents, if any, required by the original authority. Sufficient opportunity to be accorded to the applicant to present their case.

13. The Revision application is disposed off on the above terms.


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

ORDER No. 806/2023-CUS (WZ) /ASRA/MUMBAI DATED 31/10/2023.

To,

M/s. Sandvik Asia Private Limited,
Mumbai-Pune Road,
Dapoli, Pune-411012.

Copy to:

1. Pr. Commissioner of Customs, New Custom House, Mumbai.
2. Commissioner of Customs (Appeals), Mumbai Customs Zone-I.
3. Sr. P.S. to AS (RA), Mumbai
4. Spare Copy.