F.No.195/179-183/WZ/2018-RA
F.No.195/125-128/WZ/2019-RA
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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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.195/179-183/WZ/2018-RA /1250
F.No.195/125-128/WZ/2019-RA

Date of Issue: 01.03.23

ORDER NO. 84-88 /2023-CE(WZ)/ASRA/MUMBAI DATED 23 -02-2023 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Kubota Agricultural Machinery India Pvt. Ltd.

Respondent : Commissioner of Central GST, Pune-I Commissionerate;

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Commissioner of Central Tax (Appeals-I), Pune's Orders in Appeal No. PUN-EXCUS-001-APP-123-127-18-19 dated 21-06-2018 and PUN-EXCUS-001-APP-586-589-18-19 dated 14-01-2019.

ORDER

The following Revision Applications are filed by M/s Kubota Agricultural Machinery India Pvt. Ltd. situated at Gat no. 338/1, TVS Infrastructure Ltd., Village-Mahalunge, off Chakan-Talegaon Road, Taluka-Khed, Pune-410501 (hereinafter referred to as the applicant) against the Orders-In-Appeal No.PUN-EXCUS-001-APP-123 to 127-18-19 dated 21.06.2018 and PUN-EXCUS-001-APP-586-589-18-19 dated 14-01-2019 as detailed in the Table below passed by Commissioner (Appeals-I), Central Tax, Pune.

TABLE

Sl. No.	RA File No.	Order-In-Appeal No./ Date	Order-In-Original No./ Date	Amount
1	195/179-183/ WZ/18-RA	PUN-EXCUS-001-APP-123 to 127-18-19 dated 21-06-18	PI/CEx/DnIV/(CKN)/REB/PSP/407/ 17-18 dated 16-03-2018	Rs.60,75,215/-
2			PI/CEx/DnIV/(CKN)/REB/PSP/415/ 17-18 dated 29-03-2018	Rs.45,75,884/-
3			PI/CEx/DnIV/(CKN)/REB/PSP/416/ 17-18 dated 29-03-2018	Rs.29,37,485/-
4			PI/CEx/DnIV/(CKN)/REB/PSP/417/ 17-18 dated 29-03-2018	Rs.24,17,196/-
5			PI/CEx/DnIV/(CKN)/REB/PSP/418/ 17-18 dated 29-03-2018	Rs.34,80,079/-
6	195/125-128/ WZ/19-RA	PUN-EXCUS-001-APP-586 to 589-18-19 dated 14-01-19	PI/CT/DnIV/(CKN)/REB/PSP/47/18-19 dated 29-05-2018	Rs.80,15,872/-
7			PI/CT/DnIV/(CKN)/REB/PSP/46/18-19 dated 29-05-2018	Rs.73,18,146/-
8			PI/CT/DnIV/(CKN)/REB/PSP/55/18-19 dated 29-06-2018	Rs.99,57,007/-
9			PI/CT/DnIV/(CKN)/REB/PSP/65/18-19 dated 31-07-2018	Rs.1,19,99,247/-

2. The issue in brief is that the Applicant are engaged in export of agricultural equipment parts under claim of rebate under Rule 18 of the CER read with Notification 21/2004 CE(NT) dated 06/09/2004. They are registered as non-assessee under Excise and holding registration no. AADCK5472ECE002. The Applicant had filed the rebate claims before the Department for the exports made by them. The Applicants were issued with Show Cause Notices asking as to why the rebate claims may not be rejected. The Adjudicating Authority rejected the rebate claims vide the above mentioned OIOs whereby the rebate claims were rejected, mainly on the following grounds.

(i) the Appellants have contravened the Rule (3), Rule (4) and Rule (5) of the Notification no 21/2004 CE(NT) dated 06/09/2004

(ii) They are not manufacturer and they are in trading business. They had exported goods after procuring the same from outside and without processing of inputs and without manufacturing the final exported products.

3. Aggrieved by the aforesaid OIOs the applicant filed appeal with the Commissioner Appeals who vide the above mentioned Orders in Appeal upheld the impugned Orders in Original and rejected the applicant's appeal.

4. Aggrieved by the aforesaid Commissioner Appeal's Order's the Applicant filed the current Revision Application before the Government of India on the following grounds:

4.1. That the only ground on which the Commissioner (Appeals) had upheld the rejection order in the impugned O-I-A is that the activity of testing, inspection and packing carried out by the Applicant does not fall under the purview of 'processing for the purpose of claiming input stage rebate under Notification 21/2004 - C.E. (N.T). The Applicant submits that other grounds on which are taken in the O-1-O issued by the lower authority is considered to be dropped. In this regard, the applicant has provided the list of points made by the Applicant that has been duly accepted/not disputed by the Commissioner Appeals vide their impugned order:

a) Kubota is not a mere merchant exporter as they undertakes certain activities.
b) Kubota undertakes various inspection and packing activity which is integral part of the business activity.
c) Any processing not amounting to manufacture' will also be entitled for input stage rebate benefit under the said notification. Therefore, there is no bar for a processor from availing the rebate benefit.
d) Circular no. 1047/35/2016-CX dated September 16, 2016 issued by CBEC clarifies eligibility of simultaneous customs portion of drawback and input stage excise rebate.
e) Critical issues in Direct taxes has nothing to do with the issue in Indirect taxes. Both the matters are independent to each other and does not have any bearing to each other.

4.2. Activity of processing not disputed in earlier orders of Commissioner (Appeals) or Revision petitions. The Applicant summarized the findings of the Commissioner (Appeals) in the previous favourable orders:

a) That the provisions does not bar a processor from availing rebate benefit The process of testing/re-packing etc. definitely amounts to processing' of goods

b) That they have complied with the conditions/procedures of notification 21/2004 C.E. (NT) dated 06.09.2004 since there is no dispute about actual export of goods. Therefore, Applicants were eligible for input stage rebate claim.

c) It is to be kept in mind that export benefits are introduced by the Government to earn foreign exchange and if the exporter has received convertible foreign currency against the exports, the benefit cannot be denied until anything contrary to the law is proved; and

d) There is no embargo for availment of customs component of drawback in addition to refund of duty paid on terminal products of exported goods.

e) The Applicant submitted that the Department has preferred revision petitions under sub section (1A) of Section 35EE of Central Excise Act, 1944 against the earlier favourable orders of the Commissioner (Appeals). It is to be noted that the even under the said appeal before Ho'ble Bench of Revision Petition the fact that the activity carried out by the Applicant would not be covered under the term 'processing' is not contested. The only ground of revision raised by the Department in the petition filed against the previous favourable orders passed by the department was that the Applicant should not have simultaneously claimed the benefit of customs drawback along with input stage rebate.

f) The Applicant submitted that once the Authority had concluded based on facts; unless and otherwise there is any change brought in facts or legal provisions or decision by higher forum, conclusion drawn by the said authority should not be changed. The Applicant relied on the following judicial precedence's:

Relevant case law	**Extract of case law**
Camlin Private Ltd. v. Union of India and Another 1982 (10) E.L.T (Bom.)	An order passed by Court of law or the Appellate Authority is final and conclusive qua the parties. Therefore, it is not open for the Central Excise authorities to change their stand capriciously and put the assessee to avoidable inconvenience and harassment, if the position is exactly same legally and factually as well it was on an earlier occasion.
J.K. Synthetics Ltd. v. Union of India 1981 (8) E.L.T 328 (Del.)	The rule of natural justice does not allow the same assessing authority or one subordinate to him to revise his earlier views arbitrarily. If the original decision taken by the authority is wrong, it is open to the higher authorities to revise or review such decision under the Act and to set out the correct position. But, if this has not been done, or if the revisional authority has taken a

	view in favour of the assessee for an earlier period fresh proceedings cannot be launched against the assessee merely because the Deptt. later thinks that the previous decision was untenable or afresh decision should be obtained. This will neither prejudice the interests of the Department nor the assessee but would be a harmonious reconciliation between the two well established positions.

4.3. Benefit of Notification 21/2004 - C.E. (N.T.) available for all processing not amounting to manufacturing and not only for packing or blending activity. The Commissioner Appeals while analyzing whether the activity undertaken by the applicant is covered under the term 'processing have analyzed whether the same is covered under the term blending' or 'packing. The reasoning provided for analyzing whether the same is covered under the term blending/packing' is that based on reading the para 1.3 of part V of Chapter 8 of CBEC's Central Excise manual. The Commissioner Appeals have taken a restrictive view that the benefit is of input stage rebate is available only for packing/blending activities and hence analyzed only these two terms for concluding that the activity of testing, inspection and packing does not qualify as processing for the purpose of notification. The Applicant submitted that the intent of the legislature is not to impose any restriction on the benefit input stage rebate under the said notification to specific activities i.e. packing/blending. The part which should be emphasised is on the portion relating to any processing not amounting to manufacture. Accordingly, the intention of notification is to cover all activities which are not amounting to manufacturing as defined under section 2 (f) of the Central Excise Act, 1944. Further, the Board, had even issued various Circular clarifying points relating to the notification 21/2004-C.E NT. However, even under the said circulars, it is not brought out that the benefit would be available only for packing/blending activities. In this regard, the Applicant relied on the case of M/s A.V. Industries 2011 (269) E.L.T. 122 (G.O.L.) wherein the benefit of input stage rebate has been granted to an assessee who was carrying out testing and packing activities on stabilizer links.

4.4. Packing need not be prescribed in chapter notes to qualify as 'processing' for availing input stage rebate. The Commissioner (Appeals) has held in the impugned O-1-A that packing activity should be specified under the chapter notes of exported goods to be treated as 'processing' for the purpose of Notification 21/2004-C.E. (N.T). The Applicant submitted that the benefit of input stage rebate under Notification 21/2004 C.E. (N.T.) is basically extended for following activities:

• Manufacture - Activity which is covered under the Section 2 (1) of Central Excise Act, 1994 i.e. new product; Chapter note/section note,

• Processing - Activities which basically do not amount to manufacture as defined under Section 2(f) of the Central Excise Act, 1944.

The Applicants Relied on following judicial precedence's wherein it has been categorically held that the benefit of Input stage notification would be eligible even if the activity undertaken by the exporter does not amount to manufacture:

Relevant case law	**Extract of case law**
Transformers & Electricals Kerala Ltd. v Of Commr. C.Ex, Cochin 2006 (205) E.L.T. 1136(Tri.-Bangalore)	Transformers exported to Oman. Subsequently, the transformers have been imported for repairs and credit of Rs. 45,115/- was availed on inputs used in repair activity. The Commissioner (A) held that Cenuat credit availed has to be reversed as the process of repairs does not amount to manufacture. The Tribunal held that notification 43/2001-C.E. (N.T.) provided for the benefit of excise rebate even in respect of inputs used in the processing of export goods. There is no necessity of reversing credit.
Satish Agarwal V. Commissioner of Central Excise 2013 (297) E.L.T. 586(Tri.-Mumbai)	The Appellant exported processed fabrics on payment of duty and claimed rebate of the same. Cenvat credit on inputs including packing material was taken. Cenvat credit has been denied on the ground that the Appellant was not engaged in manufacture of processed fabrics. The Appellant also submitted that in case of process not amounting to manufacture, benefit under Notification 21/2004-C.E. (N.T.) would be available. The Tribunal held that even if duty is not payable, and the same has been paid, rebate would be admissible. In view of the above, the appellants have a very strong case in their favor for waiver of pre-deposit.

4.5. Specific Judicial precedents allowing input rebate benefit for activity of testing and packing. There are various established judicial precedents allowing the benefit of input stage rebate for processing which does not amount to manufacture. The key ones are summarized below:

Relevant case law	**Extract of case law.**
IN RE : A.V. INDUSTRIES 2011 (269)	Rebate on exports Testing/re-packaging of export material Stabilizer Links exported after testing and re-

E.L.T. 122 (G.O.I.)	packaging It amounted to processing of materials for export On export of such Stabilizer Links, exporter was entitled to rebate of duty paid on them - Department plea that Stabilizer Links were exported as such, rejected Notification No. 21/2004- CE (N.T.) Rule 18 of Central Excise Rules, 2002. [paras 9, 10,11] Rebate on exports Excisable goods used in their manufacture or processing - For entitlement to rebate, it is not necessary that such goods may be inputs for export goods or their processing should amount to manufacture in terms of Section 20 of Central Excise Act, 1944 Their processing was sufficient In that view, testing and re-packaging held to amount to processing - Notification No. 21/2004-C.E. (N.T.)- Rule 18 of Central Excise Rules, 2002. [paras9,10,11]
SATISH AGARWAL Vs COMMISSIONER OF EXCISE, THANE-I 2013 (297) EL.T. 586 (Tri. Mumbai).	The benefit of input stage rebate can be claimed on export of all finished goods whether excisable or not. Further the materials as defined in the said Rule 19 CENTRAL may be used for manufacture or processing. In other words, any processing not amounting to manufacture such on packing, blending, etc. will also be eligible for the benefit under the said Notification. The above provision is contained in the Central Excise Manual Published by the Board in Part VI relating to "Manufacture of Export Goods in Bond".

4.6 Intention of the Government not to export taxes from India. The Applicant submitted that the Government has always emphasised that it is not its intention to export taxes from India as the same will result in losing competitiveness of exporting products from India. The Applicant summarizes some of the judicial precedents on the above:

Relevant case law	**Extract of case law**
COMMR. OF C. EX., PUNE-III Versus HSBC SOFTWARE DEVELOPMENT (1) PVT. LTD. 2016 (42) S.T.R. 575 (Tri.	Export of taxes along with commodity or invisible exports renders them unviable in international market place - It handicaps exporters and affects robustness of domestic economy Prevention of these is accepted parameter that Governments build into policy and framework of taxation - Hence, within rigour of tax administration, tax collector is mandated to assume existence of such relief to

Mumbai)	exporter, identify it and apply it to assessment instead of relying upon first provision or construct available to deny that relief- Except in few commodities or services, and with deliberate intent. some instrument is promulgated by Government to ensure non-taxability of exports. [para 7)
Commissioner v. Essar Oil Ltd. 2015 (320) E.L.T. A115 (Guj.)	If the application was not allowed it would amount to export of taxes as the same would get included in the FOB value, which is not the intention of the Government.
In Re : Godrej Sara Lee Limited [2013 (292) E.L.T. 158(Commr. Appl.)]	Liberal interpretation should be given when substantive fact of export is not doubted. Further, it is policy of the Government that the domestic duty shall not be exported. In short, whatever duty was paid by the exporter has to be paid back so as to encourage them. Hence, I hold that the appellant is eligible for rebate."

4.7. The Commissioner (Appeals) has alleged in the impugned O-I-A that the benefit under a conditional notification cannot be extended in case of non-fulfillment of conditions and/or non-compliance of procedures prescribed therein. In this regard, the Applicant wishes to submit that as per the notification 21/2004 CE. (N.T), a person who proposes to claim the benefit under the said notification should comply with the following conditions/procedures prescribed in Notification 21/2004 - C.E.(N.T.) before filing the input stage rebate application:

• Filing of declaration: Filing of declaration regarding the activity with detailed process of export of parts, declaration in Annexure - 24, Statement of input-output ratio, verification report of the Superintendent and Chartered Engineer's certificate in respect of the said input-output ratio.

• Approval of declaration: The declaration was scrutinised and acknowledged by the Assistant Commissioner of Central Excise, Pune -IV, Chakan-II Division, Pune.

. Filing of declaration in ARE 2 on exports Filing of ARE-2 application at the time of exporting the said goods at the time of export.

• Presentation of claim of rebate - Filing of rebate application along with relevant details within due date mentioned in Section 11B of Central Excise Act, 1944.

The Applicant has complied with the conditions of the notification and had submitted all the relevant documents to demonstrate the same. Even the lower authority had not disputed the above mentioned point. The impugned O-1-A does not specify the reasons of non-compliance as alleged by the Commissioner

(Appeals). The only issue relating to the said point is pertaining to the interpretation of the notification as to whether the activity undertaken by the Applicant is covered under the term processing as defined under the notification. The Applicant submitted that the Authorities were informed about the testing, inspection and packing activities carried out and necessary approvals/ authorizations prescribed in the notification were obtained. However, the lower authority had not questioned as to whether the activity carried out by the Applicant would be covered under the said notification while granting their approvals but while sanctioning the rebate based on the above- mentioned documents, rejected the claim of rebate on the ground that the activity undertaken by the Applicant does not amount to processing as specified under the said notification. The Applicant relied on the following judicial precedence wherein it has been held that the decision of one authority cannot be questioned by another:

Relevant case law	**Extract of case law**
Yellamma Dasappa v. Commissioner of Customs 2000(120) E.L.T. 67(Kar.)	Certificate of exemption for medical equipment under Notification no. 64/88-Cus. dated 01.03.1988 was duly granted by the Director General of Health services. The Hon'ble High Court observed that unless the certificate granted is cancelled by the said Authority after carrying out inquiry and precedent Supreme Court judgment, customs could not seize goods and demand duty.
Madurai Power Corpn. (P.) Ltd. V. Deputy Commr. of C.Ex Madurai 2008(229) E.L.T. 521(Mad.)	Annexure-I certificate was issued in favor of petitioners from time to time of executing B8 security bond and on furnishing hank guarantee. The Hon'ble High court held that the department had to follow the procedures laid down in Section 351 of Central Excise Act, 1944 for setting aside the Annexure-I certificate. Unless the said certificate in cancelled or rejected by the competent authority, by following the procedure laid down in Section 35E, the department cannot invoke Section 11A for issuing show cause notice.
Surana Telecom v. Commissioner of Customs 2001(128) E.L.T. 307 (Tri.-Chennai)	The Deputy Director General of Department of Telecommunication was providing certificates to the Importer under Notification no 315/83 Cus dated 26.11.1983 and the goods have been cleared. The DRI authorities were of the view that the items imported were non-electronic items used in electronic systems or equipments or network

	The Tribunal observed that the department cannot sit in an appeal over the certificate issued by competent authority for eligibility of benefit issued under notification.

4.8. In view of the above the applicant requested to set-aside the aforesaid impugned Orders in Appeal

5. Personal hearings in the case was fixed on 13-10-2022, 03-11-2022 and 08-12-2022. No one appeared on behalf of the Applicant and Shri T.S. Ravi, Director PWC and Shri Amol Bhise, Deputy Manager, appeared for the hearing on behalf of the Respondent. They appeared online and submitted written submissions. The requested to decide all pending applications as per R.A. Order No. 1176-1178/2022 dated 29-11-2022 passed on identical matter.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original, Orders-in-Appeal and Revision Applications.

7. On perusal of the records, Government observes that, the basic issue to be decided in this case is whether the Applicant are eligible for availing the rebate benefit under Rule 18 of the Central Excise Rules, 1944 read with Notification No. 21/2004 CE (NT) dated 09-06-2004.

8. Government observes that the Applicant procures parts of tractors from vendors located in India after payment of applicable duty. After procuring they perform the activity of testing for examining the gear angles, shape, roughness, hardness, etc. They then pack the parts in carton box/returnable crates and export the same under claim of rebate under Rule 18 read with Notification No. 21/2004 CE (NT) dated 09-06-2004. The original authority rejected the rebate claim mainly on the ground amongst others that no manufacturing activity was carried out by the applicant on goods procured to qualify for rebate benefit in terms of Notification No. 21/2004-C.E. (N.T.), dated 6-4-2004 and also that they had availed the benefit of drawback. Commissioner (Appeals) upheld the Orders in

Original. Aggrieved by the said Order the Applicant filed the instant revision applications.

9. Government finds that the facts and the legal position of the impugned case has been disposed by the Government of India in the Applicant's case wherein the department had filed Revision Application against the Orders in Appeal wherein department had filed appeal against the Commissioner (Appeal)'s earlier orders wherein he had allowed the Respondent's Appeal. The Revisionary Authority vide Order No.1176-1178/2022-CX (WZ)/ASRA/ Mumbai dated 29.11.2022, rejected the department's appeal with the following findings/ observations:-

"10. The main grounds of appeal by the department is as under:

i) that the respondent has availed Drawback and is also claiming Rebate;

ii) that the benefit of this Notification is available only to manufacturer exporter;

iii) that the activity carried out by the respondent does not correspond to 'processing' and

iv) that the respondent has not fulfilled the conditions of Notification No. 21/2004-CE (N.T.).

10.1 The respondent has availed Drawback under category 'B' of the Drawback schedule though he has declared that he is not availing the same:

a. Government finds that the Commissioner Appeal in his impugned order at Para11 has clearly clarified in detail this point:

> *"...The drawback schedule specifically provide separate drawback rate in case where Cenvat credit facility has not been availed i.e. "A" which refers to total drawback (Customs, Central Excise and Service Tax component put together) allowable and those appearing under the column "Drawback when Cenvat credit facility has been availed" i.e."B" refer to Drawback allowable under the Customs Component of Drawback; that the applicants*

have claimed and received drawback of customs portion only and the Assistant Commissioner has gravely erred in rejecting their rebate claims for Central Excise duty paid on the goods removed for export; that All Industry Rate Drawback of Customs component as claimed by the applicants is based on the concept of averages, wherein drawback rate itself as well as its customs and central excise portions are based on weighted averages of consumption of imported/indigenous inputs of a represented cross section of exporters and average incidence for duties suffered on such inputs that these rates have no relation to the actual input consumption pattern and actual incidence suffered on inputs of a particular exporter or individual consignments exported by any particular exporter under AIR/DBK claims. The drawback claimed and paid does not relate to Central Excise Duty for which the present rebate claims have been filed under Notification No. 21/2004-C.E (N.T.), dated 6-9-2004 read with Rule 18 of Central Excise Rules, 2002 read with Notification 19/2004-C.E. (N.T.). dated 6-9-2004 but to the customs duty portion and hence, availment of drawback of customs portion cannot be the basis for denial of rebate of Central Excise duty paid for export.

b. Government also finds that Circular No. 1047/35/2016-Cx dated 16-09-2016 has also clarified the same as under

"2.1. The issue has been examined. Board has already vide circular no. 35/2010-Cus dated 17.09.2010 clarified that as per notification no 84/2010-Customs (N.T.) dated 17.09.2010, Customs component of AIR drawback shall be available even if the rebate of Central Excise duty paid on raw material used in the manufacture of export goods has been taken in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002. ***The circular no. 35/2010-Cus dated 17.09.2010 continues to be in operation and Customs portion of drawback so available are specified as per rates and caps under column (6) & (7) of the drawback schedule.***

2.2. Further, s.no. (11) of notes and conditions of the drawback schedule notified vide notification no. 110/2015-Customs (N.T.) dated 16.11.2015 states that the rates and caps of drawback specified in columns (4) and (5)

of the said schedule shall not be applicable to export of a commodity or products if rebate of duty on materials used in the manufacture or processing of such commodity or products is availed under rule 18 of Central Excise Rules, 2002 or if commodity or product is manufactured or exported in terms of sub-rule (2) of rule 19 ibid. However, drawback in such cases, as per rates and caps specified under columns (6) and (7) of AIR of the drawback schedule is admissible.....

5. Accordingly, it is clarified that:-

(i) Where in respect of exports, CENVAT credit is not availed on inputs but input stage rebate on excisable goods except diesel is availed under rule 18 of the Central Excise Rules, 2002, drawback of Customs portion, as per rates and caps specified in column (6) and (7) of the drawback schedule shall be admissible;....."

c. The above Circular clearly shows that the custom component of Drawback was available even if Rebate of C.Ex duty paid on the raw material used in the manufacture of export goods has been taken in terms of rule 18 of the CER, 2002 in view of Notification No.84/2010-Customs (N.T.). The issue was clarified and confirmed again vide the said Circular. Hence Government agrees with the views of the Commissioner Appeal on this point. This issue has been covered in GOI's Order Order Nos. 163-166/2017-CX, dated 14-9-2017, 2018 (363) E.L.T. 817 (G.O.I.) in respect of M/s GOKUL AUTO PVT. LTD. wherein it has been held as follows:

"Export - Rebate of duty paid on inputs used in exported goods - Denial of - Availament of drawback on exported goods - It is not deniable if assessee availed drawback of Customs duty only and not of Excise duty paid on inputs - Further, there is no prohibition under Rule 18 of Central Excise Rules, 2002 for availing rebate on availment of drawback of Customs duty - Rule 18 of Central Excise Rules, 2002."

10.2 <u>Benefit of the Notification is available to manufacturer exporter only</u>:

a. The relevant provisions of the Notification No. 21/2004-C.E. (N.T.), dated 6-4-2004 is reproduced below:

*"In exercise of the powers conferred by of rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No. 41/2001-Central Excise (N.T.), dated the 26th June, 2001 [G.S.R. 470(E) dated the 26th June, 2001], the Central Government hereby, directs that rebate of whole of the duty paid on excisable goods (hereinafter referred to as 'materials') **used in the manufacture or processing of export goods shall**, on their exportation out of India, to any country except Nepal and Bhutan, be paid subject to the conditions and the procedure specified hereinafter :-*

.....

*(3) **Procurement of material. - The manufacturer or processor** shall obtain the materials to be utilised in the manufacture of the finished goods intended for export directly from the registered factory in which such goods are produced, accompanied by an invoice under rule 11 of the Central Excise Rules, 2002:*

Provided that the manufacturer or processor may procure materials from dealers registered for the purposes of the CENVAT Credit Rules, 2002 under invoices issued by such dealers."

*b. Government observes that the rebate under Notification No. 21/2004-C.E. (N.T.), dated 6-4-2004 is admissible on the duty paid on excisable goods used in manufacture or processing of export goods. In other words the benefit is available to the manufacturer as well as to the processor. The processing has been explained in Para 1.3 of Part V of chapter -8 (Export under claim for rebate of duty on excisable material used in the manufacture of export goods) which is as under: "1.3 it may be also noted that materials may be used for manufacture or processing. In other words, any processing not amounting to manufacture (such as **packing, blending etc.**) will also be eligible for the benefit under said notification."*

10.3 <u>The activity carried out by the respondent cannot be treated as 'processing'</u>.

a. Government finds that the Respondents procure materials from vendors on payment of duty. These materials are subjected to inspection and testing with the help of various testing machines installed in their premises before they are exported. During the course of testing and inspection, if the materials do not qualify the standard fixed for export, the same is rejected and send back to the vendor for replacement. The qualified materials would be stored and based on the Order received from the customers, the materials would be packed in the carton boxes. The department's contention that no process has been carried out of the inputs does not appear to be correct as the activity of inspection, testing and packing has been carried out. . The term processing is not defined under the Excise Act. However the meaning given in the Dictionary for processing is 'the act or process of treating or preparing something by a special method'. Accordingly the activity of Inspecting /Packing would be covered in "processing". Further the Notification No. 21/2004-CE (NT) does not commend that the process carried out by the manufacturer or Processor should amount to manufacture.

b. Government relies on the judgement in an identical case of M/s A.V. INDUSTRIES" reported as 2011 (269) E.L.T. (G.O.1) wherein it was held as under:

> *"Rebate on exports - Testing/ re-packaging of export material - Stabilizer Links exported after testing and re-packaging - It amounted to processing of materials for export - On export of such Stabilizer Links, exporter was entitled to rebate of duty paid on them - Department plea that Stabilizer Links were exported as such, rejected - Notification No. 21/2004-C.E. (N.T.) - Rule 18 of Central Excise Rules, 2002. [paras 9, 10, 11]*
>
> *Rebate on exports - Excisable goods used in their manufacture or processing - For entitlement to rebate, it is not necessary that such goods may be inputs for export goods or their processing should amount to manufacture in terms of Section 2(f) of Central Excise Act, 1944 - Their processing was sufficient - In that view, testing and re-*

packaging held to amount to processing - Notification No. 21/2004-C.E. (N.T.) - Rule 18 of Central Excise Rules, 2002".

c. The department in their grounds of appeal has stated that in the aforesaid relied case the party has not availed Drawback and in the instant case the Respondent has availed Drawback. Government finds that in the impugned case, the Respondent has availed Drawback under category 'B' of the Drawback schedule i.e the Respondent has availed the Drawback of Customs portion only. This has already been dealt in the above para at Point 1. Government also relies on the following judgements wherein it is held that Customs component of All Industry Rate of drawback would be available even if the rebate of Central Excise duty paid on raw materials used in manufacture of exported goods has been taken in terms of Rule 18 of Central Excise Rules, 2002

1. GOI's Order Order Nos. 551-569/2012-CX, dated 11-5-2012 [2012 (285) E.L.T. 461 (G.O.I.)] in case of AARTI INDUSTRIES LTD.

Rebate vis-à-vis drawback - Customs component of All Industry Rate of drawback available even if the rebate of Central Excise duty paid on raw materials used in manufacture of exported goods has been taken in terms of Rule 18 of Central Excise Rules, 2002 - Allowing rebate of duty when drawback of Customs portion is availed will not amount to double benefit even after availment of Cenvat credit of duties of Central Excise as paid for the inputs used in manufacture of such exported goods which were cleared on payment of duty of Central Excise - Notifications No. 19/2004-C.E. (N.T.) and No. 103/2008-Cus. (N.T.)

2. Bombay High Court's Order Writ Petition No. 7210 of 2017 dated on 27-4-2018 [2019 (365) E.L.T. 703 (Bom.)] in respect of M/s SARLA PERFORMANCE FIBERS LTD.

Drawback - Claim of - On brand rate - After Drawback claim at All Industry Rate notified under Rule 3 of Customs, Central Excise Duties

and Service Tax Drawback Rules, 1995 - No dispute about entitlement to Drawback - HELD : Assessee could not be denied Drawback - It was immaterial whether input credit was availed or Drawback refund was granted on All Industry Rate or brand rate - Benefit in Column 'B' of All Industry Rate could not be denied on basis of D.G.F.T. Policy Circular No. 9 (RE-2013)/2009-14, dated 30-10-2013 and para 8.5 of Foreign Trade Policy, 2009-2014 - Assessee could rely on para 8.3.3 of HBP. –

10.4 The respondent has not fulfilled the conditions of Notification No. 21/2004-CE (N.T.) .

a. The relevant conditions to be followed in the impugned Notification are as follows:

".....(1) ***Filing of declaration.*** *- The manufacturer or processor shall file a declaration with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture describing the finished goods proposed to be manufactured or processed along with their rate of duty leviable and manufacturing/processing formula with particular reference to quantity or proportion in which the materials are actually used as well as the quality. The declaration shall also contain the tariff classification, rate of duty paid or payable on the materials so used, both in words and figures, in relation to the finished goods to be exported.*

(2) ***Verification of Input-output ratio.*** *- The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall verify the correctness of the ratio of input and output mentioned in the declaration filed before commencement of export of such goods, if necessary, by calling for samples of finished goods or by inspecting such goods in the factory of manufacture or process. If, after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is also satisfied that there is no likelihood of evasion of duty, he may grant permission to the applicant for manufacture or processing and export of finished goods.*

(3) Procurement of material. - The manufacturer or processor shall obtain the materials to be utilised in the manufacture of the finished goods intended for export directly from the registered factory in which such goods are produced, accompanied by an invoice under rule 11 of the Central Excise Rules, 2002:

Provided that the manufacturer or processor may procure materials from dealers registered for the purposes of the CENVAT Credit Rules, 2002 under invoices issued by such dealers.

(4) Removal of materials or partially processed material for processing. - The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise may permit a manufacturer to remove the materials as such or after the said materials have been partially processed during the course of manufacture or processing of finished goods to a place outside the factory -

(a) for the purposes of test, repairs, refining, reconditioning or carrying out any other operation necessary for the manufacture of the finished goods and return the same to his factory without payment of duty for further use in the manufacture of finished goods or remove the same without payment of duty in bond for export, provided that the waste, if any, arising in the course of such operation is also returned to the said factory of the manufacture or process; or

(b) for the purpose of manufacture of intermediate products necessary for the manufacture or processing of finished goods and return the said intermediate products to his factory for further use in the manufacture or process of finished goods without payment of duty or remove the same, without payment of duty for export, provided that the waste, if any, arising in the course of such operation is also returned to the factory of manufacturer or processor;

(c) any waste arising from the processing of materials may be removed on payment of duty as if such waste is manufactured or processed in the factory of the manufacturer or processor.

(5) Procedure for export. - The goods shall be exported on the application in Form A.R.E. 2 specified in the Annexure to this notification and the procedures specified in Ministry of Finance (Department of Revenue) notification No.19/2004-Central Excise (N.T.), dated the 6th September, 2004 or in notification No. 42/2001-Central Excise (N.T.), dated the 26th June, 2001 shall be followed.

b. Government finds that as per the Notification No. 21/2004-C.E. (N.T.) a manufacturer or processor intending to claim input rebate should file a declaration with the jurisdictional Deputy/Assistant Commissioner of Central Excise for verification and approval of input-output ratio prior to export of the goods and obtain the permission of the Deputy/Assistant Commissioner of Central Excise for manufacture or processing and export of finished goods. The materials should be procured from a registered factory or a dealer registered for the purposes of the CENVAT Credit Rules, 2002 alongwith the copy of legit invoices. The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall verify the correctness of the ratio of input and output mentioned in the declaration filed before commencement of export of such goods, if

necessary, by calling for samples of finished goods or by inspecting such goods in the factory of manufacture of process. If, after such verification, the Assistant commissioner of central Excise or the Deputy Commissioner of central Excise is also satisfied that there is no likelihood of evasion of duty, he may grant permission to the applicant for manufacture or processing and export of finished goods. Therefore as per the said notification, manufacturing or processing and export of the goods can only be effected by the party if permission is granted by the Assistant Commissioner or Deputy Commissioner after verification of correctness of the ratio of input and output mentioned in their declaration.

c. In the instant case Government finds that the

i) the respondent had filed his declarations of such input-output ratios and the jurisdictional AC approved the input output ratio for the purpose of availing rebate of duty paid on the inputs used for export which clearly shows that the AC/DC has verified the process/activity carried out by the respondent.

ii) The goods were procured on payment of duty accompanied by legit invoices

iii) The goods were exported under ARE-2

iv) The Order issued by the adjudicating authority, states that the Range Supdt in his verification report has recommended the Rebate claim for sanction as the respondent have cleared their export consignment as per the Notification No. 21/2004-C.E. (N.T.).

v) The judgements quoted by the department in respect of this point is not applicable in the instant case.

d. In view of the above, Government notes that the Respondent has fulfilled all the conditions stipulated under Notification No. 21/2004-CE (N.T).

11. In view of the above discussions, Government finds no infirmity in the impugned orders-in-appeal and upholds the same."

10. Government notes that the findings and decision arrived at in the above case is squarely applicable to the instant cases too. Government also finds that submissions made by the applicant in the subject cases have been addressed by the findings reproduced above. Given the above, Government does not agree with the decision of the Commissioner (A), in the instant cases.

11. In view of the above, Government sets aside the impugned Orders-in-Appeal Nos viz PUN-EXCUS-001-APP-123 to 127-18-19 dated 21.06.2018 and PUN-EXCUS-001-APP-586-589-18-19 dated 14-01-2019 and allows the Applicant's appeal.

12. Accordingly, Revision Applications are decided on the above terms.

23/2/23

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

ORDER No 84-92/2023-CX (WZ) /ASRA/Mumbai DATED 23 -02-2023

To,

1. Kubota Agriculture Machinery India Pvt. Ltd., Gat No. – 338/1, Mahalunge, Chakan MIDC, Taluka – Khed, District Pune – 410501, Maharashtra.

Copy to:

2. The Joint Commissioner, Central GST, Pune-I Commissionerate, 2nd Floor, I.C.E. House, 41/A, Sassoon Road, Opp-Wadia College, Pune-411001
3. D.C./A.C., C.Ex, Chakan –II Division, Pune-II Commissionerate, Excise Bhawan, Akurdi, Pune-411044.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file.
6. Spare Copy