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SPEED POST



F.No. 380/31/DBK/2016-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue... 31/8/18

Order No. 96/18-Cus dated 02-8-2018 of the Government of India passed by Shri R.P. Sharma, Principal Commissioner & Additional Secretary to the Government of India under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. ASR-CUS-PRV-APP/235-239/15-16 dated 27.10.2015, passed by the Commissioner of Central excise & Customs (Appeals), Chandigarh

Applicant : Commissioner of Central Excise, Jalandhar (camp at Ludhiana)

Respondent : M/s Jagatjit Industries Ltd.

ORDER

A revision application number 380/31/DBK/2016-RA dated 04.02.2016 has been filed by the Commissioner of Central excise, Jalandhar (hereinafter referred to as the applicant) against the Commissioner (Appeals)'s Order No. ASR-CUS-PRV-APP/235-239/15-16 dated 27.10.2015 whereby the appeal of the respondent, M/s Jagatjit Industries Ltd., filed against five Orders-in-Original of the Assistant Commissioner of Central Excise (Tech), Ludhiana, was allowed. The Assistant Commissioner had, vide his above mentioned orders, all dated 05.05.2014, had fixed the brand rates of duty drawback in respect of four duty paid inputs, but disallowed drawback of duty at All Industries Rate (AIR) in respect of Rectified Spirit (Ethyl Alcohol). However, the Commissioner (Appeals), vide his above mentioned Order-in-Appeal, allowed it on Rectified Spirit (Ethyl Alcohol) on the respondent's appeal.

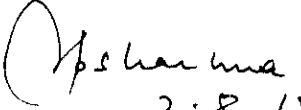
2. The revision application has been filed mainly on the ground that Commissioner (Appeal) has erred in holding that All Industries Rate of drawback in respect of Rectified Spirit (Ethyl Alcohol) is admissible even when no excise duty was paid on it being non excisable goods.

3. Hearing in this case was held on 23.05.2018 and it was availed by Sh. Sudhir Malhotra, Advocate, on behalf of the respondent, who reiterated the grounds of revision already pleaded in their revision application. However, no one appeared on behalf of the applicant and no request for any other date of hearing was also received from which it is implicit that they are not interested in personal hearing.

4. Government has examined the matter and it is observed that the respondent had opted for brand rate of drawback in respect of inputs namely Glass Bottle, PP Caps, Monocarton and Vatted Malt and the same was approved by the jurisdictional Assistant Commissioner under Rule 6 of Customs, Central Excise & Duty Drawback Rules, 1995. In regard to 5th input namely Rectified Spirit (Ethyl Alcohol) the

applicant had claimed All Industries Rate @ Rs. 3.40 per litre, but it was not approved on the ground that duty paid character of the inputs used for the manufacturer of Rectified Spirit (Ethyl Alcohol) had not been established by the respondent. However, on the appeal of the respondent against the orders of the Assistant Commissioner, the Commissioner (Appeals) has held that the AIR drawback @ Rs. 3.40 per litre is admissible to the respondent on Rectified Spirit (Ethyl Alcohol). Thus, the net effect of Commissioner (Appeal)'s order is that apart from brand rate of drawback granted in respect of 4 major inputs, AIR drawback was also additionally given to the respondent. The applicant has challenged the Order-in-Appeal to the extent that AIR drawback granted by Commissioner (Appeals) is erroneous. On analysis of the Drawback Rules, 1995 and the All Industries Rate Drawback Schedule for the year 2010-11, it is noticed that the respondent either could avail the AIR drawback or get the brand rate fixed from the jurisdictional Central Excise authorities on the basis of actual duty payments on the inputs used in the manufacturer of the exported goods or could avail AIR drawback from the Customs. It is further noticed that AIR rates are fixed in terms of exported goods under the Drawback Schedule and not in terms of inputs used in the manufacturer of exported goods. The respondent had clearly opted for brand rate of drawback primarily because AIR in respect of whisky/vodka/rum and brandy etc. was not provided in the drawback schedule of the relevant year and accordingly the respondent did not have any option but to go for fixation of brand rate of drawback in respect of inputs. As regards the respondent's claim regarding AIR drawback in respect of Rectified Spirit (Ethyl Alcohol), it is evident that the AIR @ Rs. 3.40 per litre is provided in respect of Rectified Spirit (Ethyl Alcohol) falling under Tariff item 22071090 and not in respect of the inputs like molasses, malt or grain used the manufacturer of Rectified Spirit (Ethyl Alcohol). But the respondent did not export the Rectified Spirit (Ethyl Alcohol) at all and accordingly AIR drawback at Rs. 3.40 per litre could not be given to the respondent in respect of Rectified Spirit (Ethyl Alcohol). Accordingly error has been committed by the Commissioner (Appeals) in allowing the AIR in respect of Rectified Spirit (Ethyl Alcohol) and consequently Order-in-Appeal deserves to be set aside.

6. In the light of above factual and legal position, the revision application filed by the revenue is allowed.

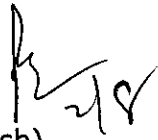

2.8.18

(R.P. Sharma)

Additional Secretary to the Government of India

Commissioner of Central Excise, Ludhiana
F Block, Rishi Nagar,
Ludhiana 141001
Punjab.

ATTESTED



(Ravi Prakash)

OSD (REVISION APPLICATION)

Order No. 96/18-Cus dated 02-8-2018

Copy to:

1. M/s Jagatjit Industries Ltd, P.O. Jagatjit Nagar Village Hamira, District Kapurthala, Punjab.
2. Commissioner of Central Excise (Appeals), Chandigarh, Plot Number 19, Sector 17 C, Chandigarh.
3. The Assistant Commissioner of Central Excise (Tech), F Block, Rishi Nagar, Ludhiana 141001, Punjab.
4. Mr. Sudhir Malhotra, Advocate, Chamber No. 103, C.K. Daphtary Lawyers, Chamber, Supreme Court of India, New Delhi

5. PS to AS(RA)

6. Guard File.

7. Spare Copy