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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  
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Mumbai- 400 005

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F.No. 373/04/DBK/2015-RA/815 Date of Issue: 23.02.2022

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ORDER NO. 99/2022- CUS (SZ)/ASRA/MUMBAI DATED 21.02.2022  
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. K.G. Denim Limited

Respondent : Commissioner of Central Excise, Salem

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. SLM-  
CUS-APP-06-2014 dated 08.10.2014 passed by the  
Commissioner (Appeals), Central Excise, Salem.

ORDER

The impugned Revision Application has been filed by M/s. K.G. Denim Limited, Jadayampalayam, Mettupalayam, Coimbatore - 641302 (hereinafter referred to as the Applicant) against Order-in-Appeal No. SLM-CUS-APP-06-2014 dated 08.10.2014 passed by the Commissioner (Appeals), Central Excise, Salem.

2. Brief facts of the case are that the applicant is engaged in the manufacture of 'Cotton Denim Fabrics' falling under chapter heading 5207 of the Central Excise Tariff Act, 1985. They had filed a brand rate application for Rs.4,92,034/- for approval with Assistant Commissioner, Salem. On scrutiny of the same, it appeared that the applicant had not maintained any inventory for the manufacture of export product viz., denim fabrics and they had arrived at the consumption of duty paid inputs by reverse calculation based on SION norms (J-96). Further, it was observed that the quantity calculated by the applicant was not the actual quantity of duty paid inputs used for the manufacture of exported goods. Accordingly show cause notice was issued proposing to reject the application. The adjudicating authority, Assistant Commissioner of Central Excise, Salem vide order-in-original No. 01/2014/AC(Cus) dated 21.04.2014 while accepting the contentions of the applicant, decided that the application cannot be rejected and ordered restoration of the same. Aggrieved, the Department filed an appeal with Commissioner (Appeals), Central Excise, Salem, who allowed the same vide impugned Order-in-Appeal while setting aside the said order-in-original.

3. Hence, the applicant has filed the impugned Revision Application mainly on the grounds that:

- i. they are manufacturer of denim fabrics and selling in the domestic market as well as carrying out exports. The process of weaving and dyeing is a continuous process. No separate line for export goods is maintained. The inputs and consumables used in the manufacture of denim fabrics are duty paid and there is no allegation that the

- applicant has used any non duty paid raw materials. The only allegation is that no separate issue slips were produced for export production. That the quantity used for export is less than the quantity procured in the case of one material is being cited as a ground to deny drawback.
- ii. when all the inputs including the basic raw material viz., cotton yarn, dyes and other consumables are duty paid, the export of finished goods are entitled for the drawback with reference to proportionate quantity of raw materials consumed. The drawback statement provide for indicating the quantity of raw material consumables used in the finished goods exported, When the line of manufacture is continuous one and common for the domestic and export production, the question of maintaining separate accounts or issue slips for raw materials issued only for quantity exported does not arise.
- iii. It was never the case of the Department that separate issue slips has to be maintained for export production when the production line is a common one for export as well as home consumption. The applicant has the details of all quantity of raw material including dye stuff used in the manufacture of denim fabrics. The consumption of the applicant is also as per the SION norms fixed by the Commerce Ministry for the consumption of cotton yarn, dye stuff etc. for the manufacture of dyed cotton fabrics. When the actual consumption of the exporter is the same as the norms prescribed by the Ministry, the drawback cannot be rejected stating that the consumption is based on the theoretical calculation. When the duty paid character of the inputs is not disputed, no cenvat credit taken and the export of dyed fabrics is also an admitted fact, drawback of the duty paid on the inputs cannot be denied
- iv. they rely upon the decision of the Commissioner(A) in the case of Samrat Houseware Private Ltd, that when the applicant has paid duty of excise on the inputs and no cenvat credit taken, the drawback cannot be denied. In the said order it was held:

*9. In the above circumstances, inasmuch as it is not disputed that the appellants have paid proper duty of excise on the inputs*

*which went into the manufacture of the final products and it also not being in dispute that such final products were actually exported and also inasmuch as the appellants have not availed Cenvat Credit on the inputs, the appellants are very much eligible for brand rate of duty drawback on the indigenous inputs.*

- v. it is an accepted practice that in the case of textiles where the use of inputs are common and the process continuous, proportionate benefits are availed. Reliance in this regard is based on the CBEC Circular No.845/3/2007-CX dated 1.2.2007, the extract of which is given below:

*3. However, it is seen that textile manufacturers/processors have to use common inputs, which are used in a continuous manner, and it may not be practically possible to segregate and store inputs like dyes and chemicals separately or maintain separate accounts. In such cases, in order to facilitate simultaneous availment of the two notifications, such manufacturers may be advised not to take credit initially and instead take only proportionate input credit on inputs used in the manufacture of finished goods cleared by him on payment the time of duty. Such proportionate credit should be taken at the end of the month only. At the time of audit of records, or at any other time if the department requires, the assessee should support such credit availment with the relevant records maintained by them showing input quantity used for the goods manufactured and cleared on payment of duty. In case any subsequent verification reveals that such proportionate credit taken is incorrect, the penal provisions as prescribed under the law will be taken against such assessees.*

- vi. the Applicant has determined the quantity of inputs used in the exported fabrics, based on the total quantity of inputs consumed. The consumption is as per the SION Norms and there is no dispute that the inputs are duty paid. There is also no allegation that non duty

paid inputs was used, nor there is any allegation that cenvat credit was availed. The Applicant submit that denial of fixation of draw back in the circumstances on the sole ground that the applicant did not produce separate account for inputs used in export fabrics is incorrect and the order merits to be set aside.

In the light of the above submissions, the applicant prayed to set aside the impugned Order-in-Appeal or pass such other order/s as deemed fit in the facts and circumstances of this case.

4. Personal hearing in the case was fixed for 14.10.2021. Shri Ganesh K. S. Iyer, Consultant attended the online hearing and reiterated the earlier submissions. He submitted that original authority has passed an exhaustive order and the same may please be restored by setting aside Commissioner (Appeals) order, which is not factual.

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

6. Government observes that the issue involved is whether duty suffered on inputs used in manufacture of export goods can be calculated using SION?

7. Government observes Standard Input Output Norms (SION) as per Directorate General of Foreign Trade (DGFT) has been described as:

*Standard Input Output Norms or SION in short is standard norms which define the amount of input/inputs required to manufacture unit of output for export purpose. Input output norms are applicable for the products such as electronics, engineering, chemical, food products including fish and marine products, handicraft, plastic and leather products etc. SION is notified by DGFT in the Handbook (Vol.2), 2002-07 and is approved by its Boards of Directors. An application for modification of existing Standard Input-Output norms may be filed by manufacturer exporter and merchant-exporter. The Directorate General of Foreign Trade (DGFT) from time to time issue*

*notifications for fixation or addition of SION for different export products. Fixation of Standard Input Output Norms facilitates issues of Advance License to the exporters of the items without any need for referring the same to the Headquarter office of DGFT on repeat basis*

*For fixation / modification of Standard Input Output Norms (SION) following details are required:*

- Technical Details of the export product as per the details given in Appendix 33.*
- Chartered Engineer certificate certifying the import requirements of raw materials in the format given in Appendix 32B.*
- Production and Consumption data of the manufacturer/supporting manufacturer of the preceding three licensing years as given in serial no 3 of sub section XII, duly certified by the Chartered accountant/ Cost & Works Accountant/ Jurisdictional Excise Authority.*

Thus, Government observes that SION is an accepted norm devised for specific industries for their export products, 'Textiles, Readymade Garments, Hosiery and Knitwears' being one of them.

8. Government observes that the applicant had applied for brand rate fixation under Rule 6 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 which reads as under:

***Rules 6. Cases where amount or rate of drawback has not been determined.-***

*(1) (a) Where no amount or rate of drawback has been determined in respect of any goods, any manufacturer or exporter of such goods may, within sixty days from the date relevant for the applicability of the amount or rate of drawback in terms of sub-rule (3) of rule (5), apply in writing to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, having jurisdiction over the manufacturing unit, of the manufacturer exporter or, of the supporting manufacturer, as the case may be, for determination of the amount or rate of drawback thereof stating all the relevant facts including the proportion in which the materials or components or inputs services are used in the production or manufacture of goods and the duties paid on such materials or components or the tax paid on input services*

Government observes that the Rule requires the manufacturer/exporter to state all relevant facts regarding proportion in which inputs are used in manufacture of export goods however no specific method to calculate the same has been specified. Therefore, the method adopted by the applicant using SION to arrive at the proportion of inputs used by them in manufacture of 'cotton denim fabrics' cannot be disallowed.

9. Government finds that the original authority has discussed in detail regarding compliance of Rule 6 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 by the applicant at para 14 and para 15 of the impugned Order-in-Original, extracts of which are reproduced hereunder:

*14.01 In the case on hand the applications for fixation of brand/special brand drawback rates under normal scheme were filed under Rule 6 (1) (a) of the Customs, Central Excise Duty Drawback Rules, 1995 along With Drawback Statements in DBK A,III and Ill A, consumption work sheet, copies of concerned shipping bills and copies of the purchase Invoices. The details of the application filed with the Director (DBK) is furnished as under: \_*

Sl.No.	KG Denim Ltd. Ref. No. & Date	Drawback amount claimed originally (in Rs.)
01	KGDL/RAM/DBK/2000-01/004 dated 24.12.2000	4,92,034/-

*14.03 Among the various enclosures to the application the DBK statements are very crucial 'in determining the eligible amount of drawback.' The details contained in the DBK Statements are narrated hereunder:*

- (1) *DBK I - This is the statement containing the consumption norms of various Inputs. The applicant has mentioned the various Inputs required for the manufacture of Denim Fabrics along with the gross quantity required for the manufacture of the quantity exported. For the purpose of the Drawback claim item Nos. 1 & 2 of the DBK statements, namely yarn warp and yarn weft are the main inputs. The required gross quantity of yarn has been worked out based on the input output norms as per J96 of SION.*

*With regard to the adoption of SION the applicant had stated that they generally produce more quantity' than the ordered*

*quantity as a few goods may be rejected in quality tests. In order to meet the contractual obligation it is necessary to produce excess quantity. However, they pleaded that this cannot at all lead to doubt the bona-fides of use of duty paid inputs warranting rejection of drawback claim.*

- (2) *DBK II - This statement is regarding imported materials used in the manufacture of Denim Fabrics.*
- (3) *DBK IIA — This Statement is also regarding the imported VAT Dyes used.*
- (4) *DBK III - This statement is regarding materials/components of Indian origin obtained by the manufacturer 'during the period commencing three months prior to the date of shipment up-to the date of application for manufacturer of Denim Fabrics. In this statement vide SI, No. (1) & (2) the quantity of yarn purchased and the amount of duty paid are mentioned.*
- (5) *DBK IIIA — This statement is similar to DBK - III with the only difference that the stock of inputs remaining after consumption is mentioned. The closing stock is arrived in the following manner: -*  
*Qty. Purchased as mentioned in DBK III - Gross Quantity required as per DBK I = Closing Stock.*

*15.01 On comparison of the documents and the worksheet enclosed along with the claim applications I find that the applications have been filed with the necessary documents and enclosures. DBK I statement is crucial as it determines the gross quantity of inputs required for the production of the export goods. As per the DBK I enclosed with the claims it is noted that under col.7 the gross quantity required is mentioned. In Column 8 recoverable wastage is mentioned. The net weight of the material used is mentioned in column 8. In this case the applicant has quantified the gross quantity based on SION norms entry No. J96. This entry defines the quantity of yarn required for the manufacture of 1 Kg. of Cotton Dyed Denim Cloth, containing 50% or more by weight of cotton. According to this entry 1.04 Kg. of Cotton Yarn is required for the manufacture 1 Kg. of Denim Fabric. From a perusal of the DBK I statement enclosed with the claim pertaining to 42 Shipping Bills for Rs.38,15,589/- it is noticed that the gross quantity of yarn required is calculated in the following manner:-*



Qty. in LM Net Wt. in  
Kg.

781178 507755

*Details of Export Goods - Denim Fabrics*

*Gross quantity of Yarn - 507755 \* 1.04 = 528065 Kgs.  
required as per SION*

*Gross Qty. of yarn as mentioned in Col, 7 of DBK I*

*Warp Yarn + Weft Yarn*

*345230+ 182835 = 528065 Kgs.*

*15.02 From the above it is seen that gross quantity required is not on actual basis but has been calculated by reckoning the net weight of the exported fabrics as per SION norms. Hence, it is alleged in the notice that they have arrived at the consumption of duty paid inputs by mere reverse calculation based on the SION norms (J96) which is based on the net weight of the export fabrics and that it is nothing but mere arithmetical reverse calculation method and not the actual quantity of duty paid inputs used for the manufacture of exported goods. Drawback is a rebate of duty paid on excisable goods used in the manufacture of the export fabrics. Here, the terms "used" obviously refers the actual quantity of goods used in manufacture. However, in this case the applicant has calculated the inputs based on a reverse calculation. Another allegation in the notice is that the applicant had not maintained any inventory.*

*15.03 With regard to the above allegation the applicant had stated interalia that it is practically not possible to arrive at the exact actual consumption of inputs used in the export products since they generally produce more than the ordered quantity as a few goods may rejected in quality tests. Hence, in order to meet the contractual obligation, it is necessary to produce excess quantity. They, however argued that it cannot at all lead to doubt the bonafides of use of duty paid inputs warranting rejection of drawback claim. In view of the practical difficulties, they have claimed the drawback based on SION published by DGFT with supporting duty paid documents. They further averred that as long as the quantum of import/procurement of inputs as furnished in the prescribed proforma is supported by necessary documentary evidence for its duty payment, the eligibility of drawback cannot be rejected on the grounds of non-maintenance of inventory for manufacture of denim fabrics.*

15.04 I find that there is sufficient force in the averment of the applicant. The exporters cannot manufacture exact quantity of fabric required for export under a particular consignment. Export items are subject to rigorous quality test and inspection. During inspection by the buyer's representative there is bound to be some quantity being rejected due to quality defects. This practical problem is a common one among exporters/manufacturers. The applicant's case is no exception to this general rule. Moreover, whether the consumption is on actual basis or not the incidence of duty suffered at the input stage, in the absence of modvat/deemed credit benefits, should be rebated by way of drawback. When the exact quantity of yarn consumed out of the purchased quantity could not be ascertained under circumstances as the one in the instant case some methodology has to be adopted, even though not prescribed elsewhere, to find out the quantity consumed in the export fabrics. It may be either SION norms or any input out norms available in textile parlance. SION norms being an established norms prescribed by DGFT for the purpose of export-import commerce, which is recognised as Law, I do not find any infirmity in applying those norms in a situation like this.

15.05 From a perusal of the drawback calculation sheet enclosed in the Policy Section file in C.No.V111/20/01/2010-PF I cus. Pol. I find that the drawback eligibility is calculated after accounting for the duty involved on the production wastage at 4%. Finally the eligible amount of drawback is arrived at Rs.4,92,034/- against the FOB value of Rs.1,30,04,892/-. Therefore, I do not find any infirmity in adopting the SION norms for the simple reasons that the main purpose underlying the drawback scheme is rebate of duty paid on excisable goods used in the exported products. The reverse calculation method is adopted in this case due to the peculiarity in the fabric production in which the applicant's case is no exception. For the foregoing reasons I hold that the proposal to reject the drawback claim for the reasons that the yarn consumption has not been calculated on basis is not sustainable.

15.06 It is also alleged in the notice that while verifying DBK-III and III-A statements with the corresponding input invoices it was observed that in some of the input invoices the quantity taken for production seems to be less than the quantity actually purchased.

15.07 In this context I observe that DBK statement III relates to "materials/components of Indian origin obtained by the manufacturer during the period commencing three months prior to the date of shipment up-to the date of application" and it contains columns for declaring details such as description, quantity purchased, its effective rate of duty, invoice no., amount of duty paid and name of the supplier etc. Similarly, DBK-III A statement relates to "details of procurement relating to stocks of indigenous materials as on commencement date (3 months prior to the date of shipment/first shipment) based on FIFO principle required for manufacture of export products" and it contains description, quantity originally purchased, assessable value, rate of duty, amount of duty paid, name of the supplier, invoice no., and stock after consumption etc. DBK Statement IIIA differs from DBK III to the extent that it requires declaration of the stock remaining after consumption for manufacture. Otherwise, DBI statements III and IIIA appear to be common. In this regard I also find that the data furnished in both the statements are common barring the entries in the column relating to stock after consumption.

15.08 On a perusal of DBK III and DBK IIIA statements it is noticed that the applicant had purchased quantity of various inputs like yarn warp and weft, caustic soda lye, maize starch, sodium hydrosulphite, bio-size, biowash, thermo-size, starch film and paper rolls. Other than paper rolls, which is mentioned in numbers, all other inputs are denoted in kilograms. Column No. 13 of the DBK IIIA statement indicates the quantity remaining after consumption which is substantially less when compared to the quantity purchased as indicated in the column no. 6, thereby confirming that out of the purchased quantity a substantial portion had been utilized for the manufacture of denim fabrics. Under these circumstances the allegation that that the quantity of input taken for production seems to be less than the actually purchased quantity may not be tenable.

15.09 The allegation that the quantity taken for production seems to be less than the actual quantity purchased led to calling for documentary evidences like internal issue slips or input inventory register containing the data of quantity issued for production. reply, the applicant vide their letter dated 29.11.2011 (prior to the Issue or SCN) had replied interalia that in almost all the cases the quantity purchased was fully consumed; that in a few cases the production

*department had returned yarn found. not suitable for production which were quality rejection and further concluded by saying that based on the net weight of the export fabrics, they calculate the yarn consumed for a particular export based on the SION (Textile- Sl. No. 396 meant for Denim fabrics). In this regard I observe that in as much as the substantial portion of the purchased quantity had been used in manufacture and the balance stock is much less than the quantity originally purchased, the clarification sought for on the basis of issue slip, which was required in the first place on the observation that the utilized quantity is much less when compared to the purchased quantity, does not require further elaboration.*

*15.10 The eligible brand rate is calculated based on the quantity of fabrics exported. The consumption of yarn relevant to a specific quantity of fabrics exported is arrived at by reverse calculation method based on the input output norms as envisaged in the SION. This calculation which is used for fixing the brand rate of drawback had been certified by the field Officers when the claim was submitted after verification to the Drawback Directorate, New Delhi vide Coimbatore Commissioner's C. No. V111/20D/59/2001-Cus.Pol.Dt.23.03.2001 in the case of the claim dealt with in Board's letter F.No.601/5201/97/2001-DBK.*

10. As regards, case law of Gordon Woodroffe Ltd. vs. Union of India, Government observes that the case was consequent to information regarding excess claim made by the leather exporters, hence corroboratory evidence in the form of relevant documents was essential, which was upheld by Hon'ble High Court of Madras. Hence, Government does not find it applicable in the instant scenario. On the contrary there are many judgments, including the one quoted by the applicant, (mentioned Para 3(iv) above), wherein it has been held that as long as the export and duty paid on export goods/inputs used is not in challenged, a liberal view is to be taken as far as procedural lapses are concerned.

11. In view of above findings, the Government sets aside the impugned Order-in-Appeal No. SLM-CUS-APP-06-2014 dated 08.10.2014 passed by the Commissioner (Appeals), Central Excise, Salem and allows the Revision Application filed by the applicant.

12. This Revision Application is disposed of on the above terms.

*Shrawan*  
*21/2/22*  
(SHRAWAN KUMAR)

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

ORDER No. 99/2022-CUS(SZ)/ASRA/Mumbai dated 21.02.2022

To,  
M/s. K.G. Denim Limited,  
Jadayampalayam,  
Mettupalayam,  
Coimbatore - 641302.

Copy to:

1. Pr. Commissioner of CGST & Central Excise,  
GST Bhavan, A.T.Devaraj Street, Race Course,  
Coimbatore - 641 018.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.