

**SPEED POST**



F. No. 373/229/DBK/2019-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue. 20/03/23

Order No. 102 / 23-Cus dated 20-03-2023 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

SUBJECT : Revision Application, filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 33/2019-TRY(CUS) dated 22.03.2019, passed by Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli.

APPLICANT : M/s Alstom Transport India Ltd., Coimbatore.

RESPONDENT : The Commissioner of Customs (Preventive), Tiruchirappalli.

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**ORDER**

A Revision Application No. 373/229/DBK/2019-RA dated 25.06.2019 has been filed by M/s Alstom Transport India Ltd., Coimbatore, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 33/2019-TRY(CUS) dated 22.03.2019, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 01/2018 (DBK-BR) dated 29.09.2018, passed by the Joint Commissioner of Customs, Tiruchirappalli.

2. Briefly stated, the Applicants herein filed six claims of Special Brand Rate of Drawback, under Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, in respect of the goods exported by them against six shipping bills as per details below :

Sl.No.	Shipping Bill Nos & date	Amount Claimed (in Rs.)	AIR Drawback availed (in Rs.)
1.	3036509/16.09.2015	629096	127661
2.	6128552/27.02.2016	581116	138418
3.	6191008/01.03.2016	754729	275043
4.	8345100/18.06.2016	449845	137206
5.	8590005/30.06.2016	730824	136666
6.	9244491/03.08.2016	556028	106590

As the All Industry Rate of Drawback (AIR Drawback) had already been availed, the original authority, vide the aforesaid Order-in-Original dated 28.09.2018, rejected the claims for Special Brand Rate of Drawback as the same was not permissible in terms of Rule 7 ibid. The appeal filed by the Applicants herein has been rejected by the Commissioner (Appeals).

3. The revision application has been filed, mainly, on the grounds that Rule 7 of the Drawback Rules does not bar the exporter from claiming the Brand Rate of Drawback of differential amount if the exporter has already claimed AIR Drawback in respect of the same export; that the Board's Circular No. 10/2003-Cus dated 17.02.2003, issued in relation to reducing the financial/business hardship faced by the exporter, is applicable in the facts of the present case; that the Drawback Rules provide for supplementary claim and hence Applicants are eligible to subject drawback claim; that the declaration of identifier Code '9807' is only for the purpose of examination; that the department cannot deny the substantial benefit on the basis of procedural lapses; that the amendment to Rule 7, vide Notification No. 109/2004-Cus (NT) dated 17.11.2014, is ultra-vires the Customs Act, 1962; that, alternatively, the Applicants may be permitted to amend the Shipping Bills, in terms of Section 149 the Customs Act, 1962.

4. Personal hearing, in virtual mode, was held on 17.03.2023. Ms. Neetu James, Advocate appeared for the Applicants and requested that Synopsis and Compilation emailed on 17.03.2023 may be taken on record. She supported the RA with reference to the compilation emailed. In her submission, non-mentioning of provisional claim of drawback on the shipping bill is a procedural infraction for which substantial benefit of drawback should not be denied. No one appeared for the Respondent department nor any request for adjournment has been received. Hence, it is presumed that the department has nothing to add in the matter.

5.1 Government has examined the matter carefully. It is observed that the issue involved in the present proceedings is whether the drawback as per brand rate can be sanctioned to an exporter even after he had already availed drawback as per AIR. The Government finds that sub-rule (1) of Rule 7 *ibid* prescribes that an application for fixation of brand rate can be made with the Central Excise Commissionerate even if AIR is already fixed for the exported goods under Rule 3 or Rule 4, as the case may be, in case the DBK as per AIR is less than four-fifth of duties or taxes actually paid on inputs etc. used in the manufacturing of exported goods. However, the said sub-rule (1) of Rule 7 has been amended, by virtue of Notification No. 109/2014-Customs (NT) dated 17.11.2014, to the effect that the provisions thereof are applicable "except where a claim for drawback under rule 3 or rule 4 has been made." Therefore, it is clear that w.e.f. 17.11.2014, an exporter cannot make an application for fixation of brand rate, in case a claim for the AIR Drawback has been made. In the present case, the applications for fixation of brand rate have been filed after 17.11.2014 when AIR Drawback had already been claimed on respective Shipping Bills, which also pertain to a period after 17.11.2014. Hence, it is clear that the Applicants could not have filled the subject applications for fixation of brand rate. The contention of the Applicants that amendment made to sub rule (1) of Rule 7 *ibid*, vide Notification No. 109/2014-Cus (NT) dated 17.11.2014, is ultra-vires the Act has no legal basis, as no declaration to this effect from a competent Court has been placed on record.

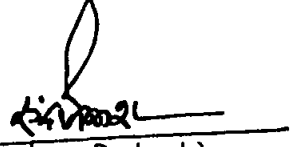
5.2 It is also the contention of the Applicants that they are entitled for Brand Rate of Drawback in terms of sub-rule (3) of the said Rule 7. The Government observes that the said sub-rule (3) carves out an exception to the sub-rule (1) whereby drawback can be claimed as per brand rate even if AIR Drawback had been claimed. However, the benefit of this exception is conditional upon such a claim of AIR Drawback being provisional. In the present case, the Shipping Bills were filed without the claim of AIR Drawback being made provisional. The Applicants also failed to indicate the requisite identifier, in terms of Board's Circular No. 13/2014-Cus dated 18.11.2014. The contention that non-mentioning on the shipping bills that these are under provisional claim of AIR Drawback is merely a procedural infraction, is not acceptable as the sub-rule (3) specifically requires that wherever the exporter desires that he may be granted drawback provisionally, he may, while making an

application under sub-rule (1), apply to the Principal Commissioner of Central Excise or Commissioner of Central Excise, in writing in this behalf in the manner as has been provided in clause (a) of sub-rule (2) of Rule 6. In the present case, such a request has not been made. These being EDI shipping bills, the only other way in which the claim could have been identified as provisional was by way of using the identifier code '9807' on the shipping bills which has also not been done. The non-mentioning of the identifier code could not also be an inadvertent error as the six shipping bills involved herein have been filed over a period of 11 months and brand rate applications filed do not make any mention of such an error being made inadvertently. Therefore, the contention of this being an inadvertent error is nothing but an afterthought necessitated in the face of rejection of the brand rate claims under sub-rule (1).

5.3 Further, the drawback claims were sanctioned on AIR basis without being provisional. As such, the subject Shipping Bills have become final. It is also on record that the Applicants had not requested customs authorities for any amendment of the Shipping Bills nor had they filed any appeal before the appellate authority for the review of the drawback sanctioned. Therefore, the AIR drawback sanctioned has attained finality. The contention that the shipping bills may be allowed to be amended at this stage, under Section 149 of the Customs Act, 1962, cannot also be accepted as such a request was never made before the proper officer in terms of the said section 149. Any amendment allowed at this stage would also amount to allowing the Applicants to review the assessment of the shipping bill, which has become final, by back door, i.e., without following the statutory provisions in this regard.

5.4 The Applicants have heavily relied upon the judgment of the Hon'ble Bombay High Court in the case of Alfa Laval (India) Ltd. vs Union of India {2014 (309) ELT 17 (Bom)} and in the case of Sarla Performance Fibers Ltd. vs Union of India {2019 (365) ELT 703 (Bom.)} in support of their case. The Government observes that the case of Alfa Laval (India) Ltd. pertains to the period prior to the amendment of Rule 7(1) by virtue of Notification dated 17.11.2014. In this case, the Hon'ble High Court has held that the CBIC's Circular dated 30.12.2011 could not have incorporated a limitation/restriction which did not find a place in Rules. However, as already pointed out, in respect of the subject exports, the rule position, as obtaining w.e.f. 17.11.2014, itself barred the claim for Brand Rate of Drawback where claim for Drawback under rule 3 or rule 4, i.e., AIR Drawback had been made. The Sarla Performance Fibers Ltd. (supra) again relates to a case where drawback was denied on the basis of DGFT Policy Circular No. 9 (RE-2013)/2009-2014 dated 30.10.2013 i.e., executive instructions. However, as already pointed out in the present case, the rule position, as obtaining on the date of export, itself barred Brand Rate of Drawback if AIR Drawback had been claimed. Therefore, these cases are of no assistance to the Applicant's case.

6. In view of the above, the Revision Application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Alstom Transport India Limited,  
63, Trichy Main Road,  
Kannampalam, Village Sular,  
Coimbatore – 641 401

Order No. 102/23-Cus dated 10-03-2023

**Copy to:-**

1. The Commissioner of Customs & Central Excise (Appeals), No. 1, Williams Road, Cantonment, Tiruchirappalli – 620 001.
2. The Commissioner of Customs (Preventive), No. 1, Williams Road, Cantonment, Tiruchirappalli – 620 001.
3. M/s Lakshmikumaran & Sridharan, 5, Link Road, Jangpura Extension, New Delhi-110014.
4. PPS to AS (RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED



अश्वनी कुमार लौ / Ashwani Kumar Lau  
अधीक्षक / Superintendent (R.A. Unit)  
राजस्व विभाग / Department of Revenue  
वित्त मंत्रालय / Ministry of Finance  
Room No. 608, 8th Floor, B-Wing  
14, Hudco Vistala Building, New Delhi-110008

