

REGISTERED
SPEED POST



F.No. 373/150/DBK/2018-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 21/03/23

Order No. 106/23-Cus dated 21-03-2023 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 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 63/2018 (CTA-I) dated 05.02.2018, passed by the Commissioner of GST & Central Excise (Appeals-I), Chennai.

Applicant : M/s Ashok Leyland Ltd., Chennai

Respondent : Commissioner of Customs, Chennai-IV, Chennai

ORDER

Revision Application No.373/150/DBK/2018-RA dated 03.05.2018 has been filed by M/s Ashok Leyland Ltd., Chennai (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 63/2018 (CTA-I) dated 05.02.2018, passed by the Commissioner of GST & Central Excise (Appeals-I), Chennai. Commissioner (Appeals) has, vide the above-mentioned Order-in-Appeal, upheld the Order-in-Original No.01/2016 dated 13.04.2016, passed by the Additional Commissioner of Central Excise, Large Taxpayer Unit, Chennai to the extent of rejection of drawback claim in respect of 'Chassis portion' filed in terms of Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Vide the aforementioned Order-in-Original, the original authority had rejected all the 84 drawback claims filed by the Applicant herein including in respect of 'chassis'.

2. Brief facts of the case are that the Applicants had filed 84 drawback claims as manufacturer-cum-merchant exporter relating to period October 2012 to November 2014, in terms of Rule 7 ibid, under Special Brand Rate Scheme for the composite final product, i.e., Buses that comprised two identifiable portions, namely, 'Chassis' manufactured by Applicant and 'Body' built by independent Body Builders. All the drawback claims were rejected by the original authority citing reasons that (i) Applicant had not filed Drawback claims in the prescribed manner; and (ii) the claim of Applicant of their inability to furnish requisite details/documents since they had not maintained data in their system and had not instituted a system to capture exact data on imported items used in the export product was not acceptable. Aggrieved, the Applicants filed appeal before the Commissioner (Appeals) which was partially allowed to the extent of allowing claims in respect of 'body', but the rejection of claim in respect of 'chassis' was upheld.

3. The revision application has been filed, mainly, on the grounds that they do not have a system to capture the data and since all along the authorities had been sanctioning Drawback based on the AIR method they did not preserve the documents; that it may be difficult since their export volumes are relatively low when compared

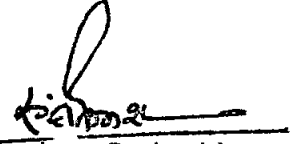
to domestic volumes and averaging duty incidence may be an issue and may not be accurate; that circular no. 83/2003-cus dated 18.09.2003 is only a clarification on the methodology to be followed for granting duty drawback on the body portion contained in the bus in terms of the 1988 circular which was specific to grant of duty drawback for body portion; that the applicant had followed the practice of claiming AIR for Chassis all along and 7% of body in the Special Brand rate claim had been accepted.

4. Personal hearing in the matter was fixed on 13.03.2023, which was adjourned to 20.03.2023 at the request of the Applicant. In the hearing held on 20.03.2023, in virtual mode, Ms. Anchana Varadarajan, AGM appeared for the Applicant and submitted that their claim for Special Brand Rate of Drawback for 'Chassis' was not allowed by Commissioner (Appeals) as they did not submit Bills of Entry copies to support the information DBK-II & IIA. In this background, she reiterated the contents of the RA. Sh. Ezhilarasan, AC supported the Order of Commissioner (Appeals).

5. The Government has examined the matter carefully. It is contended by the Applicant that they had not submitted Bills of Entry copies etc. to support the information furnished in DBK-II & IIA formats as they do not have a system to capture the data and since all along the authorities have been sanctioning Drawback based on the AIR method, they did not preserve the documents. It is observed that Special Brand Rate Drawback is a special scheme, which is applicable when the All Industry Rate (AIR) of Drawback is less than four-fifth of duties or taxes paid on the materials or components or input services used in the manufacture of export goods. In such a case, as per sub-rule (1) of Rule 7 *ibid*, the manufacturer is required to make an application to the Commissioner for determination of rate of drawback "stating all relevant facts including proportion in which the materials or components or input services are used in the production or manufacture of goods and the duties and taxes paid on such materials or components or input services." In terms of sub-rule (2) of said Rule 7, the Commissioner may, after making or causing to be made such inquiry, as it deems fit, allow payment to such exporter at such amount or at such rate as may be determined to be appropriate, if the amount or rate of drawback determined under

rule 3 or, as the case may be, revised under rule 4, is in fact less than four-fifth of such amount or rate determined under this sub-rule." Thus, in the scheme of Rule 7, it is for the manufacturer to submit all relevant information, including in respect of duties and taxes paid on input services, for determination of brand rate of drawback and it is open to the department to verify the information so furnished. In the present case, the manufacturer exporter, i.e., the Applicant has admittedly not submitted all the information and documents required for verification of the information so furnished. As such, the Applicant has failed to discharge the obligation cast upon it under Rule 7 ibid and, therefore, their application for fixation of brand rate of drawback in respect of 'chassis' could not have been allowed. The Order-in-Appeal impugned herein, thus, does not merit revision.

6. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

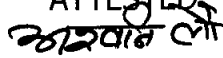
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Order No. 106 /23-Cus dated 21-03-2023

Copy to:

1. The Commissioner of Customs, Chennai-IV, Custom House, 60 Rajaji Salai, Chennai-600001.
2. The Commissioner of GST & Central Excise (Appeals-I), No. 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
3. PPS to AS(RA).
4. Guard File.
- ✓ 5. Spare Copy.
6. Notice Board.

ATTESTED


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