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F.Nos. 380/06/DBK/13-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 7/8/14

ORDER NO. 115/14-Cus DATED 06.05.2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT 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 appeal No.PI/MMD/214-215/12 dated 12.11.2012 passed by Commissioner of Central Excise (Appeals) Pune-I
APPLICANT	:	Additional Commissioner, BRU, Central Excise, Pune-I
RESPONDENT	:	M/s Honeywell Turbo (India) Pvt. Ltd., Plot No. 4-A, Raisoni Industrial Park, Village Mann, Near Phase-II, Hinjewadi, Pune – 411057

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ORDER

This revision application is filed by Additional Commissioner, BRU, Central Excise, Pune-I against the order-in-appeal No.PI/MMD/214-215/12 dated 12.11.2012 passed by Commissioner of Central Excise (Appeals) Pune-I with respect to order-in-original No. PI/BRU/Div-IV/Honey Well/08/12 dated 19.07.2012 dated 09.08.2012, passed by Additional Commissioner of Central Excise, BRU, Pune-I. M/s Honeywell Turbo (India) Pvt. Ltd. are the respondents in this case.

2. Brief facts of the case are that M/s Honeywell Turbo (India) Pvt. Ltd., Plot No. 4-A, Raisoni Industrial Park, Village Mann, Near Phase-II, Hinjewadi, Pune (herein referred to as 'the claimant') are Merchant Exporters, interalia, engaged in exporting 'Turbochargers' manufactured by their associated company M/s Honeywell Turbo Technologies (India) Pvt. Ltd., Hinjewadi, and falling under S.S. No. 8414 of the schedule of All Industry Duty Drawback Rates 2011-12.

2.1 The claimant filed two applications dated 12.01.2012 and 17.02.2012, for fixation of Brand Rate of duty drawback under Rule 7(1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 (hereinafter referred to as the Drawback Rules, 1995). The amount claimed as drawback was Rs.2,95,29,818/- and Rs.2,71,30,603/-, respectively, in respect of two applications.

2.2 During the scrutiny of the said applications, certain discrepancies were noticed in respect of both the applications, dated 12.01.2012 and 17.02.2012, which are summarized as under –

(a) Application dated 12.01.2012 –

(i) That the claimant have claimed drawback amounting to Rs.59,14,409/- on inputs imported by third parties M/s Cogeme Precision Parts (I) Pvt. Ltd., Khed, Pune & M/s Inzi Controls (I) Ltd., Sriperumbudur, Tamil Nadu; that the claimant have

failed to file the requisite 'Disclaimer Certificate' from such third parties and therefore the aforesaid amount is liable for rejection.

(ii) That the claimant have claimed drawback amounting to Rs.3,94,362/- in respect of excess quantity shown as consumed.

(iii) That the claimant have claimed drawback of Rs.25,83,894/- in respect of material not in stock.

(b) <u>Application dated 17.02.2012</u>-

(i) That the claimant have claimed drawback amounting to Rs.46,70,970/- on inputs imported by third parties M/s Cogeme Precision Parts (I) Pvt. Ltd., Khed, Pune & M/s Inzi Controls (I) Ltd., Sriperumbudur, Tamil Nadu; that the claimant have failed to file the requisite 'Disclaimer Certificate' from such third parties and therefore the aforesaid amount is liable for rejection.

(ii) That the claimant have wrongly claimed drawback amounting to Rs.12,00,684/- in respect of Bills of Entry (BOEs) which were totally exhausted i.e. there was no material in stock as per these BOEs but drawback was still claimed.

(iii) Drawback of Rs.2,64,415/- has been claimed pertaining to materials in respect of which the claimant failed to furnish relevant original BOEs for verification and defacing.

(iv) That the claimants have claimed drawback of Rs.7,68,964/- wherein they have failed to furnish the original copies of relevant shipping bills.

2.3 In respect of their application dated 12.01.2012, the claimant re-calculated their eligibility for drawback and submitted that the claim be reduced by Rs.42,65,207/- (inclusive of Rs.6,05,217/- pertaining to imports by their party and in respect of which they were unable to produce original documents).

2.4 In respect of their application dated 17.02.2012, the claimant re-calculated their eligibility for drawback and submitted that the claim be reduced by Rs.15,35,875/-.

2.5 However, in respect of both the applications, the claimant's common contention was that they are eligible to claim drawback on inputs imported by their parties viz. M/s Cogeme Precision Parts (I) Pvt. Ltd., Khed, Pune & M/s Inzi Controls (I) Ltd., Sriperumbudur, Tamil Nadu. They placed reliance upon Board's Circular No.14/2003-Cus. Dated 06.03.2003.

2.6 After taking into consideration the claimant's submissions, the Additional Commissioner (BRU), Central Excise, Pune-I Commissionerate, vide letter issued under F.No.P-I/BRU/D-IV/Honeywell/8/12, dated 19.07.2012 (FIFO No.8/12), sanctioned the drawback amount of only Rs.2,00,07,609/- i.e. [Rs.2,95,29,818/- minus (Rs.42,65,207/- as requested by the claimant plus Rs.52,57,002/-, on account of ineligibility to claim drawback on third party imports)].

2.7 Similarly, vide letter issued under F.No.P-I/BRU/D-IV)Honelywell/20/12, dated 29.08.2012 (FIFO No. 20/12), the adjudicating authority sanctioned the drawback amount of only Rs.1,90,50,051/- i.e. [Rs.2,71,30,603/- minus (Rs.15,35,875/- as requested by the claimants plus Rs.65,44,682/- on account of ineligibility to claim drawback on third party imports)].

3. Being aggrieved by the aforesaid orders/letters dated 19.07.2012 and 29.08.2012, the claimant preferred appeals with the Commissioner (Appeals), Central Excise, Pune-I, challenging the rejection of drawback claim to the extent of Rs.52,57,002/- and Rs.65,44,682/-, respectively.

3.1 Commissioner (Appeals) vide impugned common order-in-appeal No.P-I/MMD/214&215/12 dated 12.11.2012, has set aside the impugned orders/letters dated 19.07.2012 and 29.08.2012, issued by the Adjudicating Authority and has allowed the claimant's appeal with consequential relief.

3.2 While setting aside the aforesaid order-in-original the Appellate Authority has, interalia, observed –

3.2.1 That there is no dispute that the parts supplied i.e. Actuators Assembly, Nozzle Assembly, Wheel Turbine etc., by M/s Cogeme Precision Parts (I) Pvt. Ltd., Khed, Pune & M/s Inzi Controls (I) Ltd., Sriperumbudur, Tamil Nadu are not part of 'Turbochargers', but have been manufactured out of raw materials imported by the aforesaid suppliers.

3.2.2 That on going through para (viii) of Board's Circular No.14/2003-Cus dated 06.03.2003, it is the Government's intention to allow drawback claim on inputs being used in export product, including the inputs being used in the manufacture of components / vendor items, being manufactured at multiple manufacturing locations and supplied as component / vendor items to the principal location manufacturing the final product being exported.

3.2.3 That Brand rate application consists of DBK-I/DBK-II/DBK-IIA/DBK-III & DBK-IIIA statements; that in this case DBK-I/DBK-II and DBK-IIA statements are relevant. DBK-I statement is for bill of material used for manufacture of export goods which consists of raw material / components going into the manufacture of export product and the details regarding the same are provided by the claimant in respect of imported materials, interalia, procured by M/s Cogeme Precision Parts (I) Pvt. Ltd., Khed, Pune & M/s Inzi Controls (I) Ltd., Sriperumbudur, Tamil Nadu.

3.2.4 That Disclaimer Certificate of their aforesaid vendors were produced by the claimant to the Department.

3.2.5 That since the claimant is a merchant exporter of final products, they are eligible for Brand Rate fixation as per Board's Circular No. 14/2003-Cus dated 06.03.2003.

4. Being aggrieved by the impugned order-in-appeal, the department has filed this revision application under Section 129DD of Customs Act, 1962 before Central Government on the following grounds :

4.1 On examination of the aforesaid order-in-appeal dated 12.11.2012, it is observed that the same is not legal, proper and correct, interalia, on the following grounds :-

(i) The aforesaid inputs viz. Spring, Pin, Insulator, Sensor, Wheel Turbine, Shaft, Pipes etc. have been imported by M/s M/s Cogeme Precision Parts (I) Pvt. Ltd., Khed, Pune & M/s Inzi Controls (I) Ltd., Sriperumbudur, Tamil Nadu.

(ii) As per Board's Circular No. 14/2003-Cus dated 06.03.2003, the data in respect of these units is required to be filed in the Headquarters office of Central Excise Commissionerate, having jurisdiction over the units, wherein such components are manufactured. The relevant sub-para of para 3(d) of the aforesaid Board's Circular is reproduced below –

"(d) Fixation and approval of Brand rate :

(viii).....

Sometimes, various components/ vendor items of the export goods, like those in the Automobile Industry are manufactured in the jurisdiction of more than one Central Excise Commissionerate. In such cases, Brand Rate application is required to be filed within the stipulated period in the Headquarters of Central Excise Commissionerate having jurisdiction over the manufacturing unit wherein the finished/ final export goods are manufactured / assembled. In such cases, the applicant is required to specify the components/ vendor items which are manufactured in the jurisdiction of other Central Excise Commissionerate and submit the requisite data subsequently in the Headquarters of the concerned Commissionerate of Central Excise having jurisdiction over the units wherein such components/ vendor items are manufactured. The Commissionerate in which the original Brand Rate application has been filed will get the data furnished in the application verified and fix the Brand Rate. This Brand Rate may be subsequently revised on the receipt of the verification reports in respect of the components / vendor items from the concerned Central Excise Commissionerate."

(iii) In the instant case, the claimant has failed to file the requisite data with the concerned jurisdictional Commissionerate and hence the data pertaining to these vendors could not be verified by the jurisdictional Commissionerate.

(iv) The verification / defacement of duty paying documents in respect of supporting manufacturer can be carried out by the Divisional Officer-in-charge of the supporting manufacturers. Since the exporter did not submit the requisite data to the jurisdictional Commissionerate, this could not be done.

(iv) It is pertinent to note that the procedure for verification of documents, laid down under the aforesaid Board's Circular, is vital to determine the fixation of Brand rate because, without such verification, it would be difficult to ascertain as to whether the raw materials imported by these third party vendors, against which drawback is claimed, have fully gone into the goods manufactured by these third party vendors, purported to contain the raw materials imported by them, are further claimed to be utilized by the claimant in their exported goods.

(v) Although, the requirement of verification, as discussed above, may appear to be merely procedural, it has to be viewed in the light of the object behind the issue of the Circular itself, which has been issued with a view to simplify the procedure for sanction of drawback but at the same time it is clearly specified in sub-para (i) of para 3(d) of the aforesaid Board's Circular.

4.2 In view of the above mentioned facts and the Board's guidelines issued in respect of fixation of drawback, it will be seen that the claimant have not followed the procedure laid down under Board's Circular No. 14/2003-Cus dated 06.03.2003, and therefore, the Adjudicating Authority has correctly rejected the drawback claims pertaining to the third party imports, in strict adherence to the aforesaid Board's Circular. Consequentially, the orders/ letters under F. No. P-I/BRU/D-IV/Honeywell/8/12 dated 19.07.2012 (FIFO No. 8/12) & under F.No.P-I/BRU/D-IV/Honeywell/20/12 dated 29.08.2012 (FIFO No. 20/12), are legally correct. The Commissioner (Appeals) has therefore erred in setting aside the orders passed by the adjudicating authority and consequentially allowing the appeals filed by the claimant.

5. A show cause notice was issued to the respondent under Section 129 DD of Customs Act, 1962 to file their counter reply. The respondents have filed their counter reply dated 12.09.2013 and made following submissions :-

5.1 The present revision application filed by the Additional Commissioner (BRU) on the ground that the respondents have failed to comply with the procedure prescribed in Circular No. 14/2003-Cus is not warranted in law in as much as the same was never disputed at the adjudication as well as during the first appeal stage. Therefore the revision application filed on the basis of totally a new ground is bad in law and therefore set aside on this ground itself.

5.2 Without prejudice to above submissions, the respondents submit that the revenue is incorrect in contending that the respondents have failed to fulfill the conditions of the Circular No. 14/2003-Cus.

5.3 The respondent submit that as per the said circular the only responsibility casted on the respondents is to file the details of the goods manufactured in the jurisdiction of other excise Commissionerates which are further used in the exported product.

5.4 In this regard, the respondents submit that their supporting manufacturers had filed copy of the declaration given to the respondents in their respective jurisdictional excise commissionerates along with the relevant bill of entries. Therefore, the respondents were under bonafide belief that the same is sufficient compliance of the said condition of the circular.

5.5 Further, the acknowledged copy of the submissions made by the supporting manufacturers was also submitted before Additional Commissioner (BRU) during the adjudication proceedings and no such objection was raised by the Additional Commissioner (BRU) during the adjudicating proceedings and even at first appeal stage.

5.6 In this regard, the respondents submit that Additional Commissioner was provided the copies of the documents filed by the supporting manufacturers filed in

their respective jurisdictional excise commissionerates. Therefore, as per the said circular, the Additional Commissioner (BRU) should have first sanctioned the drawback to the respondents immediately of the said amount. Further the same can be revised on the basis of verification report being received from the jurisdictional excise authorities of the supporting manufacturer in case erroneous brand rate has been sanctioned.

5.7 In the present case, the Additional Commissioner (BRU) did not sanction the drawback to the respondents as per the directions of the circular. Further, it was the responsibility of the Additional Commissioner (BRU) to receive verification report from the respective jurisdictional commissionerates of supporting manufacturer in order to revise the brand rate sanctioned. Since the Additional Commissioner (BRU) himself has not complied with the direction of the said circular and contending that the respondents have failed to comply with the directions of the said circular. In fact, the respondents did comply with the conditions of the Circular by way of filing the copies of the declaration as acknowledged by the jurisdictional Central Excise Authorities of the supporting manufacturers.

5.8 Therefore, the respondents submit that the present revision application filed by the Additional Commissioner (BRU) is liable to be dropped on this ground itself and the order of the Commissioner (Appeals) shall be uphold.

5.9 Therefore, the respondents submit that since the incidence of duty is passed on by the supporting manufacturer, to neutralize the effect of such duty from the export product, the drawback of the same should be allowed to the respondents. In view of the above facts, the respondents submit that the Commissioner (Appeals) has correctly allowed the appeals of the respondents and the present revision application filed by the Additional Commissioner (BRU) is liable to be dismissed on this ground itself.

6. Persons hearing scheduled in this case on 10.04.2014 at Mumbai was attended by Shri Mayank Jain, Advocate on behalf of the respondent who reiterated the findings of the Commissioner (Appeals) and the submissions made in their written reply dated

12.09.2013,. Shri R.S. Rao, Joint Commissioner of Central Excise Pune-I, attended hearing on behalf of the applicant department who reiterated the grounds of revision application.

7. Government has carefully gone through the relevant cases records available in case file, oral & written submissions and perused the impugned order-in-original and order-in-appeal.

8. On perusal of records, Government observes that in the instant case, while fixing drawback brand rate under rule 7 of Customs, Central Excise Duties and Service Tax Drawback Rules 1995 as amended the drawback claim of Rs.52,57,002/- and Rs.65,44,682/- was disallowed by original authority. The Commissioner (Appeals) allowed the appeal of claimant and set aside the impugned order-in-original. Now applicant department has challenged the said order-in-original on the grounds stated above.

9. Government notes that the said disputed amount of Rs.52,57,002/- and Rs.65,44,682/- is claimed by claimant (respondents) for fixation of Brand rate of drawback on the items viz. Spring, Pin, Insulator, Sensor, Wheel Turbine, Shaft, Pipes etc. imported by third parties namely M/s Cogeme Precision Parts (I) Pvt. Ltd., Khed, Pune & M/s Inzi Controls (I) Ltd., Sriperumbudur, Tamil Nadu who had manufactured Actuators Assembly, Nozzle Assembly, Wheel Turbine etc. from these imported inputs and supplied it to the respondent. As per para 3(d) of Circular No.14/03-Cus. Dated 06.03.2003, the data in respect of these units is required to be filed in the headquarters office of Central Excise Commissionerate having jurisdiction over the units wherein such components are manufactured. The Commissionerate in which original brand rate application has been filed will get the data (pertaining to its Commissionerate) furnished in application verified and fix brand rate. The brand rate may be subsequently revised on the receipt of verification reports in respect of components / vendor items from concerned Central Excise Commissioneraate. Applicant has claimed that requisite data was filed in the concerned Commissionerates but the Additional Commissioner (BRU)

failed to get the verification done from other commissionerates. As per circular, the verification was to be got gone by the Additional Commissioner (BRU) Pune-I. Commissioner (Appeals), has held that claimant has submitted all the requisite data to the BRU for necessary verification and intention of Government is to allow drawback claim on the inputs being used in the export product including the inputs being used in the manufacture of component / vendor items being manufactured at multiple manufacturing locations and supplied as components /vendor items to the principal manufacturer. Government notes that Commissioner (Appeals) has rightly discussed the intention of Government but ignored the vital requirement of said circular which require the data to be verified by other commissionerate where components/ vendor items are manufactured. In this regard, Government observes that ends of justice will be met if the brand rate in respect of said components / vendor items involving the disputed amount stated above, is fixed after getting the data verified from the concerned Central Excise Commissionerate.

10. Government therefore, directs the original authority to get the requisite data verified from concerned commissionerate of Central Excise and then fix the drawback brand rate in respect of said components/ vendor items. The claimant is directed to furnish the requisite data alongwith copies of earlier data supplied alongwith original claim to the Additional Commissioner (BRU) Pune-I within 2 weeks of the receipt of this order. A reasonable opportunity of hearing will be afforded to the parties. The impugned order-in-appeal is modified to this extent.

11. The revision application is thus disposed off in terms of above.

12. So ordered.

(D.P. Singh)
Joint Secretary(Revision Application)

Additional Commissioner(BRU),
Central Excise, Pune-I Commissionerate,
ICE House, 41A, Sasoon Road,
Pune - 411001.

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C.B.E.C.-O.S.D. (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Order No. 115/14-Cus Dated 06.05.2014

Copy to:

1. Commissioner of Central Excise, Pune-I Commissionerate, ICE House, 41A, Sasoon Road, Pune - 411001.

2. The Commissioner of Customs & Central Excise (Appeals), Pune-I Commissionerate, ICE House, 41A, Sasoon Road, Pune – 411001

3. M/s Honeywell Turbo (India) Pvt. Ltd., Plot No. 4-A, Raisoni Industrial Park, Village Mann, Near Phase-II, Hinjewadi, Pune – 411057

4. PA to JS(RA)

5. Guard File.

6. Spare Copy

(B.P. Sharma)
OSD(Revision Application)