



W.P.No.13321 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2025

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.13321 of 2021

M/s.Tractors and Farm Equipment Limited,
Pottipatti Plaza,
No.35, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.
Represented by its GM (Indirect Taxes)
Mr.T.Amarnath

... Petitioner

Vs.

1. The Principal Commissioner (RA)
and Ex-Officio Additional Secretary,
Government of India,
8th Floor, World Trade Centre,
Cuffe Parade,
Mumbai - 400 005.
2. The Joint Secretary to the Government of India (RA),
Ministry of Finance Department of Revenue,
14, Hudco Vishala Building, B Wing, 6th Floor,
Bhikaji Cama Place,
New Delhi - 110 066.



W.P.No.13321 of 2021

3. The Commissioner of Customs and Central
Excise (Appeals),
No.1, Williams Road,
Cantonment,
Tiruchirapalli - 620 001.

4. The Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin - 628 004.

5. The Deputy Commissioner (Drawback),
Customs House,
New Harbour Estate,
Tuticorin - 628 004.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus, to call for the records relating to the Order No.219/2020-CUS (SZ)/ASRA/MUMBAI dated 24.12.2020 passed by the first respondent and to quash the same as illegal and consequently direct the respondents to grant the customs portion of the All Industry Rate of Duty Drawback at 1% of the FOB Value i.e., Rs.55,886/- (Rupees Fifty Five Thousand Eight Hundred and Eighty Six only) under Sl.No.8701 B of the schedule to the Notification No.103/2018 - Customs (N.T) dated 29.08.2008 as amended together with applicable interest to the Petitioner.



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W.P.No.13321 of 2021

For Petitioner : Mr.Krishna Srinivasan
Senior Counsel
Assistd. by Mr.S.Shivathanu Mohan
for M/s.S.Ramasubramaniam and
Associates

For Respondents : Mr.J.Vasu
Junior Standing Counsel

ORDER

This is the second round of litigation before this Court. In this Writ Petition, the Petitioner has challenged the Order dated 24.12.2020 bearing Order No.219/2020-CUS (SZ)/ASRA/MUMBAI passed by the 1st Respondent (hereinafter referred to as the 'Impugned Order').

2. By the Impugned Order dated 24.12.2020, the Petitioner's Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order dated 20.12.2010 passed by the Commissioner of Central Excise and Customs (Appeals), Tiruchirappalli in Order-in-Appeal No.72/2010 has been rejected. Relevant portion of the Impugned Order dated 24.12.2020 is extracted hereunder:

"21. The Applicant has made some arguments to the effect that since they have used certain duty paid goods



for the manufacture of the export goods, they would be eligible for drawback. However, no details of any such goods have been mentioned. In this regard, Government finds that the categorical stipulation of the respective notifications allowing drawback is that the rates of drawback shall not be applicable to the export of a commodity or product if it is manufactured or exported in terms of sub-rule (2) of Rule 19 of the Central Excise Rules, 2002. Once materials procured under sub-rule (2) of Rule 19 of the Central Excise Rules, 2002 are used for manufacture, the manufacturer is disentitled from the benefit of drawback. A few goods procured otherwise would not alter the scope of above condition of the notification. There is no room left for interpretation and hence the arguments put forth by the Applicant do not survive.

22. In view of the above, Government finds no infirmity in Order-in-Appeal No.72/2010 dated 20.12.2010 passed by the Commissioner of Central Excise & Customs (Appeals), Trichurapalli and therefore refrains from exercising its revisionary powers in the instant case.

23. The Revision Application is disposed off on above terms."

3. The case of the Petitioner is that the Petitioner is a Public Limited Company engaged in the manufacture of agricultural tractors and parts thereof duly registered with the Central Excise Authorities. The Petitioner had exported certain consignment of manufactured goods under Shipping Bill No.2102572 dated 29.05.2009 and Shipping Bill No.2118356



W.P.No.13321 of 2021

dated 02.07.2009.

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4. The Petitioner claimed duty draw back on the export made under the aforesaid shipping bills in the terms of Notification No.43/2001-Central Excise (N.T.) dated 26.06.2001. The Petitioner claimed duty draw back at the applicable rate in accordance to Paragraph No.6 of Notification No.103/2008-Customs (N.T.) dated 29.08.2008.

5. On the other hand, the Department was of the view that the Petitioner was not entitled to duty draw back on the export made under the aforesaid Shipping Bills as was in violation of Paragraph No.8(f) of the Notification No.103/2008-Customs (N.T.) dated 29.08.2008.

6. The Petitioner had reportedly procured some of the inputs from the Domestic Tariff Area without payment of duty in terms of Rule 19(2) of the Central Excise Rules, 2002 r/w Notification No.43/2001-Central Excise (N.T.) dated 26.06.2001 before exporting goods under the aforesaid Duty Drawback Shipping Bills.



7. Rule 19 of the Central Excise Rules, 2002 reads as under:-

“Rule 19. Export without payment of duty.-

- (1) Any excisable goods may be exported without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, as may be approved by the Principal Commissioner or Commissioner, as the case may be.
- (2) Any material may be removed without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, for use in the manufacture or processing of goods which are exported, as may be approved by the Principal Commissioner or Commissioner, as the case may be.
- (3) The export under sub-rule (1) or sub-rule (2) shall be subject to such conditions, safeguards and procedure as may be specified by notification by the Board.”

8. Rule 19 of the Central Excise Rules, 2002, prescribes the procedure for export without payment of duty.

9. Rule 19(1) of the Central Excise Rules, 2002, allows export of excisable goods without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, as may be



W.P.No.13321 of 2021

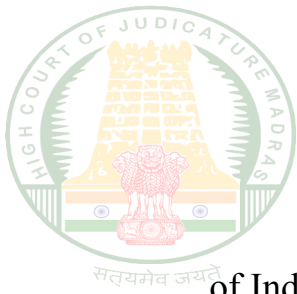
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approved by the Principal Commissioner or Commissioner, as the case may be.

10. Rule 19(2) of the Central Excise Rules, 2002, allows removal of any material from a factory of the producer or the manufacturer or the warehouse or any other premises, as the case may be, without payment of duty for use in the manufacture or processing of goods which are exported, as may be approved by the Principal Commissioner or Commissioner. Such removals are however subject to such conditions, safeguards and procedure as may be specified by notification by the Central Board of Customs.

11. To implement the mandate of Rule 19 of the Central Excise Rules, 2002, Notification No.43/2001-Central Excise (N.T.) dated 26.06.2001 has been issued.

12. Notification No.43/2001-Central Excise (N.T.) dated 26.06.2001, notified the conditions, safeguards and procedures for procurement of excisable goods without payment of duty for the purpose of use in manufacture or processing of export goods and their exportation out



W.P.No.13321 of 2021

WEB COPY

of India, to any country except Nepal and Bhutan.

13. As per Paragraph 2 to Notification No.43/2001-Central Excise (N.T.) dated 26.06.2001, for the purpose of manufacture of intermediate products necessary for the manufacture or processing of finished goods and return of said intermediate products to factory for further use in the manufacture or processing of finished goods without payment of duty or to remove the same, without payment of duty in bond for export, provided that the waste, if any, arising in the course of such operation is also returned to the factory of manufacturer or processor.

14. Paragraph No.2 of Notification No.43/2001-Central Excise (N.T.) dated 26.06.2001 is reproduced below:-

“2. For the purpose of manufacture of intermediate products necessary for the manufacture or processing of finished goods and return the said intermediate products to his factory for further use in the manufacture or processing of finished goods without payment of duty or remove the same, without payment of duty in bond for export, provided that the waste, if any, arising in the course of such operation is also returned to the factory of manufacturer or processor.”

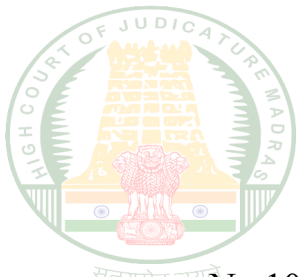


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15. The Petitioner has claimed Duty Drawback on the strength of Serial No.87 to Schedule to Notification No.103/2008-Customs (N.T.) dated 29.08.2008. Serial No.87 to Schedule to Notification No.103/2008-Customs (N.T.) dated 29.08.2008 is extracted below:-

<i>Tariff Item</i>	<i>Description of Goods</i>	<i>Unit</i>	<i>A</i>		<i>B</i>	
			<i>Drawback when Cenvat facility has not been availed</i>		<i>Drawback when Cenvat facility has been availed</i>	
			<i>Drawback Rate</i>	<i>Drawback Cap per unit in Rs.</i>	<i>Drawback Rate</i>	<i>Drawback cap per unit in Rs.</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>
<i>87</i>	<i>Vehicles other than railway or tramway rolling stock, and parties and accessories thereof</i>					
<i>8701</i>	<i>Tractors (other than tractors of heading 8709)</i>		<i>1%</i>		<i>1%</i>	

16. The Petitioner was issued with a Show Cause Notice / Demand Notice dated 30.11.2009. It sought to recover the duty draw back that was sanctioned to the Petitioner on the exports made under the aforesaid Shipping Bills for non-fulfillment of Condition No.8 to Notification



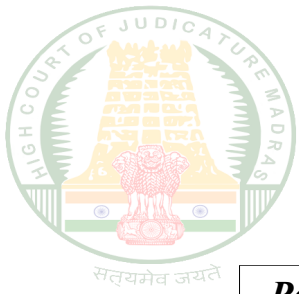
W.P.No.13321 of 2021

No.103/2008-Customs (N.T.) dated 29.08.2008.

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17. For the sake of clarity Paragraph Nos.6 & 8(f) of the Notification No.103/2008-Customs (N.T.) dated 29.08.2008 are reproduced below:

<i>Paragraph No.6 of Notification No.103 of 2008</i>	<i>Paragraph No.8 of Notification No.103 of 2008</i>
<i>6. The figures shown under the drawback rate and drawback cap appearing below the column "Drawback when Cenvat facility has not been availed" refer to the total drawback (customs, central excise and service tax component put together) allowable and those appearing under the column "Drawback when Cenvat facility has been availed" refer to the drawback allowable under the customs component. The difference between the two columns refers to the central excise and service tax component of drawback. If the rate indicated is the same in both the columns, it shall mean that the same pertains to only customs component and is available irrespective of whether the exporter has availed of Cenvat of</i>	<i>8. The rates of drawback specified in the said Schedule shall not be applicable to export of a commodity or product if such commodity or product is-</i> (a)... (b)... (c)... (d)... (e)... (f) <i>manufactured or exported in terms of sub-rule(2) of Rule 19 of the Central Excise Rules, 2002.</i> (g)...



W.P.No.13321 of 2021

WEB COPY

Paragraph No.6 of Notification No.103 of 2008	Paragraph No.8 of Notification No.103 of 2008
<i>not.</i>	

18. Thus, the rate prescribed in Serial No.87 to Schedule to Notification No.103/2008-Customs (N.T.) dated 29.08.2008 was *prima facie* not applicable since the Petitioner had availed the benefit of Rule 19(2) of the Central Excise Rules, 2002.

19. The Deputy Commissioner of Customs (Drawback) dropped the aforesaid proceedings seeking to recover the duty draw back that was sanctioned to the Petitioner for the aforesaid Shipping Bills. The Department however preferred an appeal before the Commissioner (Appeals) who vide Order-in-Appeal No.72/2010 dated 20.12.2010, who allowed the Department's appeal and thus confirmed the demand proposed in the Show Cause Notice / Demand Notice dated 30.11.2009 issued to the Petitioner.



W.P.No.13321 of 2021

WEB COPY

20. The Order-in-Appeal No.72/2010 dated 20.12.2010 was affirmed by 2nd Respondent vide Order dated 08.03.2013 in Order No.84/2013-Cus, in revision filed by the Petitioner under Section 129DD of the Customs Act, 1962.

21. Thus, the Petitioner had challenged Order dated 08.03.2013 in Order No.84/2013-Cus before this Court in W.P.No.1792 of 2014. This Court vide Order dated 08.10.2020 allowed the aforesaid Writ Petition and partly remanded the case back to Respondents to pass a fresh order.

22. It is in this background, the 1st Respondent passed the Impugned Order dated 24.12.2020 pursuant to a Personal Hearing that was held on 07.12.2020 with the Petitioner. Aggrieved by the same, the Petitioner has filed this Writ Petition.

23. The learned Senior Counsel for the Petitioner would draw the attention of this Court to Paragraph No.6 of Notification No.103/2008-Customs (N.T.) dated 29.08.2008 fixing all industry rate of duty draw back



W.P.No.13321 of 2021

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for the year 2008 & 2009. Insofar as the goods falling under Tariff Item No.8701 are concerned, it is stated the draw back rate when CENVAT facility was availed or not.

24. The learned Senior Counsel for the Petitioner also drew the attention of this Court to the subsequent notification issued by the Central Government in Notification No.84/2010-Customs (N.T.) dated 17.09.2010. It is submitted that the Notification No.84/2010-Customs (N.T.) dated 17.09.2010 substitutes and replaces the earlier notification in Notification No.103/2008-Customs (N.T.) dated 29.08.2008. It is submitted that identical provisions that are available in Paragraph No.8(f) in Notification No.103/2008-Customs (N.T.) dated 29.08.2008 is in Paragraph No.9(b) in Notification No.84/2010-Customs (N.T.) dated 17.09.2010.

25. It is further submitted by the learned Senior Counsel for the Petitioner that in view of the confusion prevailing in the industry and in the field, the Central Board of Customs has also issued a clarification in Circular No.35/2010-Cus dated 17.09.2010, wherein in Paragraph No.4(vi)(d), it has



W.P.No.13321 of 2021

been clarified as under:

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"4(vi)(d): The earlier notification (No.103/2008 Cus.(N.T) dated 29.08.2008 as amended) provided that the rates of drawback in the Drawback Schedule would not be applicable to products manufactured or exported by availing the rebate of Central Excise duty paid on materials used in the manufacture of export goods in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002. Reference have been received that exporters are being denied 1% of drawback, which is the customs component of AIR drawback, on the basis of the above condition although the manufactures had taken only the rebate of Central Excise duties in respect of their inputs / procured the inputs without payment of central excise duties; and the Customs duties which remained unrebated should be provided through the AIR drawback route."

It is therefore submitted that the Impugned Order is unsustainable.

26. On the other hand, the learned Junior Standing Counsel for the Respondents drew attention of this Court to Paragraph Nos.5 and 7 of the Counter Affidavit and it is submitted that the Petitioner had availed the benefit for export of goods by availing the benefit under Central Excise Notification No.43/2001-Central Excise (N.T.) dated 26.06.2001 issued under Rule 19(2) of the Central Excise Rules, 2002 and that the benefit of duty draw back was not available to the Petitioner.



W.P.No.13321 of 2021

WEB COPY

27. I have considered the arguments advanced by the learned Senior Counsel for the Petitioner and the learned Junior Standing Counsel for the Respondents and have also perused the materials on record.

28. The benefit of duty draw back under Section 75 of the Customs Act, 1962 is intended to incentivize and to promote export to foreign country as they bring previous foreign exchange to the country and thus improve not only the economy but also balance of payment of the country. It is under these circumstances, Notification No.103/2008-Customs (N.T.) dated 29.08.2008 was issued. It was subsequently replaced by Notification No.84/2010-Customs (N.T.) dated 17.09.2010.

29. Section 75(1) of the Customs Act, 1962, contemplates Drawback of duties of customs chargeable under the Customs Act, 1962 on any imported material in respect of goods viz., a class or description used in the manufacture or processing of goods or carrying out any operation on such goods in accordance with, and subject to rules made under Sub-section (2) of Section 75 of the Customs Act, 1962.



30. For the sake of clarity, Section 75(1) and (2) of the Customs Act, 1962 are reproduced below:-

Section 75(1) of the Customs Act	Section 75(2) of the Customs Act
75. Drawback on imported materials used in the manufacture of goods which are exported.— (1) Where it appears to the Central Government that in respect of goods of any class or description 5 manufactured, processed or on which any operation has been carried out in India, being goods which have been entered for export and in respect of which an order permitting the clearance and loading thereof for exportation has been made under section 51 by the proper officer, or being goods entered for export by post under clause (a) of section 84 and in respect of which an order permitting clearance for exportation has been made by the proper officer, a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the manufacture or processing of such goods or carrying out any operation on such goods, the Central Government may, by notification in	75. Drawback on imported materials used in the manufacture of goods which are exported.— (1) (2) The Central Government may make rules for the purpose of carrying out the provisions of sub-section (1) and, in particular, such rules may provide (a) for the payment of drawback equal to the amount of duty actually paid on the imported materials used in the manufacture or processing of the goods or carrying out any operation on the goods or as is specified in the rules as the average amount of duty paid on the materials of that class or description used in the manufacture or processing of export goods or carrying out any operation on export goods of that class or description either by manufacturers generally or by persons processing or carrying on any operation generally or by any particular manufacturer or particular person carrying on any process or



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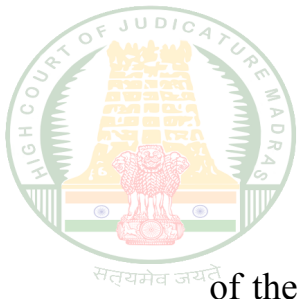
Section 75(1) of the Customs Act	Section 75(2) of the Customs Act
the Official Gazette, direct that drawback shall be allowed in respect of such goods in accordance with, and subject to, the rules made under sub-section (2). Provided that no drawback shall be allowed under this sub-section in respect of any of the aforesaid goods which the Central Government may, by rules made under sub-section (2), specify, if the export value of such goods or class of goods is less than the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf. Provided further that where any drawback has been allowed on any goods under this sub-section and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), such drawback shall	other operation, and interest if any payable thereon; (aa) for specifying the goods in respect of which no drawback shall be allowed; (ab) for specifying the procedure for recovery or adjustment of the amount of any drawback which had been allowed under sub-section (1) or interest chargeable thereon; (b) for the production of such certificates, documents and other evidence in support of each claim of drawback as may be necessary; (c) for requiring the manufacturer or the person carrying out any process or other operation to give access to every part of his manufactory to any officer of customs specially authorised in this behalf by the Assistant Commissioner of Customs or Deputy Commissioner of Customs to enable such authorised officer to inspect the processes of manufacture, process or any other operation carried out and to verify by actual check or otherwise the statements made in support of the claim for drawback. (d) for the manner and the time within which the claim for payment of drawback may be filed; (3) The power to make rules conferred by sub-section (2) shall include the power to give drawback with retrospective effect from a date



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Section 75(1) of the Customs Act	Section 75(2) of the Customs Act
except under such circumstances or such conditions as the Central Government may, by rule, specify, be deemed never to have been allowed and the Central Government may, by rules made under sub-section (2), specify the procedure for the recovery or adjustment of the amount of such drawback. (1A) Where it appears to the Central Government that the quantity of a particular material imported into India is more than the total quantity of like material that has been used in the goods manufactured, processed or on which any operation has been carried out in India and exported outside India, then, the Central Government may, by notification in the Official Gazette, declare that so much of the material as is contained in the goods exported shall, for the purpose of sub-section (1), be deemed to be imported material.	not earlier than the date of changes in the rates of duty on inputs used in the export goods.

31. To implement, Section 75(1) of the Customs Act, 1962, the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 has been framed by the Central Government. It has been framed in exercise of power conferred under Section 75 of the Customs Act, 1962 and Section 37



W.P.No.13321 of 2021

WEB COPY

of the Central Excises and Salt Act, 1944 and Section 93A r/w with Section 94 of Finance Act, 1994.

32. The expression ‘drawback’ is defined in Rule 2(a) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. It is a rebate of duty or tax, chargeable on any imported materials or excisable materials used or taxable services used as input services in the manufacture of such goods on goods manufactured and exported from India.

33. Rule 2(a) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 is reproduced below:-

“2(a) “drawback”, in relation to any goods manufactured in India and exported, means the rebate of duty or tax, as the case maybe, chargeable on any imported materials or excisable materials used or taxable services used as input services in the manufacture of such goods.”

34. As per Rule 3 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, the procedure for claiming drawback is subject to the provisions of-



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W.P.No.13321 of 2021

1. the Customs Act, 1962 and the rules made thereunder;
2. the Central Excise and Salt Act, 1944 (1 of 1944) and the rules made thereunder; and
3. these rules, viz., the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

35. A drawback may be allowed on the export of goods of such amount, or at such rates, as may be determined by the Central Government.

36. As per first *Proviso* to Rule 3 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, duty drawback is admissible even where any goods are produced or manufactured from imported materials or excisable materials on some of which only, duty chargeable thereon has been paid and not on the rest, or only a part of the duty chargeable has been paid or the duty paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962, and the rules made thereunder, or under the Central Excises Act, 1944 (1 of 1944) and the rules made thereunder. The duty drawback that is to be on the said exported goods is to be reduced taking



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into account the lesser duty paid or the rebate, refund or credit obtained. In other words, no part of the duty paid is to be borne by an exporter to make the export competitive in the international arena.

37. The second *Proviso* to Rule 3 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 stipulates no drawback shall be allowed under certain circumstances. It reads as under:-

“Provided further that no drawback shall be allowed : -

(i) if the said goods, except tea chests used as packing material for export of blended tea, have been taken into use after manufacture;

(ii) if the said goods are produced or manufactured, using imported materials or excisable materials in respect of which duties have not been paid; or

(iii) on jute batching oil used in the manufacture of export goods, namely, jute (including Bimlipatan jute or mesta fibre), yarn, twist twine, thread, cords and ropes;

(iv) if the said goods, being packing materials have been used in or in relation to the export of : -

1. jute yarn (including Bimlipatan jute or mesta fibre), twist, twine, thread and ropes in which jute yarn predominates in weight;

2. jute fabrics (including Bimlipatam jute or mesta fibre), in which jute predominates in weight;



3. jute manufactures not elsewhere specified (including Bimlipatam jute or mesta fibre) in which jute predominates in weight.

(v) on any of the goods falling within heading [0401,c0402, 0403, 0404, 0405, 0406, 1006, 2523, 3501, 5205, 5206 or 5207] of the First Schedule to the Customs Tariff Act, 1975.

38. Thus, unless any of the restrictions in the second proviso to Rule 3 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 are attracted, the benefit of duty drawback on exports made cannot be denied. Clause (ii) to the second *Proviso* to Rule 3 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 as extracted above states that if the said goods are produced or manufactured, using imported materials or excisable materials in respect of which duties have not been paid. This restriction is not applicable merely because the benefit of Rule 19(2) of the Central Excise Rules, 2002 was availed only for manufacture of goods at the intermediary stage which were used for the manufacture of export.



W.P.No.13321 of 2021

WEB COPY

39. The Central Government shall have regard to the factors/parameters stipulated in Rule 3 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 while determining the amount or rate of drawback under it. For the sake of clarity, Rule 3(2) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 is reproduced below:-

“(2) In determining the amount or rate of drawback under this rule, the Central Government shall have regard to : -

- 1. the average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India;*
- 2. the average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods;*
- 3. the average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods;*
- 4. the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents*

Provided that if any such waste or catalytic agent is reused in any process of manufacture or is sold, the average amount of duties on the waste or catalytic agent



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W.P.No.13321 of 2021

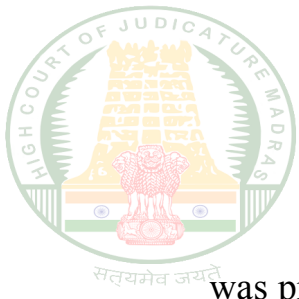
reused or sold shall also be deducted;

- 5. the average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods;*
- 6. any other information which the Central Government may consider relevant or useful for the purpose.”*

40. Notification No.103/2008-Customs (N.T.) dated 29.08.2008 which was substituted by Notification No.84/2010-Customs (N.T.) dated 17.09.2010 merely implements the statutory requirement under Rule 3(2) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 for determining the rate for the purpose of duty drawback. All Industry Rate (AIR) of duty drawback compared to Brand Rate of Duty Drawback.

41. The record indicates that the Petitioner has procured certain components as input without payment of duty under Rule 19(2) of the Central Excise Rules, 2002 r/w Notification No.43/2001-Central Excise (N.T.) dated 26.06.2001.

42. Therefore, there is no question of the Petitioner availing Cenvat Credit on the input procured without payment of duty. If such input



W.P.No.13321 of 2021

WEB COPY

was procured on payment of duty, the Petitioner would have been entitled to avail Cenvat Credit under the provisions of Cenvat Credit Rules, 2004, in which case, unless other incentives under Rule 18 of the Central Excise Rules, 2002, was availed, the benefit of Duty Drawback cannot be denied.

43. The Central Board of Customs also clarified the position vide Circular No.35/2010-Cus dated 17.09.2010 to redress the issue arising out of Paragraph No.6 of the Notification No.103/2008-Customs (N.T.) dated 29.08.2008 as amended by Notification No.84/2010-Customs (N.T.) dated 17.09.2010. In Paragraph No.4(d) to Circular No.35/2010-Cus dated 17.09.2010, it has been clarified as under:-

“(d) The earlier notification (No.103/2008 Cus. (N.T.) dated 29.08.08 as amended) provided that the rates of drawback in the Drawback Schedule would not be applicable to products manufactured or exported by availing the rebate of Central Excise Duty paid on materials used in the manufacture of export goods in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise Duty under Rule 19(2) of the Central Excise Rules, 2002. References have been received that exporters are being denied 1% of drawback, which is the customs component of the AIR drawback, on the basis of the above condition although the manufacturers had taken



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W.P.No.13321 of 2021

only the rebate of Central Excise Duties in respect of their inputs / procured the inputs without payment of central excise duties; and the Customs duties which remained unrebated should be provided through the AIR drawback route.

The issue has been examined. The present notification No.84/2010-Cus (N.T.) dated 17.09.2010 provides that customs component of AIR drawback shall be available even if the rebate of Central Excise Duty paid on raw material used in the manufacture of export goods has been taken in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise Duty under Rule 19(2) of the Central Excise Rules, 2002.”

The view taken by the Central Board of Customs is clear, which has been extracted above.

44. Though the above clarification was issued in the context of Notification No.84/2010-Customs (N.T.) dated 17.09.2010 which amends Notification No.103/2008-Customs (N.T.) dated 29.08.2008, Paragraph No.6 of Notification No.103/2008-Customs (N.T.) dated 29.08.2008 and Paragraph No.6 of Notification No.84/2010-Customs (N.T.) dated 17.09.2010 are *pari materia* with each other.

45. Similarly, Paragraph No.8(f) of Notification No.103/2008-



W.P.No.13321 of 2021

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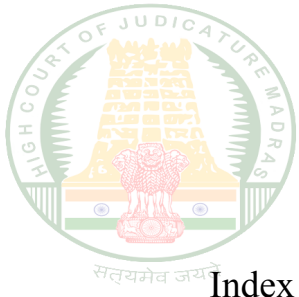
Customs (N.T.) dated 29.08.2008 is *pari materia* with Paragraph No.9(b) of Notification No.84/2010-Cus (N.T.) dated 17.09.2010. Therefore, the Petitioner is entitled for Duty Drawback in terms of beneficial clarification of the Central Board of Customs vide Circular No.35/2010-Cus dated 17.09.2010.

46. Therefore, the Impugned Order dated 24.12.2020 of the 1st Respondent the Principal Commissioner (RA) and Ex-Officio Additional Secretary, Mumbai, is liable to be set aside. Consequently, the Order dated 20.12.2010 of the 3rd Respondent the Commissioner of Customs and Central Excise (Appeals), Tiruchirapalli, is also liable to be set aside and Order No.1712 of 2010 of the 5th Respondent the Deputy Commissioner (Drawback), Tuticorin dated 21.07.2010 is upheld.

47. In the result, this Writ Petition is allowed. No costs.

23.01.2025

NCC: Yes / No



W.P.No.13321 of 2021

Index : Yes / No

Speaking Order : Yes / No

vji/arb

To

1. The Principal Commissioner (RA)
and Ex-Officio Additional Secretary,
Government of India,
8th Floor, World Trade Centre,
Cuffe Parade,
Mumbai - 400 005.
2. The Joint Secretary to the Government of India (RA),
Ministry of Finance Department of Revenue,
14, Hudco Vishala Building, B Wing, 6th Floor,
Bhikaji Cama Place,
New Delhi - 110 066.
3. The Commissioner of Customs and Central
Excise (Appeals),
No.1, Williams Road,
Cantonment,
Tiruchirapalli - 620 001.
4. The Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin - 628 004.
5. The Deputy Commissioner (Drawback),
Customs House,



W.P.No.13321 of 2021

सत्यमेव जयते
New Harbour Estate,
Tuticorin - 628 004.



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W.P.No.13321 of 2021

C.SARAVANAN, J.

vji/arb

W.P.No.13321 of 2021

23.01.2025