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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : 12.02.2026

+ ITA 489/2022

NARAYAN INDUSTRIES

.....Appellant

Through: Mr. Rohit Jain, Mr. Aniket D.
Agrawal and Mr. Abhisek Singhvi,
Advs.

versus

ACIT CIRCLE 60(1) NEW DELHI

.....Respondent

Through: Mr. Ruchir Bhatia SSC with Mr.
Anant Mann JSC.

CORAM:**HON'BLE MR. JUSTICE DINESH MEHTA****HON'BLE MR. JUSTICE VINOD KUMAR****JUDGMENT****DINESH MEHTA, J. (ORAL)**

1. The following questions of law were framed on 30.09.2024 in the present appeal:

(i) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in upholding the action of the assessing officer in denying deduction to the extent of Rs.1,52,07,079/- under Section 80-IC of the Act on account of duty drawback of the said amount, holding that the same is not derived from industrial undertaking?

(ii) Whether the Tribunal erred in law in upholding the action of the assessing officer in denying deduction of Rs.6,58,683 under Section 80-IC of the Act on account of



exclusion of gross interest on KDR from the eligible profits, holding that the same is not derived from industrial undertaking?

2. At the beginning of the submission, Mr. Rohit Jain, learned counsel for the appellant submitted that that he does not press the appeal *qua* question no.(ii).
3. The appeal is, therefore, dismissed *qua* question no.(ii).
4. In relation to the question no. (i) reproduced hereinabove also Mr. Rohit Jain, learned counsel for the appellant has fairly conceded that the first question stands decided by Hon'ble the Supreme Court against the assessee in the case of ***Liberty India v. Commissioner of Income-tax*** reported in [2009] 317 ITR 218 (SC) and ***Commissioner of Income-tax v. Sterling Foods*** reported in [1999] 237 ITR 579 (SC).
5. He however submitted that even if the aforesaid question is decided against the appellant and it is held that the duty drawback has no nexus and co-relation with the industrial undertaking, the appellant-assessee alternatively contends the excise and customs duties, which it had paid while purchasing the raw materials is required to be deducted from the duty drawback it had received *qua* the duty paid on exported goods.
6. Learned counsel for the appellant submitted that in memo of appeal, such question had been proposed by the appellant by way of question no. (ii) and even at the time of admission, he did pray to the Court to consider framing of this question but the same was not framed.
7. On hearing learned counsel for the parties, we are of the view that the following question also arises for our consideration :

(iii) *If the answer to question no. (i) is in negative, then*



whether amount of excise and customs duties paid by the appellant-assessee while purchasing the raw materials is required to be subsumed from the excise and custom duties, which the appellant had paid at the time of export of the goods?

8. Question no. (i) is decided against the appellant in light of the judgment of Hon'ble the Supreme Court in ***Liberty India*** (supra) in which Hon'ble Court had held thus:-

“22.The cost of purchase includes duties and taxes (other than those subsequently recoverable by the enterprise from taxing authorities), freight inwards and other expenditure directly attributable to the acquisition. Hence trade discounts, rebate, duty drawback, and such similar items are deducted in determining the costs of purchase. Therefore, duty drawback, rebate etc. should not be treated as adjustment (credited) to cost of purchase or manufacture of goods. They should be treated as separate items of revenue or income and accounted for accordingly (see: page 44 of Indian Accounting Standards & GAAP by Dolphy D'souza). Therefore, for the purposes of AS-2, Cenvat credits should not be included in the cost of purchase of inventories. Even Institute of Chartered Accountants of India (ICAI) has issued Guidance Note on Accounting Treatment for Cenvat/Modvat under which the inputs consumed and the inventory of inputs should be valued on the basis of purchase cost net of specified duty on inputs (i.e. duty recoverable from the Department at later stage) arising on account of rebates, duty drawback, DEPB benefit etc. Profit generation could be on account of cost cutting, cost rationalization, business restructuring, tax planning on sundry balances being written back, liquidation of current assets etc. Therefore, we are of the view that duty drawback, DEPB benefits, rebates etc. cannot be credited against the cost of manufacture of goods debited in the Profit & Loss account for purposes of Sections 80-IA/80-IB as such remissions (credits)



would constitute independent source of income beyond the first degree nexus between profits and the industrial undertaking.”

9. Now moving on to question no.(iii), learned counsel for the appellant submitted that while passing the orders for AYs 2013-14 and 2015-16, the Income Tax Appellate Tribunal, DELHI Branch ‘E’, New Delhi (*hereinafter referred to as ‘the Tribunal’*) vide its orders dated 03.03.2023 for AY 2015-16 and 10.07.2024 for AY 2013-14 has accepted the appellant’s submissions and allowed the appeal with a direction to the Assessing Officer (AO) to deduct the excise and customs duties paid by the appellant-assessee while purchasing the raw materials from the duty drawback it had received.

10. He further submitted that the said orders of the Tribunal have attained finality, as the same were not challenged by the Income Tax Department by way of appeal before this Court.

11. For the purpose of completion of the arguments, learned counsel for the appellant added that after the matters were remanded by the Tribunal, the AO undertook the exercise and passed assessment orders and gave the benefit to the assessee as directed by the Tribunal.

12. Mr. Anant Mann, learned Junior Standing Counsel for the respondent, on the other hand, submitted that the appellant’s contention that the matter be remanded back to the AO with the direction that the excise and customs duties paid by the appellant at the time of purchase of raw materials cannot be accepted, as a question to this effect was never raised before this Court. He further submitted that the Department has not challenged the orders dated 03.03.2023 and 10.07.2024 of the Tribunal as the tax effect in those appeals was less than the ceiling prescribed under the circulars of Central Board of Direct Taxes (CBDT).



13. Heard learned counsel for the parties and perused the material.
14. Since we have framed the question no.(iii) as indicated above, we are of the view that question does emanate from the order of the Tribunal and since the same was duly proposed by the appellant and ground in relation thereto was taken, the same deserves to be dealt with and decided.
15. On perusal of the orders dated 03.03.2023 and 10.07.2024 passed by the Tribunal for the AYs 2013-14 and 2015-16, we find that the matters were remanded to the AO with a direction to deduct the amount of duty paid while purchasing the raw material, which appears to be the correct position of law. That apart, there cannot be two different treatments for the very same assessee in the sense that in one year he does not get deduction of the duty paid while adding back the duty drawback in his income and for the other two years, it gets such advantage.
16. While deciding the appeals of AY 2013-14 and AY 2015-16, the Tribunal has dilated upon this issue and gave its reason for the said direction, which we reproduce as under:-

“8. It was submitted that duty component embedded in purchases debited in the profit and loss account exceeds the amount of duty drawback of Rs. 1,92,64,540/- received during the year under consideration, thereby not resulting in any profit from the incentive by way of duty drawback. In view of the aforesaid, It was submitted that since there was no profit from the incentive received by the appellant by way of duty drawback, the question of any such profit being included in the eligible profit of the undertaking/ gross total income of the appellant does not arise at all. The AO may verify the purchases and duty paid thereof and examine the net impact of the duty paid and received and take a decision in



accordance with the provisions of the Act.”

17. Question no.(iii) above is answered in affirmative. The orders of the Tribunal and CIT(A) so also of the AO are set aside the extend of addition of duty drawback of Rs.1,52,07,079/- and the matter is remanded back to the AO to subsume or deduct the amount of excise duty and custom duty, which the appellant had paid at the time of purchase of raw materials from the duty drawback and pass assessment order afresh in this regard.

18. Needless to observe that he shall be free to verify the facts as asserted and claimed by the assessee.

19. Appeal is partly allowed. Pending application(s), if any, disposed of.

DINESH MEHTA, J

VINOD KUMAR, J

FEBRUARY 12, 2026

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