**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III**

**Customs Appeal No. C/51165/2016- CU[SM]**

[Arising out of Order-In-Original No. V-CE(30) Tech.1/Brand-Rate/ Comm/DDN/Amber/104/2015/692 dated 22.01.2016 passed by Commissioner of Customs, Service Tax and Central Excise E-Block, Nehru Colony, Dehradum]

**For approval and signature:**
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

M/s. Amber Enterprises India Pvt. Ltd ...Appellant

Vs.

C.C.E. & S.T.-Dehradun …Respondent

**Appearance:**
Sh. R.K. Hasija, (Advocate) for the Appellant
Ms. Suchitra Sharma (AR) for the Respondent

**CORAM:**
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing/ Decision. 29.06.2016

**Final Order No 56480 /2016**

**Per S K Mohanty**

Heard both sides and perused the records.

2. Issue involved in the present appeal relates to fixation of brand rate of drawback under Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

3. The appellant is registered with Central Excise Department and are engaged in the manufacturing of Air-Conditioners, classified under Chapter Heading 8415 of the First Schedule of the Central Excise Tariff Act, 1985. The appellant has been availing the area based exemption of Excise duty under Notification No. 50/2003-CE dated 10.06.2003 and do

not avail Cenvat Credit of Central Excise duty paid on the inputs. The appellant is a supporting Manufacturer of Panasonic India Private Limited and received an order to supply of Air Conditioner for export. The First export was made on dated 25.05.2015 under ARE-1 procedure without payment of excise duty and no rebate of duty on the final product was claimed due to exemption under the said Notification No. 50/2003-CE dated 10.06.2003. The inputs used in the exported goods were procured from domestic market by paying excise duty and no Cenvat was availed on them.

4. Export of Air Conditioners has been covered by All Industry Rate of Drawback Schedule, wherein a drawback rate has been prescribed @1.9% in both cases where Cenvat facility has been availed and where Cenvat facility has not been availed. As per Note 7 of the Notes and Conditions issued from time to time to the drawback Schedule, the rate of drawback where Cenvat facility has been availed means that the rate pertains to Customs portion and where Cenvat facility has not been availed means that the rate pertains to total drawback (Customs, Central Excise and Service Tax component put together). It has been further provided that 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 facility or not.

5. Since the All Industry Rate of drawback was much lower than the actual duties and taxes involved in the export product, the Appellant opted to apply for Brand Rate fixation in terms of Rule 7 of the Drawback Rules. Since the exports were made through ICD, Tughlakabad, New Delhi, the Appellant under a mistaken bona fide belief applied of the fixation of Brand Rate of drawback to the Commissioner of Customs, ICD, Tughlakabad, New Delhi, vide application dated 27.08.2015. Later, the Appellant came to know that the application for fixation of brand rate of duty drawback has to be applied to the jurisdictional Central Excise Commissionerate, the Appellant filed the application for the same to the Commissioner of Central Excise, Dehradun with a copy to the Assistant Commissioner, Central, Excise Division on 19.11.2015. Appellant also filed an application for extension in terms of proviso to Rule 7 along with Challans.

6. The Commissioner vide Order dated 22.01.2016 has rejected the application for fixation of brand rate of drawback on the following grounds:

(i) The reason given by the Appellant are not found sufficient to condone the delay. The appellant has failed to comply with the provisions of Rule 7 of the Drawback Rules.

(ii) In view of the facts stated in the rejection letter dated 22.01.2016 against point no.3(i) and (ii), it is found that the Appellant is not eligible to claim Duty Drawback as the Appellant has failed to comply with the procedures laid down in the Drawback Rules read with provisions of Notfn. No. 110/2014- Customs (NT) dated 17.11.2014 and Circular No. 13/2014-Customs Dated 17.11.2014.

7. On condonation of delay, it is found that the issue is covered by the decision of the Tribunal in the case of Amber Distilleries Ltd. Vs. CCE Thane-I-2016(337) E.L.T. 602 (Tri.-Mumbai), Wherein it has been held that drawback being beneficial legislation need consideration in broader perspective and not in narrow compass and provision for condonation of delay up to 12 months in not filing brand rate application within three months, requires to be implemented in correct perspective. Therefore, the application for fixation of brand rate in the present case needs to be considered by condoning the delay.

8. Regarding the applicant failing of declare figure 9801 as an identifier in the Shipping Bill under Drawback details, it is found that the Hon'ble High Court of Bombay on the very issue in the case of **Alfa Laval (India) Ltd. Versus Union of Inida-2014(309)E.L.T. 17(Bomb.)** has held that the C.B.E. & C. while clarifying the Rules, cannot impose limitations/restrictions thereon, which are clearly not provided for in the Rules, and accordingly, has the effect of whittling down the Rules, and that in the grab of clarification, the C.B.E.

& C. cannot incorporate a restriction/limitation which did not find a place in the Rules. Reading C.B.E. & C. Circular dated 30.12.2011 and Rules 3 and 7 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 harmoniously, it was held that Circular cannot override the Rules, such that a part of it, struck down. The Hon'ble High Court has further held that there is no bar to claim brand rate even if AIR has been claimed.

9. In view of the above, the impugned order rejecting the claim of the Appellant is set aside and the matter is remanded to the original authority for fresh consideration on all issues, in the light of the above observations.

10. The appeal is allowed by way of remand.

(Operative Portion pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

Sakshi