Annexure-2

2013 (289) E.L.T. 209 (G.O.I.)

BEFORE THE GOVERNMENT OF INDIA, MINISTRY OF FINANCE

[Department of Revenue - Revisionary Authority]
Shri D.P. Singh, Joint Secretary

IN RE : CHEMSPEC CHEMICALS PVT. LTD.

Order No. 279/2012-Cus., dated 27-7-2012 in F. No. 371/8/DBK/2011-RA

Drawback - Re-export after re-packaging/re-labelling - It is without any value addition - Process undertaken did not amount to manufacture under Chapter Note 10 of Chapter 29 of Central Excise Tariff, which is meant only for 'products' of that chapter, for processes which render them marketable to consumer, and is not a general permission to anyone to sell or trade 'inputs' for profit and claim benefit of drawback meant for genuine re-exports after value addition in factory of manufacture of excisable goods - In that view, benefit of drawback was not available under Section 75 of Customs Act, 1962 - Though applicant could have availed benefit under Section 74 ibid, but they failed to avail it. *[para 9]*

Manufacture - Re-packaging and re-labelling - Chapter Note 10 of Chapter 29 of Central Excise Tariff - It is meant only for 'products' of that chapter, for processes which render them marketable to consumer - It is not a general permission to anyone to sell or trade the 'inputs' as such for a profit and then claim the beneficial scheme of grant of drawback which actually meant for genuine re-exports after doing some value added defined operations in the factory of manufacture of excisable goods - Section 2(f) of Central Excise Act, 1944. *[para 9]*

Interpretation of statutes - Specific dispute about same - In such case, simple and plain reading of statute has to be strictly construed without any intendment and liberal interpretation. *[para 8.3]*

Interpretation of statutes - Stipulation of particular act in specific manner - It means that no deviation is permitted at all, and the act should be performed in that manner itself. *[para 8.4]*

Revision rejected

CASES CITED

Commissioner v. Terai Overseas Ltd. — 2003 (156) E.L.T. 841 (Cal.) — *Referred*.... [Paras 4.3, 4.5]
H.E.G. Ltd. — 2001 (137) E.L.T. 992 (Commr. Appl.) — *Referred*..... [Para 4.1]
I.T.C. Ltd. v. Commissioner — 2004 (171) E.L.T. 433 (S.C.) — *Relied on*..... [Para 8.3]
Indian Aluminium Company Ltd. v. Thane Municipal Corporation — 1991 (55) E.L.T. 454 (S.C.) — *Relied on* [Para 8.4]
Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner — 1991 (55) E.L.T. 437 (S.C.) — *Referred* [Para 4.5]
Terai Overseas Ltd. v. Commissioner — 2001 (137) E.L.T. 683 (Tribunal) — *Referred*..... [Para 4.3]

REPRESENTED BY : *None, for the Assessee.*
None, for the Department.

[Order]. - This revision application is filed by M/s. Chemspec Chemicals Pvt. Ltd., Plot No. 3-C, MIDC Taloja, Tal. Panvel, Distt. Raigad against the order-in-appeal No. PKS/419/Bel/10, dated 10-11-2010 passed by Commissioner of Central Excise (Appeals) Mumbai-III.

2. The brief facts of the case are that the applicants have filed the application for fixation of brand rate on 17-8-2009 in respect of export goods, i.e. '2N Propyl 4 Methyl 6-(I-Methyl Benximidazole-2-YL') exported vide shipping bill No. 7317061 dated 23-6-2009. During the scrutiny of the documents submitted by the applicants, it was found that the description and

quantity of the product imported and description and quantity of product exported are the same. However, an irrecoverable wastage of 0.010 Kg. was shown against the manufacture of 1.00 Kg of final products in their DBK-1 statement which was submitted along with the application. Accordingly, the applicants were asked vide letter dated 23-12-2009 to clarify as to how they are eligible for duty drawback when the imported items and exported item are one and the same. The applicant vide letter dated 2-6-2010 has stated that they had imported 40 Kgs. of the impugned goods, vide Bill of Entry No. 993436 dated 26-5-2009 and was cleared after payment of import duties for manufacture of their final product. However, since they were not in the acute need of the said imported input, they decided to sell out the same to a foreign buyer. However, before exporting the said imported input, they had removed the original packing and labels of the foreign country and relabelled and affixed the said input with their factory's name and address and exported the same goods to Israel, under claim of rebate under Rule 18 of the Central Excise Rules, 2002 on payment of Central Excise duty and education cess. The jurisdictional Assistant Commissioner of Drawback, Central Excise, Belapur after conducting a personal hearing dated 9-6-2010 and after considering written submission dated 2-6-2010 passed an order-in-original dated 29-6-2010 wherein the said claim of the applicant was rejected for not being maintainable under Section 75 of the Customs Act, 1962.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the same.

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

4.1 That the Commissioner (Appeals) erred in rejecting the appeal of the applicants without application of mind inasmuch as that he has not discussed or commented on the judgments cited on the subject matter, rejection of claim of application without issuance of show cause notice is not proper. The applicants submit and say that they did not deny that the letter dated 23-12-2009 was issued to them but simple letter for asking clarification cannot be treated as a show cause notice. The respondent erred in rejecting the drawback application for fixing of brand rate dated 10-8-2009 in respect of the shipping bill No. 7317061 dated 23-6-2005 and bill of entry No. 993436 dated 26-5-2009 as the respondent had failed to issue show cause notice to the applicants before rejecting the claim and thus the respondent had not given any natural justice to the applicants before deciding the issue in dispute. The letter dated 18-5-2010 addressed to the applicant by respondent cannot be treated as show cause notice. It has been held in case of *HEG Ltd.* v. *Comm. (Appeals)* - 2001 (137) E.L.T. 992 that proper show cause notice not issued before rejection of applicant's claim, applicants given only a letter fixing date of personal hearing within a short time neither a proper opportunity of hearing being given to applicant nor a show cause notice being issued. Principles of natural justice violated.

4.2 The respondent failed to appreciate that the applicants had removed the original identity of the packing and labels of the original manufacturer of the product and relabelled the imported input by affixing the labels of applicants factory to enable them to sell in the market and hence the process of carrying out relabelling on the imported inputs amounts to manufacture. Hence drawback claim under Section 75 of the Customs Act, 1962 is correct.

4.3 Commissioner (Appeals) failed to appreciate that the applicants had removed the original packing and hence they were under impression that the goods i.e. imported goods could not be exported under Section 74 of the Customs Act, 1962 and Central Excise Drawback Rules, 1995. It is submitted that since the original packing was removed, the applicants were under impression that the goods i.e. imported goods could not be exported under Section 74 of the Customs Act, 1962 and Central Excise Drawback Rules, 1995. The applicants stated that they have not committed any fraud or indulged in evasion of duty. It has been held in *CCE* v. *Terai Overseas Ltd.* - 2003 (156) E.L.T. 841 (Cal.) that liberal approach should be adopted and drawback cannot be denied on mere technicality or by adopting narrow and pedantic approach especially since drawback is an incentive scheme for augmenting export. The court should adopt a liberal construction as required to further the object behind drawback rules namely to boost export. The court thus affirmed the decision in *Terai Overseas Ltd.* v. *CCE* - 2001 (137) E.L.T. 683 (Tri.-Kol.) wherein it was held that the factum of export and the receipt of money was not doubted. Respondent has not commented on the case laws cited by the applicants.

4.4 Commissioner failed to appreciate that if the claim was not filed as per proper section, the respondent should have returned the drawback claim *ab initio* to the applicants for following correct procedure instead of rejecting the same. Rejecting the claim after 90 days was not proper and legal.

4.5 It is submitted that at the time of re-export of the imported goods the Customs Officer who signed and endorsed the export documents had not objected for export though it was specifically mentioned in the export documents that the goods were under drawback scheme. In 2003 (156) E.L.T. 841 (Cal.) the court relied upon the decision in *Mangalore Chemicals and Fertilizers Ltd.* v. *DC* - 1991 (55) E.L.T. 437 (S.C.) wherein it was held that in the matter of granting exemption, some provisions are mandatory which are decided on the basis of policy decisions and some are procedural it will be erroneous if the court interprets both the provisions on the same footings. The respondent should have condoned the procedural lapses.

5. Personal hearing was scheduled in this case on 20-4-2012, 31-5-2012 and 29-6-2012. Nobody appeared for hearing on any of these dates.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. Government notes that in this case matter of fixation of brand rate of drawback for the imported goods which were claimed to be re-exported after re-packing and re-labelling, the factual details are not in dispute but the applicant exporter and the respondent department are controverting the legal interpretations of the applicable statute, the provisions of which are to be applied herein. It is further noted that the applicant while citing the reason that since they were not in acute need of said imported input they decided to sell out the same to a foreign buyer by removing original packing/labels and affixing their own packing details and labels. They wanted to take advantage of Chapter Note 10 of Chapter 29 with Notification No. 11/2008-C.E. (N.T.) (S.No. XIV) that their above act shall amount to manufacture. It is also submitted by the applicant herein that any of the objections as taken by lower authorities for rejection of their request for fixation of brand rate should be taken as a 'procedural'

one and needs to be condoned as such.

8. In this case matter, the applicable statutory provision of relevant section/chapter note which are as under :-

8.1 "Section 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 [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 section 82 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 used in the [manufacture or processing of such goods or carrying out any operation on such goods], the Central Government may, by notification in 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). ----------"

8.2 Further Chapter Note 10 of Chapter 29 of Central Excise Tariff Act, 1985 specifies that :-

"10. In relation to products of this Chapter, labelling or relabelling of containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to 'manufacture'."

8.3 In a situation as above, specifically when the applicant herein is disputing the interpretation of the relevant statutory provisions and also the conclusions - as drawn above, Government thinks it proper that the matter should be considered and proceeded in the light of Hon'ble Supreme Court's observations in the case of *M/s. ITC Ltd.* v. *CCE* [2004 (171) E.L.T. 433 (S.C.)] that the simple and plain reading of statute may be strictly construed without any intendment and any liberal interpretation.

8.4 Further, Hon'ble Supreme Court in case of *M/s. Indian Aluminium Co.* [1991 (55) E.L.T. 454 (S.C.)] and Hon'ble Tribunal in case of *M/s. Avis Electronics* have conclusively opined that when provisions are stipulated for doing a particular act in a specific manner then it would mean that any deviation therefrom are not permitted at all and it should be performed in that manner itself as per Rules.

9. Government when considers all the factual details of this matter in right perspective, finds that Chapter Note 10 of Chapter 29 is meant for the 'products' of this chapter and further the purpose of the same is to render the 'product' marketable to the consumer. It nowhere grants a general permission to anyone to take a cover to sell or trade the 'inputs' as such for a profit and then claim the beneficial scheme of grant of drawback which actually is meant for genuine re-exports after doing some value added defined operations in the factory of manufacture of excisable goods. In the instant case, applicant has stated that they removed original packing and relabelled the goods without making any value addition. So drawback claim under Section 75 of Customs Act was rightly denied. However, applicant could have re-exported the goods under Section 74 and availed drawback benefit subject to compliance of provisions of Section 74 which applicant has failed to avail.

12. Government, therefore, is in conformity with the views of Commissioner (Appeals) and upholds the said order-in-appeal for being legal and proper.

13. The revision application is thus rejected for being devoid of merits.

14. So ordered.
