CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87505 OF 2023

[Arising out of Order-in-Original No: CUS/DBK/BR/830/2023-BRU-O/o COMMR-CUS-PUNE/209 dated 30th May 2023 passed by the Commissioner of Customs, Pune.]

John Deere India Pvt Ltd
Off: Pune – Nagar Road, Sanaswadi, Pune - 412208 … ***Appellant***

versus

Commissioner of Customs
GST Bhawan, 41/A Sassoon Road, Pune - 400001 …***Respondent***

APPEARANCE:

Shri Ashok Nawal, Cost Accountant and Ms Nidhi Nawal, Advocate for the appellant

Shri Mahesh Patil, Joint Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 87485/2024

DATE OF HEARING: 25/06/2024
DATE OF DECISION: 13/12/2024

PER: C J MATHEW

M/s John Deere India Pvt Ltd is before us with the grievance that their application for determination of 'brand rate' for goods exported

by them under rule 6 of Customs, Central Excise Duties and Service Tax Drawback Rules, 2017 had been rejected solely on the ground that the application was barred by limitation of time prescribed therein without reference to the 'relevant date' as appropriate to the circumstances.

2. Learned Consultant appearing for the appellant submitted that they were '100% export oriented unit (EOU)' operating under that scheme of the Foreign Trade Policy (FTP) and, with intention of transferring to the Export Promotion Capital Goods (EPCG) scheme therein, had applied to the jurisdictional Development Commissioner on 17th December 2020 for exiting therefrom. It was submitted that, in accordance with the provisions of the scheme, consumption of goods imported or procured domestically for manufacture, as well as the manufactured goods lying in stock, were frozen for determination of duty liability on such goods and, though continuing to manufacture and export even as the 'debonding' process was underway, the duty liability likely to crystallize on such raw materials and inputs upon exit would have to be neutralized either through claim for drawback under section 75 of Customs Act, 1962 or by recourse to parallel schemes in the Foreign Trade Policy (FTP) in pursuance of which all the shipping bills, entered for clearance in the *inter regnum,* carried endorsement of such intent. It was informed that the final 'debonding' order was issued on 16th September 2021 by the jurisdictional Development Commissioner

after ‘no due certificate’ towards customs or excise duties, as the case may be, on imported goods and locally procured goods was granted on 23rd August 2021 by the jurisdictional central excise authorities.

3. Thereafter, according to Learned Counsel, the shipping bills, pertaining to export during the transition *i.e.* 1st February 2021 to 20th September 2021, were sought to be converted as having been undertaken on claim for drawback or in fulfillment of the scheme for which application was preferred on 25th October 2021. It was intimated that the competent authority under section 149 of Customs Act, 1962 in the respective jurisdictions permitted conversion of 1147 shipping bills on 20th August 2022, of 190 shipping bills on 10th October 2022 and of 2571 shipping bills on 12th October 2022 and, not satisfied with the rate of drawback in the schedule, application for fixation of brand rate was filed on 13th January 2023. The rejection of the application, purportedly for having been sought 9 months and 12 days from the date of respective ‘let export order (LEO)’, as stipulated in rule 5 of Customs, Central Excise Duties and Service Tax Drawback Rules, 2017, and held to barred by limitation is cause of this appeal.

4. Learned Consultant further contended that they could not have applied for either rate of drawback in the schedule or for fixation of ‘brand rate’ without conversion of the shipping bills by the competent authority which assumes the date of ‘let export order (LEO)’ for the

purpose.

5. We have heard Learned Authorized Representative.

6. The Customs, Central Excise Duties and Service Tax Drawback Rules, 2017 are intended to operationalize section 75 of Customs Act, 1962 for grant of drawback on exports in accordance with the scheme of chapter X of Customs Act, 1962. As a general measure for facilitating exporters, the Central Government notifies, from time to time, 'all the industry rates' on the basis of duties chargeable on inputs – both imported and domestically procured – which is approximation of the actual drawback. In the interest of fairness, the said Rules also provide for the Commissioner of Customs to determine, on application of exporters and subject to the conditions stipulated in rule 7 of Customs and Central Excise Duties Drawback Rules, 2017, for an exporter/exports to have a separate rate of drawback. The enabling provision also stipulates a deadline for filing of such application which is three months from the 'relevant date' or such period as lies within power of extension by the Assistant Commissioner of Customs / Principal Commissioner of Customs, as the case may be, and the rejection in the present case has been attributed to the lapse of time beyond condonable period. The limitation has been brought into play by taking into account the date on which export was permitted under section 51 of Customs Act, 1962, as provided for in section 16 of

Customs Act, 1962, which has been referred to in rule 5 of Customs and Central Excise Duties Drawback Rules, 2017.

7. There is no doubt that the application for 'brand rate' was preferred by appellant herein well after the export of the goods. But it may not be ignored that claim for drawback or, for that matter, option exercised for separate drawback rate until after eligibility was attained upon conversion. These could have been converted from the existing bills for exports under the export oriented unit (EOU) to scheme of the Foreign Trade Policy (FTP) or to that under claim for drawback only after the unit had been delicensed as 'export oriented unit (EOU)'; Consequently, the export would have to be deemed to have taken place only on the date of conversion; amendment of shipping bill/conversion of shipping bill under section 149 of Customs Act, 1962 would be an exercise in futility absent deeming the date of conversion as date of export under section 51 of Customs Act, 1962. This is not a regular occurrence in administration of drawback and appears to have been overlooked insofar as the Rules are concerned. Owing to the indirect approach to limitation of time in the Rules, it must be inferred as being amenable to contingency such as this. The inappropriate interpretation of limitation by the jurisdictional Commissioner of Customs had led to rejection of the claim for brand rate. As the deemed date of extension stands altered owing to its necessity before any further processing can be done, the Commissioner of Customs would need to ascertain

compliance with rule 7 of Customs and Central Excise Duties Drawback Rules, 2017 for the purpose of initiating the disposal of application which includes consideration of the ground for condonation of delay. To enable that we set aside the impugned order of rejection and direct the applications be placed once again before the competent authority to determine the limitation period for application for brand rate.

8. The appeal is, therefore, allowed by way of remand.

(Order pronounced in the open court on 13/12/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*