$~81

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

Date of decision: 26th March, 2025

\+ **W.P.(C) 3675/2025 & CM APPL. 17199/2025**

VEDANTA LIMITED .....Petitioner

Through: Mr. Aarohi Bhalla, Mr. Alok Agarwal, Mr. Prachit Mahajan, Mr. Shubham Singh and Mr. Mohit Kalra, Advs.

versus

CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS & ORS. .....Respondents

Through: Mr. Aditya Singla, SSC, CBIC with Ms. Arya Suresh Nair, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner- Vedanta Limited *inter alia* challenging the non-grant of relief in terms of drawback under Instruction No. 4/2019 issued by Central Board of Indirect Taxes and Customs (hereinafter, '*CBIC*') dated 11th October, 2019.

3. The case of the Petitioner is that it had sought duty drawback in respect of the amount it had deposited as clean energy cess, on utilisation of coal as a raw material, during the course of manufacturing of aluminium products. While calculating the brand rate for the purpose of duty drawbacks, the clean energy cess ought to be permitted to be added so that whenever the products are exported, exporters can get drawbacks inclusive of the amount of clean energy cess.

4. Between 2010-2017, various exports are stated to have been made by

the Petitioner, however, at the relevant point in time there was no clarity as to whether clean energy cess which was charged on consumption of coal would be liable to be included in the calculation of the brand rate or not.

5. This position became clear after the clarification in Instruction No. 4/2019 dated 11th October, 2019, wherein the Central Board of Indirect Taxes and Customs clarified as under:

> *"Order-Instruction – Customs*
> *Instruction No. 04/2019- Customs*
> *F. No. 609/38/2019-DBK*
> *Government of India*
> *Ministry of Finance, Department of Revenue*
> *Central Board of Indirect Taxes & Customs*
> *New Delhi, dated 11th October, 2019*
>
> *XXXX*
>
> *Subject: Clarification regarding inclusion of cesses, surcharge, duties, etc. levied and collected under legislations other than Customs Act, 1962, Customs Tariff Act, 1975 or Central Excise Act, 1944 in Brand Rate of duty drawback.*
>
> *XXXX*
>
> *2.3 Regarding Clean Environment cess (erstwhile Clean Energy cess), Finance Act, 2010 vide Section 83(3) provided for levy and collection of Clean Energy cess as a duty of Excise and vide Section 83(7) empowered the Central Government to declare any of the provisions of Central Excise Act. 1944 applicable to the cess. Government vide notification No. 2/2010- Clean Energy Cess dated 22,06.2010 made, among others, the provisions related to refund under Section 11B of Central Excise Act, 1944 applicable to the cess. Vide instruction F, No. 354/72/2010-TRU dated 24,06.2010, the Board clarified that Clean Energy cess would also*

> *be levied on import in the form of additional duty of Customs. Since the cess is collected as additional duty under Section 3 of Customs Tariff Act, the provisions of Customs Act, 1962 related to drawback, refund, etc. are applicable to it in terms of Section 3(12) of the Customs Tariff Act. 1975. Therefore, the incidence of Clean Environment cess (erstwhile Clean Energy cess) is required to be included in the calculation of Brand Rate. It may be mentioned that Clean Energy cess was renamed as Clean Environment cess in Finance Bill 2016 and the latter has been subsumed under GST w.e.f 01.07.2017."*

6. Pursuant to this clarification, the Petitioner moved before different Commissionerates seeking release of drawbacks, which were rejected by the respective Commissionerates as also by the CBIC Drawback Division on the ground that the same was barred by limitation.

7. According to Mr. Bhalla ld. Counsel for the Petitioner, until the instruction was issued on 11th October, 2019, the Petitioner was unaware that it could claim clean energy cess as part of the drawback and, therefore, it cannot be held that the application was barred by limitation.

8. In addition, Mr. Bhalla, ld. counsel for the Petitioner submits that the Customs and Central Excise Duties Drawback Rules, 1995 provide for power to relax the limitation period. Rule 17 of the said Rules reads as under:

> ***"17. Power to relax.***
> *- If the Central Government is satisfied that in relation to the export of any goods, the exporter or his authorised agent has, for reasons beyond his control, failed to comply with any of the provisions of these rules, and has thus been entitled to drawback it may, after considering the representation, if any, made by such exporter or agent, and for reasons to be recorded in writing, exempt*

such exporter or agent from the provisions of such rule and allow drawback in respect of such goods."

9. Mr. Singla, ld. SSC for the CBIC, on the other hand, submits that since the exports relate to the period 2010-2017 and the maximum period to claim duty draw back is three months, which can be further extended for a period of another three months. Therefore, the applications seeking drawback are barred. It is submitted by the ld. SSC that the representations made by the Petitioner was after the said period and therefore, the rejection cannot be assailed and is perfectly valid.

10. The Court has considered the matter. A perusal of the letter dated 18th October, 2023 issued by the CBIC, Drawback Division shows that the rejection is completely cryptic and merely says that the "*request for relaxation is not considered favorably*". There are no other reasons which have been assigned for the rejection of the representation of the Petitioner.

11. In addition, even the impugned order dated 18th July, 2024 passed in reference to the representation dated 8th May, 2024 made by the Petitioner to the CBIC, Drawback Division reiterates the same position and does not assign any reasons.

12. The Instruction No. 4/2019 is clear to the effect that even pending applications were to be dealt with in terms of the said instruction. The relevant portion of the said instruction reads as under-

> *"3. Field formations are requested to deal with the pending applications for fixation of Brand Rate of duty drawback accordingly."*

13. Thus, the instructions were not merely prospective in nature. Benefit

could be given even to pending applications.

14. Mr. Singla, ld. SCC further submits that since there was no pending application of the Petitioner on the said date, the rejection is completely valid.

15. On the other hand, the Petitioner's case is as soon as the Instruction No. 4/2019 was issued, within a period of three months, the representations have been made.

16. Under such circumstances, the reason for rejection, if any, ought to be spelt out and the order cannot be simply a cryptic order stating that the same has not been considered favourably.

17. Considering the same, this Court is of the opinion that the CBIC, Drawback Division ought to look into the matter and pass a reasoned order on the representations of the Petitioner while considering the purpose and the rationale behind issuance of the said Instruction No. 4/2019 dated 11th October 2019.

18. The present writ petition may be treated as a representation and a reasoned order may be passed by the CBIC, Drawback Division within three months.

19. All remedies of the Petitioner are left open in accordance with law.

20. The petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MARCH 26, 2025
dj/ck