IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-07-2026

CORAM

THE HON'BLE MR.JUSTICE HEMANT CHANDANGOUDAR

WP Nos. 28619 of 2022, 28621 of 2022 and 28625 of 2022

And

WMP Nos. 27896 of 2022 and 27897 OF 2022

WP Nos. 28619 of 2022

Ashok Leyland Limited
No. 1. Sardar Patel Road, Guindy, Chennai 600 032
Rep by its GM Indirect Taxation

Mr. Ch. Kishore Raj Singh

..Petitioner(s)

Vs

1. Principal Commissioner
   and Ex-officio Addl. Secretary to Government of India, 8th Floor, World Trade Centre,
   Cuffe Parade, Mumbai 400 005

2. Deputy Secretary (Drawback)
   Central Board of Excise and Customs,
   Department of Revenue, Ministry of Finance
   Government of India,
   Jeevan Deep building,
   Parliament street New Delhi

3. Commissioner of GST and Central Excise
   Salem Commissionerate,
   No. 1 Foulkes Compound, Anai Medu Road
   Salem 636 001

4. Joint Commissioner of GST and Central Excise
   Chennai North Commissionerate,
   26/1, Uthamar Gandhi Salai, Chennai 600 034

5. Assistant Commissioner of Customs
   Drawback Department
   Office of the Commissioner of Customs (E.P)
   New custom House, Ballard Estate
   Mumbai

..Respondent(s)

WP No. 28621 of 2022

Ashok Leyland Limited
No. 1. Sardar Patel Road, Guindy, Chennai 600 032
Rep by its GM Indirect Taxation

Mr. Ch. Kishore Raj Singh

..Petitioner(s)

Vs

1. Principal Commissioner
   and Ex-officio Addl. Secretary to Government
   of India, 8th Floor, World Trade Centre,
   Cuffe Parade, Mumbai 400 005

2. Deputy Secretary (Drawback)
   Central Board of Excise and Customs,
   Department of Revenue, Ministry of Finance
   Government of India,
   Jeevan Deep building,
   Parliament street, New Delhi.

3. Commissioner of GST and Central Excise
   Salem Commissionerate,
   No. 1 Foulkes Compound, Anai Medu Road
   Salem 636 001

4. Joint Commissioner of GST and Central Excise, Chennai North Commissionerate, 26/1, Uthamar Gandhi Salai, Chennai 600 034

5. Assistant Commissioner of Customs
Drawback Department
Office of the Commissioner of Customs (E.P)
New custom House, Ballard Estate,
Mumbai

..Respondent(s)

WP No. 28625 of 2022

Ashok Leyland Limited
No. 1. Sardar Patel Road, Guindy, Chennai 600 032
Rep by its GM Indirect Taxation

Mr. Ch. Kishore Raj Singh

..Petitioner(s)

Vs

1. Principal Commissioner
and Ex-officio Addl. Secretary to Government of India, 8th Floor, World Trade Centre, Cuffe Parade, Mumbai 400 005

2. Deputy Secretary (Drawback)
Central Board of Excise and Customs,
Department of Revenue, Ministry of Finance
Government of India,
Jeevan Deep building,
Parliament street, New Delhi.

3. Commissioner of GST and Central Excise
Salem Commissionerate,
No. 1 Foulkes Compound, Anai Medu Road,
Salem 636 001

4. Joint Commissioner of GST and Central Excise, Chennai North Commissionerate, 26/1, Uthamar Gandhi Salai, Chennai 600 034

5. Assistant Commissioner of Customs
Drawback Department
Office of the Commissioner of Customs (E.P)
New custom House, Mumbai

..Respondent(s)

Prayer in W.P.No.28619 of 2022: Writ Petition is filed under Article 226 of Constitution of India praying for issuance of writ of certiorarified mandamus, calling for the records relating to the order no. 230 / 2022 - CX (SZ) / ASRA / Mumbai dated 08.03.2022 passed by the 1st respondent and quashing the same, and directing the respondents to grant drawback at 7 percentage on the cost of the body portion of the fully built passenger buses exported by the petitioner in respect of the brand rate applications and letters subject matter of the said order of the 1st respondent and to pass orders.

Prayer in **WP No. 28621 of 2022 :** Writ Petition is filed under Article 226 of Constitution of India praying for issuance of writ of certiorarified mandamus, calling for the records relating to the order no. 107/ 2022 - CUS (WZ) / ASRA / Mumbai dated 08.03.2022 passed by the 1st respondent and quashing the same, and directing the respondents to refund to the petitioner (with interest) the drawback amounts subject matter of the said order of the 1st resondent,

Prayer in W.P.No. 28625 of 2022 : Writ Petition is filed under Article 226 of Constitution of India praying for issuance of writ of certiorari, calling for the records relating to the letter dated 10.11.2006 in F.No. 609 / 10 / 2006 - DBK and letter dated 10-4-2008 in F.No. 609 / 10/ 2006-DBK issued by the 2nd respondent and quash the same in so far as they are prejudicial to the petitioner and to pass orders.

For Petitioner: (in all WPs)	Mr. P.R. Renganath
For Respondents: (in all WPs)	Mr. K.S.Ramaswamy, Standing Counsel – R2 to R5 For R1 – Notice Served – No appearance.

COMMON ORDER

The petitioner has challenged the common revisional orders dated 08.03.2022 passed by the first respondent–Revisional Authority, affirming the orders of the adjudicating and appellate authorities, whereby the petitioner's claim for grant of brand rate drawback at 7% on the bus body portion of exported passenger buses was rejected and the consequential recovery proceedings were upheld. The petitioner has also challenged the communications issued by the second respondent–Central Board of Excise and Customs (CBEC) dated 08.11.2006, 10.11.2006 and 10.04.2008.

2. The petitioner manufactures passenger buses for export. While the chassis are manufactured by the petitioner, the bus bodies are fabricated by

independent small-scale industrial units. Owing to the practical difficulties faced by exporters in establishing the exact incidence of duty on bus bodies manufactured by such independent body builders, the Drawback Directorate issued a circular dated 05.12.1988 prescribing a simplified procedure. Under the said circular, exporters were permitted to claim drawback on the bus body portion at an average rate of 7% of the actual cost of the bus body, without insisting upon production of detailed duty-paid documents.

3. Subsequently, by Circular dated 18.09.2003, the Board clarified that while fixing the brand rate of drawback for complete buses, the practice introduced under the Circular dated 05.12.1988 should continue. Thereafter, the Duty Entitlement Pass Book (DEPB) Scheme was extended to motor vehicles. The petitioner opted to avail DEPB benefits in respect of the chassis component while simultaneously claiming 7% brand rate drawback on the bus body portion.

4. The dispute arose after the CBEC issued communications dated 08.11.2006 and 10.11.2006, taking the view that simultaneous availment of DEPB benefits and the simplified 7% drawback under the 1988 Circular was impermissible and that such claims would necessarily have to satisfy the conditions prescribed in Circular No.39/2001-Cus., dated 06.07.2001. Based on the said clarification, proceedings were initiated against the petitioner, resulting in withdrawal of brand rate approval, rejection of pending applications and

recovery of drawback already sanctioned. Though the earlier revision petitions were dismissed, this Court, by order dated 02.11.2020, remanded the matter for fresh consideration. Pursuant thereto, the impugned common revisional order has been passed. Hence, these writ petitions.

5. Mr. P.R.Renganath, learned counsel appearing for the petitioner, made the following submissions:

(i) The Drawback Rules confer the power to revoke the brand rate only upon the Central Government and not upon subordinate departmental authorities.

(ii) The communications issued by the second respondent are merely executive instructions and cannot override statutory circulars issued earlier.

(iii) The Circular dated 05.12.1988 continued to remain in force even after the introduction of the DEPB Scheme and was expressly reaffirmed by the Circular dated 18.09.2003.

(iv) DEPB benefits and brand rate drawback relate to different duties, namely, customs duty on imported inputs and excise duty on indigenous non-SION inputs respectively. Therefore, there is no question of double benefit.

(v) The insistence on production of duty-paid documents is contrary to the very object of the Circular dated 05.12.1988, which dispensed with such requirement.

(vi) Withdrawal of the benefit after a long-standing departmental practice violates the doctrine of promissory estoppel and the petitioner's legitimate expectation.

(vii) The recovery proceedings are barred by limitation.

6. Per contra, Mr. K.S. Ramaswamy, learned Standing Counsel appearing for respondents 2 to 5, submitted:

(i) The Drawback Rules constitute a self-contained code and the Board merely clarified the existing legal position.

(ii) DEPB benefits were granted on the value of the complete bus. Therefore, grant of additional drawback on the bus body results in duplication of benefits.

(iii) Once exports are made under the DEPB Scheme, Circular No.39/2001-Cus., dated 06.07.2001 exclusively governs the grant of brand rate drawback and production of duty-paid documents becomes mandatory.

(iv) The law of limitation contained in Section 28 of the Customs Act is not applicable to recovery proceedings under the Drawback Rules.

(v) Fiscal incentives are matters of policy and cannot be claimed as vested rights.

7. Upon hearing the learned counsel appearing for the parties and perusing the materials placed on record, the following questions arise for consideration:

(i) Whether the clarificatory communications dated 08.11.2006, 10.11.2006 and 10.04.2008 issued by the second respondent are contrary to the statutory scheme?

(ii) Whether the petitioner was entitled to simultaneously avail DEPB benefits and 7% brand rate drawback under the Circular dated 05.12.1988?

(iii) Whether production of duty-paid documents could be insisted upon?

(iv) Whether the withdrawal of brand rate approval and the consequential recovery proceedings are sustainable in law?

8. Since Questions (i) to (iii) are interconnected, they are considered together.

9. The Circular dated 05.12.1988 was issued to overcome the practical difficulties faced by exporters of fully built buses. The Government itself recognised that independent body builders were unable to furnish detailed consumption particulars and duty-paid documents. It was for this reason that an average drawback of 7% of the cost of the bus body was prescribed. The Circular consciously substituted actual verification with an average rate, thereby dispensing with the requirement of producing duty-paid documents. The exemption from production of such documents, therefore, forms the very foundation of the Circular dated 05.12.1988.

10. The subsequent Circular dated 18.09.2003 expressly directed the field formations to continue the said practice while fixing the brand rate for complete buses. Thus, at the time when the petitioner made the exports, the Circular dated 05.12.1988 continued to remain in force and had not been withdrawn.

11. Circular No.39/2001-Cus., dated 06.07.2001 was issued after the introduction of the DEPB Scheme. The Circular recognises that although exports under the DEPB Scheme would ordinarily not be entitled to drawback, brand rate drawback could nevertheless be granted in respect of duties suffered on indigenous non-SION inputs and certain imported inputs. Thus, the Circular does not impose an absolute prohibition against simultaneous availment of DEPB benefits and brand rate drawback. Rather, it recognises specific situations where such simultaneous benefits may be granted. Therefore, the real issue is

not whether simultaneous benefits are legally impermissible, but whether the petitioner's claim falls within the recognised exceptions.

12. The respondents proceeded on the assumption that DEPB benefits covered the entire passenger bus and, therefore, grant of 7% drawback necessarily resulted in duplication of benefits. The petitioner, however, contends that the DEPB benefit compensates customs duty relatable to imported inputs used in the chassis, whereas the 7% brand rate drawback represents excise duty suffered on indigenous inputs consumed in the fabrication of the bus body. The nature of the duties, the inputs on which they are levied and the statutory basis for the two incentives are distinct. Unless the respondents establish, by acceptable material, that the very same duty element stood reimbursed twice, the allegation of double benefit cannot be sustained. The impugned orders proceed on a general assumption without any examination of the actual duty incidence.

13. The principal reason assigned for rejecting the petitioner's claim is the non-production of duty-paid documents. However, this reasoning overlooks the very purpose for which the Circular dated 05.12.1988 was issued. The Circular dispensed with the requirement of producing such documents precisely because independent body builders were unable to furnish them. If the respondents' interpretation is accepted, the Circular dated 05.12.1988 would be rendered meaningless.

14. Circular No.39/2001-Cus., dated 06.07.2001 cannot be interpreted in a manner that completely nullifies the special dispensation consciously created under the Circular dated 05.12.1988. Such an interpretation is impermissible, particularly when the respondents have not placed any material on record to show that the earlier Circular was ever withdrawn or superseded.

15. It is no doubt true that the second respondent-Board possesses the power to issue binding instructions for uniform implementation of the fiscal statutes. However, a clarificatory communication cannot impose substantive conditions which are inconsistent with an existing beneficial circular. Where two circulars operate simultaneously, they must be harmoniously construed so as to give effect to both, unless one has been expressly withdrawn.

16. The communications dated 08.11.2006 and 10.11.2006 proceed on the premise that the Circular dated 05.12.1988 did not contemplate the DEPB Scheme, as the Scheme was introduced subsequently. However, that by itself does not lead to the conclusion that the benefit under the 1988 Circular stood extinguished upon the introduction of the DEPB Scheme. On the contrary, the subsequent Circular dated 18.09.2003 expressly reaffirmed the continuance of the benefit under the Circular dated 05.12.1988 even after the DEPB Scheme had come into force.

17. The present proceedings are not in the nature of revising or re-fixing the brand rate, but are proceedings to determine whether the drawback already

granted was contrary to law. Such proceedings fall within the jurisdiction of the adjudicating authority under the Drawback Rules. The contention of the petitioner that the adjudicating authorities lacked jurisdiction to reopen the matter cannot be accepted. The adjudicating authorities are competent to examine whether drawback has been wrongly granted and to initiate proceedings in accordance with the statutory framework. If the benefit has been extended contrary to law, the authorities are empowered to reopen the matter in accordance with the Drawback Rules. Accordingly, this contention is rejected.

18. Rule 16 of the Customs and Central Excise Duties Drawback Rules provides an independent mechanism for recovery of drawback wrongly paid. Section 28 of the Customs Act deals with recovery of customs duty and cannot automatically be imported into proceedings under Rule 16. Consequently, the period of limitation prescribed under Section 28 has no application to recovery proceedings initiated under Rule 16. Although no specific limitation period is prescribed under Rule 16, such proceedings must nevertheless be initiated within a reasonable time. In the present case, the recovery proceedings were initiated within a reasonable period of time, after the Board issued the clarificatory communications taking the view that simultaneous availment of DEPB benefits and 7% drawback was impermissible. In the facts of the case, the contention that the recovery proceedings are barred by limitation is therefore rejected.

19. The doctrine of promissory estoppel cannot compel the continuance of a fiscal incentive contrary to statutory provisions. However, where exporters have acted upon binding departmental circulars which continued to remain in force, those circulars cannot subsequently be interpreted in a manner that defeats the legitimate expectation of the exporters unless they are expressly modified or withdrawn.

20. Learned Senior Counsel appearing for the respondents placed reliance upon the decision of the Division Bench of this Court in ***Bishan Saroop Kishan Agro Industries (P) Ltd. v. CESTAT, Chennai [(2019) 367 E.L.T. 572 (Mad.)]***, wherein it was held that the object of restricting drawback is to prevent double benefit, since drawback is intended only to reimburse the excise duty actually suffered on the exported goods. Where CENVAT credit has already been availed in respect of the same duty element, the corresponding drawback is liable to be reduced.

21. The aforesaid decision does not advance the respondents' case. In the present case, the respondents have not produced any material to establish that the DEPB benefit and the 7% brand rate drawback compensated for the very same duty element. On the contrary, the Circular dated 05.12.1988 continued to remain in force and was reaffirmed by the Circular dated 18.09.2003.

22. Since the respondents have failed to establish that the DEPB benefit and the brand rate drawback relate to the same duty incidence, the very foundation of the impugned proceedings disappears. Once the allegation of duplication fails, the respondents could not deny the benefit available under the Circular dated 05.12.1988, particularly when the said Circular continued to remain in force and stood reaffirmed by the Circular dated 18.09.2003.

23. In light of the aforesaid discussion, the impugned order passed by the 1st respondent and the impugned communication issued by the 2nd respondent are not legally sustainable and hereby quashed. Accordingly, the writ petitions are allowed.

24. Before parting with the cases, it is clarified that the relief granted in these writ petitions is confined during which the petitioner acted upon the circular 05.12.1988, as reaffirm by the circular dated 18.09.2003 prior to the issuance of impugned communication and consequential demand notices. This order shall not be construed as recognising any vested or continuing right to the petitioner to claim 7% Brand Rate Draw Back on the bus body portion in respect of exports made subsequent to the issuance of the impugned demand notices. Any claim relating to such subsequent exports shall be gone by the statutory

provisions and the policy/circulars applicable on the date of relevant export and shall be adjudicated on its own merits, independently of the findings recorded in this order.

25. Consequently, the connected Miscellaneous Petitions are closed. There shall be no order as to costs.

30-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1. The Principal Commissioner
   and Ex-officio Addl. Secretary to Government of India, 8th Floor, World Trade Centre,
   Cuffe Parade, Mumbai 400 005

2. The Deputy Secretary (Drawback)
   Central Board of Excise and Customs,
   Department of Revenue, Ministry of Finance Government of India,
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HEMANT CHANDANGOUDAR J.

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