

REGISTERED
SPEED POST



F.No. F.No.375/11/DBK/2015-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue... 5/1/18

Order No. 02/2018-Cus dated 1.1.2018 of the Government of India passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

- Subject : Revision Application filed, under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CC(A)Cus/ICD-752/2014 dated 01.12.2014 passed by the Commissioner of Customs (Appeals), New Delhi.
- Applicant : M/s. Gippsaero Pty. Ltd.
- Respondent : Commissioner of Customs, Export, Inland Container Depot, Tughlaqabad, New Delhi

ORDER

A Revision Application No. F.No.375/11/DBK/2015-RA dated 10.03.2015 has been filed by M/s. Gippsaero Pty Ltd. (hereinafter referred to as applicant) against the order No. CC(A)Cus/ICD-752/2014 dated 15.12.2014, passed by Commissioner (Appeals) New Delhi.

2. Brief fact of the case are that the applicant had imported aircraft on temporary basis for 13 days after obtaining permission from DGCA. However, on the request of the applicant the said permission was further extended upto 60 days from the date of import by DGCA. But when applicant failed to re-export the aircraft within a stipulated period of 60 days, the department initiated the proceedings against the applicant under the provisions of Customs Act, 1962 and the aircraft was seized. The Commissioner of Customs, Kolkata, allowed provisional release of the aircraft on payment of Customs duty and bank guarantee for 30% of the value of aircraft towards fine and penalty. The said aircraft was re-exported under the provision of Section 74 of the Customs Act, 1962 from ICD, Tughlaqabad, Delhi. The Commissioner of Customs, Kolkata, vide his, OIO No. KOL/CUS/AIRPORT/ADMN/20/2013 dated 18.11.2013 ordered for the confiscation of the aircraft, but its redemption was allowed on payment of fine, penalty and customs duty for violating the provisions of Customs Act, 1962. Being aggrieved with the order of Commissioner of Customs, Kolkata, applicant has filed an appeal before the CESTAT against the denial of the benefit of Notification No. 12/2012, (sl. No. 450) and for imposition of fine and penalty which is still pending before the CESTAT. In the meantime after re export of aircraft, the applicant claimed duty drawback from ICD, TKD. But the Dy. Commissioner, ICD, Tughlaqabad, New Delhi, rejected the drawback claim of the applicant holding that duty is not finally assessed and the matter is sub-judice. The applicant filed an appeal before Commissioner (Appeals) who has, vide above mentioned Order in Appeal, rejected the appeal of the applicant stating that importability of the said aircraft is yet to be decided. Now the applicant has filed the instant revision application challenging the order of

Commissioner (Appeals) on the ground that they have fulfilled all the criteria for re-export as per the provisions of Section 74 of the Customs Act, 1962 and importability of the aircraft is not a relevant issue under Section 74 of the Customs Act, 1962. Therefore, the Commissioner (Appeals) has erroneously rejected their appeal.

3. Personal hearing in this case was fixed on 20.11.2017 and the same was attended by Sh. Dinesh Kumar Agarwal, consultant, on behalf of the applicant and reiterated the grounds of revision application already pleaded in their revision application.

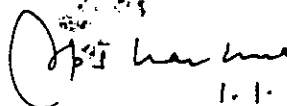
4. On examination of the revision application, the Commissioner (Appeals)'s order and pertinent legal provisions, it is observed by the Government that for getting drawback of duty under section 74 of Customs Act, 62 the following ingredients are to be satisfied :-

- i) The imported goods should be capable of being easily identified
- ii) Duty of customs should be paid on importation and the imported goods should be exported within 2 years from the date of payment of duty on imported goods and
- iii) The re-exported goods should be identified with the imported goods to the satisfaction of Assistant/Dy. Commissioner of Customs

5. No doubt has been expressed either by the Dy. Commissioner or by the Commissioner (Appeals) in their order regarding fulfilment of the above ingredients in this case. But still the Dy. Commissioner has denied duty drawback to the applicant by citing a reason that duty has been paid in this case on provisional basis and Commissioner (Appeals) has given an additional reason that importability of the aircraft is yet to be settled. Both these reasons are manifestly unfounded and misplaced as the issue regarding levy of duty has already been finalized by the Commissioner of Customs, Kolkata, vide his above referred order and the applicant has not contested his order to the extent of recovery of Customs duty. Duty

demanded from the applicant has already been paid. Further even if it is accepted that duty has been paid on provisional basis, it cannot be ignored that applicant has also requested for drawback of duty in reference to actual Customs duty paid by them whether it is final or provisional. The appeal filed by the applicant before CESTAT against Commissioner's order before CESTAT also does not have any nexus with the applicant's claim for duty drawback and if there is any recovery of dues thereafter it can be settled even subsequently. But merely because of their pending appeal, the drawback of duty cannot be refused when they have already paid customs duty much before and the disposal of the appeal can take its own time. No basis for Commissioner (Appeals)'s above observation regarding importability is also noticed in this case as it is an accepted fact that the aircraft has been imported in India and on the basis of this fact alone not only the Commissioner Customs has demanded customs duty but it has been paid by the applicant also. Thus the importability of the aircraft is already settled. Accordingly, the Government is fully convinced that duty drawback is admissible in this case in accordance with Section 74 of the Customs Act, 1962 and it should be paid immediately to the applicant.

6. In view of the above discussions, Commissioner (Appeals) order is set aside and the revision application is allowed.


1.1.18
(R.P.Sharma)

Additional Secretary to the Government of India

M/s. Gippsaero pty. Ltd,
Morwell Victoria, 3840 Australia
Represented in India by Niral Baheto
Emerald House 1 B, old post office Street,
Kolkata 700001.

ATTESTED


(Ravi Prakash)
OSD (REVISION APPLICATION)

Order No. 02/2018-LA #17 Cus dated 1.1.18 2017

Copy to:

1. The Commissioner of Customs, (Exports), Inland Container Depot, Tughlaqabad, New Delhi 110020
2. Commissioner of Customs (Appeals), Delhi, New Customs House, Near IGI Airport, New Delhi 110037
3. Deputy Commissioner, (Exports), Inland Container Depot, Tughlaqabad, New Delhi 110020
4. ✓ Dinesh Kumar Agarwal, Khaitan & Co. One Indiabulls centre 841, Senapati Bapat Mag Mumbai 400013.
5. PS to AS(RA)
6. Guard File.
7. Spare Copy