

REGISTERED
SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.373/64/DBK/15-RA | 201

Date of Issue: 18.12.22

ORDER NO. 05 /2022-CUS (SZ)/ASRA/MUMBAI DATED 14.01.2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE
CUSTOMS ACT, 1962.

Applicant : M/s. JSW Steels Ltd.

Respondent: Commissioner of Customs, Bangalore.

Subject : Revision Application filed under Section 129DD of the Customs
Act, 1962 against the Order-in-Appeal No. 336/2014 dated 14.10.2014
passed by the Commissioner (Appeals), Customs, Bangalore.

ORDER

This Revision Application is filed by the M/s. JSW Steel Limited, Vijayanagar Works, P.O. Vidyanagar, Toranagallu, Bellary – 583 275 (hereinafter referred to as “the Applicant”) against the Order-in-Appeal No. 336/2014 dated 14.10.2014 passed by the Commissioner (Appeals), Customs, Bangalore.

2. Brief facts of the case are that the Applicant had filed a drawback claim of Rs.5,54,227/- in respect of re-export of imported goods exported vide drawback Shipping Bills filed under Section 74 of the Customs Act, 1962. The adjudicating authority vide Order-in-Original No. 805/2013 dated 28.09.2013 held that there is substantial delay in filing the claim after the LEO was obtained and also the identity of the goods exported was not established, as no certification by the proper officer that the goods imported were re-exported was forthcoming. Accordingly, the adjudicating authority rejected the drawback claim of Rs.4,15,668/- under the provisions of Section 74 of the Act read with Re-export of imported Goods (Drawback of Customs Duties) Rules, 1995. Aggrieved, the Applicant filed an appeal. However, the Commissioner (Appeals) vide Order-in-Appeal No. 336/2014 dated 14.10.2014 rejected the appeal.

3. Hence the Applicant has filed the impugned Revision Application mainly on the following grounds:

- a The Commissioner (A) has grossly erred in mentioning that there was a delay in submission of drawback claim. The Appellate authority completely failed to accept the submissions of the Applicants that the deficiency memo was issued on 23/25.08.2010 'after accepting 'Duty Drawback claim' & therefore directed the Applicants that they were only required to comply the said deficiency memo within 30 days from the date of issuance. It is

evident that the said memo was complied on 31.08.2010 within one week.

- b The basic requirement was to identify the imported item "TRAJECTORY MEASUREMENT PROBE Sl. No. 6" that the same item was re-exported or not has been identified, established with the corroborative documentary evidences & the Commissioner (A) also has neither discussed nor disputed. Further, from the permission letter dtd.11/09/2009 it is clear that the duty drawback claim was granted. Therefore, the ground for rejection of legitimate duty drawback claim of the Applicants on the time limitation ground is not sustainable.
- c From section 74 read with Rule 5 of Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995, it is evident that following were the requirements such as:-
 - i. to submit the claim in complete manner within 3 months from the date of LET export order (the Applicants have complied by way of getting permission from the Customs authorities);
 - ii. in case of filing of incomplete claim, to be considered as claim not filed & the same was to be returned alongwith the deficiency memo within 15 days from the date of filing of claim (the Customs department has not done to issue deficiency memo within the time limit of 15 days but it was issued after one year), &
 - iii. if the exporter complies with the deficiency memo within 30 days of its receipt, the drawback claim will be treated as a claim filed within three months stipulated in Rule 5(1) of the said Rules (Applicants have complied within one week - no dispute).

d. From the above discussion it is clear that the Applicants have complied with all the requirements but the Commissioner (A) has grossly erred in upholding findings of the Assistant Commissioner who rejected drawback claim of the Applicants on the ground of identity of the imported goods which has been proved by way of submitting all the relevant documents and treating claim as time barred which is uncalled for.

4. Personal hearing in the case was fixed for 12.10.2021. Shri M.S. Nagaraja, Advocate attended the online hearing and reiterated the earlier submissions. He submitted that original claim was filed within three months, hence not time barred. He submitted that the SCN clearly records this fact. He further submitted that goods were re-exported and shipping bill has been converted to drawback shipping bill. He requested to allow the claim.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Order-in-Appeal.

6. Government observes from the impugned Order-in-Original that the rebate claim was rejected on the following grounds:

- i. Time barred: Assistant Commissioner (Export), ACC had conveyed the permission for conversion of Shipping Bill into drawback Shipping Bill on 11/09/2009. The drawback claim was submitted on 22/05/2010 which is after five months beyond the stipulated three months under section 74 of the Customs Act, 1962. It is clear that there is a substantial delay on the part of the exporter in filing the claim after the LEO was obtained.

- ii. Identity of goods exported not established vis-à-vis the import documents: *The proper officer nominated for this purpose under section 74 of the Customs Act, read with the notification 36/95 Cus dated 26/05/1995 i.e. Assistant Commissioner has not certified that the re-exported goods were the VERY SAME goods that were imported. No certification is forthcoming by the proper officer regarding the identity of the goods with respect to the import documents and the Bill of Entry under which goods were imported. Further the certification on the Shipping Bill reads thus "Open Examined 01 boxes and F/C Trajectory Measurement probe as per export Invoice No. JSWSL/BF/EXP/09 dated 17/04/2009. Part No. And Sl.No. as per invoice. Items being sent for demo and returnable basis" which means that the export has taken place for demo outside India. The verification report has not established identity of the goods that the goods imported were re-exported, which is basis condition for sanction of drawback under Section 74 of Customs Act, 1962.*
7. Government observes from the relevant documents that:
- i. The item 'TRAJECTORY MEASUREMENT PROBE SL#6 FOR COMMISSIONING BF#3 (IMPORTED UNDER RETURNABLE BASIS) HIRING FOR 60 DAYS' was imported by the applicant vide bill of entry no. 967419 dated 10.02.2009 from M/s. Corus UK Ltd. The assessable value shown is Rs. 23,19,428.03.
 - ii. An amount of Rs. 5,54,227/- was paid as import duty vide TR6 challan No. 98997779 dated 12.02.2009.
 - iii. The applicant exported the item 'TRAJECTORY MEASUREMENT PROBE SL#6' to M/s. Corus UK Ltd. vide shipping bill no. 2270387 dated 27.04.2009.
 - iv. Assistant Commissioner (Exports), Air Cargo Complex, Bangalore, vide letter dated 11.09.2009 informed the Applicant that the Commissioner had allowed conversion of free shipping bill into drawback shipping bill subject to condition that it is proved by the Applicant that the goods are same that were exported.

7.1 Government observes that Rule 5 of Re-export of imported goods (Drawback of Customs duties) Rules, 1995 reads as under:

5. Manner and time of claiming drawback on goods exported other than by post.-

(1) A claim for drawback under these rules shall be filed in the form at Annexure II [See Customs Series Form No. 109 in Part 5] within three months from the date on which an order permitting clearance and loading of goods for exportation under Sec. 51 is made by proper officer of customs :

Provided that the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may, if he is satisfied that the exporter was prevented by sufficient cause to file his claim within the aforesaid period of three months, allow the exporter to file his claim within a further period of three months.

The proviso was further substituted vide Notification No. 48/2010 - Customs (N.T.) dated 17.06.2010 and the amended proviso read as under:

"Provided that-

(i) the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, may extend the aforesaid period of three months by a period of three months and that the Commissioner of Customs or Commissioner of Customs and Central Excise, as the case may be, may further extend the period by a period of six months;

(ii) the Assistant Commissioner of Customs or Deputy Commissioner of Customs or Commissioner of Customs or Commissioner of Customs and Central Excise, as the case may be, may, on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal;

(iii) *an application fee equivalent to 1% of the FOB value of exports or Rs. 1000/- whichever is less, shall be payable for applying for grant of extension by the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be and an application fee of 2% of the FOB value or Rs. 2000/- whichever is less; shall be payable for applying for grant of extension by the Commissioner of Customs or Commissioner of Customs and Central Excise, as the case may be."*

Thus, in all an extension of 9 months over and above the initial 3 months was allowed by the Statute.

7.2 Therefore, the Government observes that drawback claim filed by the Applicant was still within limitation, being filed on 22.05.2010 after receiving permission for converting the free shipping bill to drawback shipping bill on 11.09.2009. Though, they should have obtained an extension from the authorities and regularized the delay after paying applicable fee. There are umpteen judgments condoning such technical lapses if the export is beyond doubt. Government does not see any reason for not extending this benefit to the Applicant, once procedure is complied with.

7.3 As regards the other reason for rejecting drawback claim viz. Identity of goods exported not established vis-à-vis the import documents, it is observed that adjudicating authority has while analyzing the remark on certification on the Shipping Bill ("*Open Examined 01 boxes and F/C Trajectory Measurement probe as per export Invoice No. JSWSL/BF/EXP/09 dated 17/04/2009. Part No. And Sl.No. as per invoice. Items being sent for demo and returnable basis*") commented that the said remark conveys that the export had taken place for demo outside India. However, the same certification also mentions that export consignment consists of 01 Box containing Trajectory Measurement probe as per export Invoice No. JSWSL/BF/EXP/09 dated 17/04/2009. Government observes that the said

invoice mentions the applicant as exporter and M/s. Corus UK Ltd. as the consignee. The invoice bears following remarks: "TEMPORARILY IMPORTED TRAJECTORY MEASUREMENT PROBE SL#6 ON RETURNABLE BASIS FOR COMMISSIONING BLAST FURNACE #3 IS RETURNED NOW AND NOT FOR SALE. NO COMMERCIAL TRANSACTION." Thus, it clear that the Applicant was re-exporting the same goods which they had imported vide bill of entry no. 967419 dated 10.02.2009

8. In view of the findings recorded above, Government sets aside the impugned Order-in-Appeal No. 336/2014 dated 14.10.2014 passed by the Commissioner (Appeals), Customs, Bangalore and remands the matter to Original authority for reconsideration.

9. The Revision Application is disposed of on the above terms.


(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 05 /2021-CUS (SZ)/ASRA/Mumbai DATED 14.01.2022

To,
M/s. JSW Steel Limited,
Vijayanagar Works, P.O. Vidyanagar,
Toranagallu, Bellary – 583 275.

Copy to:

1. Commissioner of Customs,
Air Cargo Complex Division,
Menzies Aviation Bobba Air Cargo Terminal,
Devanhalli, Bangalore-560 300.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.