

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. 373/32/DBK/2014-RA /1020

Date of Issue: 18.02.2021

ORDER NO. 08/2021-CX (WZ)/ASRA/MUMBAI DATED  
13.01.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHARVAN  
KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL  
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF  
THE CENTRAL EXCISE ACT, 1944.

Subject : Revision Application filed, under Section 129DD of the Customs  
Act, 1962 against the Order-in-Appeal No. IND/CEX/25/2011  
dated 21.01.2011 passed by the Commissioner (Appeals),  
Customs, Central Excise & Service Tax, Indore

Applicant : M/s Cummins Technologies India Ltd

Respondent : Commissioner of Central Excise, Indore

ORDER

This Revision Application is filed by M/s Cummins Technologies India Ltd., Industrial Area No. 2, A.B. Road, Dewas, M.P. 455 001 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. IND/CEX/25/2011 dated 21.01.2011 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore.

2. The issue in brief is that the Applicant, is engaged in the manufacture of Shaft and Wheel for Turbo Charger and is availing Benefit of Drawback scheme. The Applicant had filed an application for fixation of brand rate of drawback on Shaft and Wheel which was exported under three Shipping Bills Nos. 6510299 dated 28.09.2007, 6513995 dated 01.10.2007 and 6551565 dated 01.11.2007 vide their letter dated 29.11.2007 for the fixed quantity of export goods. The application was received in the Office of the Commissioner, Customs, Central Excise, Indore on 30.11.2007 but without the DBK I, II, III statements, DBK working sheet and copies of Bills of Entry. Later on the Applicant filed revised application with request for condonation of delay which was received on 11.01.2008. This date was treated as the date of filing the claim. The Joint Commissioner vide letter C.No. VIII(Cus)25-47/BR/T/2407 dated 23.01.2009 rejected the application in respect of Shipping Bills Nos. 6510299 dated 28.09.2007 and 6513995 dated 01.10.2007 of as time barred as per Rule 6(1)(a) of Customs & Central Excise Duties Drawback Rules, 1995 read with CBEC Circular No. 14-Cus/2003 dated 06.03.2003 and allowed Drawback on the Shipping Bill No. 6551565 dated 01.11.2007.

3. The Applicant then vide their letter dated 01.04.2009 requested the Commissioner to reconsider their applications for fixation of brand rate of exported product. Hence a Show Cause Notice dated 01.07.2009 was issued proposing therein why their application dated 01.04.2009 should not be rejected. The Adjudicating Authority, Addl. Commissioner, Customs & Central Excise, Indore vide Order-in-Original No. 06/ ADC/ CUSTOMS/

IND/ 09-10 dated 08.02.2010 allowed their application in respect of Shipping Bills Nos. 6510299 dated 28.09.2007 and 6513995 dated 01.10.2007 and the brand rate of Rs. 149.60 was fixed.

3. The Commissioner of Customs & Central Excise, Indore reviewed the impugned Order-in-Original dated 08.02.2010 and the Department filed appeal before the Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore on the following grounds :

- (i) The Application dated 29.11.2007 in respect of the three Shipping Bills Nos. 6510299 dated 28.09.2007, 6513995 dated 01.10.2007 and 6551565 dated 01.11.2007 was already disposed vide the Joint Commissioner vide letter C.No. VIII(Cus)25-47/BR/T/2407 dated 23.01.2009.
- (ii) Once the application for fixation had been disposed off by the adjudicating authority, it was not proper and legal to have subsequently issued SCN dated 01.07.2009 for reconsideration of his own order dated 23.01.2009 and allowing drawback on the two Shipping Bills Nos. 6510299 dated 28.09.2007 and 6513995 dated 01.10.2007 vide impugned Order-in-Appeal dated 08.02.2010.

The Commissioner (Appeals), Indore vide Order-in-Appeal No. IND/CEX/25/2011 dated 21.01.2011 allowed the departmental appeal and set aside the Order-in-Original dated 08.02.2010.

4. Aggrieved, the Applicant filed the current Revision Application before the Government of India on the following grounds :

- (i) The Applicant had filed the Application within time. They had filed the application for fixation of Brand Rate of Drawback on 24.10.2007 in the Division Ujjain of Central Excise. However they had not submitted some of the statutory statement such as DBK-I, II, IIA, III, IIIA, copies of Bill of Entries along with their application. These documents had been submitted in the office of the Commissioner, Customs & Central Excise on 18.01.2008 and this date was treated as

the date of filing the claim which was not correct. The Addl. Commissioner had erred in rejecting their application considering the date of application filed as 18.01.2008. The Applicant submitted that the filing of the documents with the wrong office was merely a technical default. They should not have been penalized for this default.

- (ii) They were under the genuine belief that the application was required to be filed with the Division Office, Ujjain. They should be given the benefit of Rule 17 which empowered them for relaxation of rules for reasons of default beyond the control of the Applicant.
- (iii) It is a settled legal position that refund/rebate should not be disallowed on procedural/ technical grounds. The Addl. Commissioner had overlooked the decision of the Hon. Bombay High Court in the case of Phil Corporation Ltd. Vs UOI [2004 (168) ELT 24 Bom] , wherein it was categorically held that the rules are there to protect the interest of the manufacturers and export and merely on technical/ procedural lapse on the part of the company, it should not be penalized.
- (iv) The Applicant prayed that the impugned Order-in-Appeal dated 21.01.2011 be set aside and the Applicant's application for fixation of special brand rate of drawback under Rule 7 of the Drawback Rules, 1995 be granted.

5. The Assistant Commissioner vide V.No. I(gen)19-24/Cus/T/17-18 dated 16.11.2017 filed the following cross-objection submissions before the revisionary authority :

- (i) The Applicant had filed application with relevant documents for fixation of brand rate in the office of the Commissioner, Central Excise Hqrs, Indore on 18.01.2008 in respect of the three shipping bills.
- (ii) The Commissioner(Appeals) vide Order-in-Appeal dated 20.01.2011 had set aside the Order-in-Original on the grounds that it was not proper and legal to subsequently allow drawback on the two Shipping



bills which had already been rejected by the Addl. Commissioner on 23.01.2009 as time barred. According to Rule 6(1) of DBK Rules, an application of drawback has to be filed within 60 days from the relevant date or further 30 days, if the Commissioner is satisfied that the exporter was prevented by the sufficient cause from filing the application. Similarly, Para 3(d)(viii) of CBEC Circular No. 14/2003-Cus dated 06.03.2003 also specified the time limit for filing the brand rate application which may be filed within period of 60 days from the LET export date of the first shipping bill an delay upto 30 days may be condones on receipt of the export's application in this regard. Hence, in the Applicant's case, they are entitled to get drawback on only one shipping Bill i.e. Shipping Bill No. 6551565 dated 01.11.2007 and not on Shipping Bills Nos. 6510299 dated 28.09.2007 and 6513995 dated 01.10.2007 which are time-barred.

6. The Applicant delayed filing the Revision Application, details of which is as given below:

Sl. No.	OIA No. & dt	Dt OIA recd by Applicant	RA No. & date filed	Date RA & COI3 recd	No. of days delay
1	IND/CEX/25/2011 dt 21.01.2011	28.03.2014	373/32/DBK/2014-RA 05.08.2014	05.08.2014	90+40 =130

The Applicant filed the Revision Application along with the Miscellaneous Application for Condonation of Delay (herein after as 'COD').

7. A personal hearing in the case was fixed on 29.05.2018, 15.10.2019 and 22.01.2020. The Applicant vide their letter dated 02.01.2020 requested to dispose the case on the basis of submissions made in their revision application, as it would be difficult for their representative to attend the personal hearing.

8. 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.

9. Government first proceeds to discuss the issue of delay in filing the revision application. The Applicant submitted that they came to know of the Order-in-Appeal dated 21.01.2011 at the time of personal hearing granted by Additional Commissioner on 02.01.2014. They then filed a letter dated 17.02.2014 and 12.03.2014 before the Commissioner(Appeals) requesting for issuing duplicate certified copy of the Order-in-Appeal. The Applicant was communicated of the Order-in-Appeal on 28.03.2014. Hence they could not file the revision application within the prescribed time limit and prayed for condonation of the delay. As per provisions of Section 35EE of Central Excise Act, 1944 the revision application can be filed within 3 months of communication of Order-in-Appeal and delay up to another 3 months can be condoned provided there are justified reasons for such delay. Hence, Government, in exercise of power under Section 35EE of Central Excise Act, 1944 condones the said delay and takes up revision application for decision on merit.

8. On perusal of the records, it is observed that the Applicant had filed an application dated 29.11.2007 for fixation of brand rate of drawback on Shaft and Wheel which was exported under three Shipping Bills Nos. 6510299 dated 28.09.2007, 6513995 dated 01.10.2007 and 6551565 dated 01.11.2007. The application was received in the Office of the Commissioner, Customs, Central Excise, Indore on 30.11.2007 but without the DBK I, II, III statements, DBK working sheet and copies of Bills of Entry. Later on the Applicant filed revised application with request for condonation of delay which was received on 11.01.2008. The Joint Commissioner vide letter C.No. VIII(Cus)25-47/BR/T/2407 dated 23.01.2009 rejected the application in respect of Shipping Bills Nos. 6510299 dated 28.09.2007 and 6513995 dated 01.10.2007 of as time barred as per Rule 6(1)(a) of Customs & Central Excise Duties Drawback Rules, 1995 read with CBEC Circular No. 14-

Cus/2003 dated 06.03.2003 and allowed Drawback on the Shipping Bill No. 6551565 dated 01.11.2007. Government finds that aggrieved with the Order-in-Original dated 23.01.2009, the Applicant should have filed an appeal with Commissioner(Appeals) instead they wrote a letter to the original adjudicating authority which is not proper and legal

9. From the plain reading of the provisions of Section 35 of the Central Excise Act, it is clear that an appeal should be filed within sixty days from the date of communication of the decision or order that is sought to be challenged. However, in view of the proviso thereto, the Commissioner (Appeals) is empowered to allow the appeal to be presented within a further period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of sixty days. Thus, the Commissioner (Appeals) is empowered to extend the period for filing an appeal for a further period of thirty days and no more.

10. Government notes that instead of filing appeal with the Commissioner (Appeals) against Order dated 23.01.2009, they made a request to Assistant Commissioner. Based on the Applicant request letter dated 01.04.2009, the Applicant was issued Show Cause Notice dated 01.07.2009 and subsequent Order-in-Original dated 08.02.2010 was issued which are not proper and legal. Government finds that the case/ issue of Order-in-Original dated 23.01.2009 is Res-Judicata and final.

11. As in the instant case no appeal had been filed with the Commissioner(Appeals) by the Applicant after more than 90 days of receipt of the Order-in-Original dated 23.01.2009, the Government holds that the Commissioner (Appeals) has rightly upheld the departmental appeal on the ground that the SCN dated 01.07.2009 and Order-in-Original dated 08.02.2010 were without any propriety and deserve to be quashed.

12. In view of position explained above, Government finds that the impugned Order-in-Appeal No. IND/CEX/25/2011 dated 21.01.2011 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore as legal and proper.

13. The revision application is dismissed being devoid of merit.

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India  
*(SHRAWAN KUMAR)*  
*12/01/2021*  
13 01 2021

UNIKER No. 08/2021-CX (WZ) / ASKA/Mumbai DATED  
To,  
M/s Cummins Technologies India Ltd.,  
Industrial Area No. 2,  
A.R. Road, Dewas,  
M.P. 455 001

Copy to:

1. Commissioner of CGST, Manik Bagh Palace, Post Box No. 10, Indore (M.P.) 452 001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.