

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  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005**

F.No.373/66-67/DBK/14-RA /2692

Date of Issue: 09.04.2021

ORDER NO. <sup>100-101</sup>/2021-CUS (SZ) /ASRA/MUMBAI DATED 31.03.2021 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.

**Subject** : Revision Applications filed under Section 129DD of Customs  
Act, 1962 against Orders in Appeal No. 480-481/2013 CUS.(B)  
dated 23.12.2013 passed by Commissioner of Customs,  
(Appeals), Bangalore.

**Applicant** : M/s Nexteer Automotive India Pvt. Ltd. Bangalore.

**Respondent** : Commissioner of Customs, Bangalore.

## ORDER

These Revision Applications have been filed by M/s Nexteer Automotive India Pvt. Ltd. Bangalore (hereinafter referred to as the "applicant") against Orders-in-Appeal No. 480-481/2013 CUS.(B) dated 23.12.2013 passed by Commissioner of Customs, (Appeals), Bangalore as detailed below.

TABLE

Sl. No.	Revision Application Nos.	Order-In-Appeal No./ Date	Order-In-Original No. & Date	Amount of Drawback sanctioned
1	2	3	4	5
1.	373/66/DBK/14	480-481/2013 CUS.(B) dated 23.12.2013	261/2013 dated 03.05.2013	Rs.9,69,272/-
2.	373/67/DBK/14	480-481/2013 CUS.(B) dated 23.12.2013	272/2013 dated 10.05.2013	Rs. 3,77,593/-

**RA No. 373/66/DBK/14**

2. The brief facts of the case are that the applicant, an exporter of goods had re-exported duty paid goods VIZ., three used machines vide Shipping Bill Nos. 11 and 12 both dated 10.04.2012, under claim of drawback under Section 74 of the Customs Act, 1962. The goods were presented for export and the Let Export Order was issued on 19.04.2012. The applicant filed single Drawback Claim amounting to Rs.9,69,272/- for both the shipping bills (received in ICD, Bangalore on 10.10.2012). Vide letter dated 19.11.2012, the Deputy Commissioner of Customs ICD, Bangalore, issued deficiency memo indicating therein the following defects observed in the aforesaid drawback claim.

**RA No. 373/67/DBK/14**

2.1 The brief facts of the case are that the applicant, an exporter of goods had re-exported duty paid goods VIZ., "Pump Assy. Hydraulic vide Shipping Bill Nos. 584 and 585, both dated 29.05.2012, under claim of drawback under Section 74 of the Customs Act, 1962. The goods were presented for export on 01.06.2012 and the Let Export Order was issued on 01.06.2012. The applicant filed single Drawback Claim amounting to Rs.3,77,594/- for both the shipping bills (received in ICD, Bangalore on 07.11.2012). Vide letter dated 19.11.2012, the Deputy Commissioner of Customs ICD, Bangalore, issued deficiency memo indicating therein the defects observed in the aforementioned drawback claims.

3. The applicant submitted compliance to deficiency memo vide letter dated 29.01.2013 and also filed a request for condonation of delay on 29.01.2013 and paid a late fee of (i) Rs. 1000/- vide TR 6 challan No. 453639 dated 29.01.2013 and (ii) Rs.1000 vide TR 6 challan No, 453818 dated 07.02.2013 for condonation of delay covering two Shipping Bills in each claim. Thereafter the said claim was processed and the Deputy Commissioner of Customs (Drawback), Inland Container Depot, Bangalore vide Order in Original No. 261/2013 dated 03.05.2013 and Order in Original No.272/2013 dated 10.05.2013, sanctioned drawback of Rs. 9,69,272/- and Rs. 3,77,593/- under the provisions of Section 74 of Customs Act, 1962 in respect of goods re-exported under Shipping Bill Nos. 11 & 12 both dated 10.04.2012 and 584 and 585 both dated 29.05.2012 respectively.

4. The above said Order in original was reviewed by Commissioner of Customs, Bangalore and on finding that the said Orders in original were not proper, legal and correct issued the authorization issued for filing appeal for setting aside the Orders-in-Original No. No.261/2013 dated 03.05.2013 and 272/2013 dated 10. 05. 2013 on the following grounds:

*(a) The drawback claim was filed on 10.10.2012 and the Let Export Order was issued on 19.04.2012. As there was delay in filing the claim exporter submitted a letter for condonation of delay and paid a late fee wide TR 6 Challan No. 453640 dated 29.01.2013 & TR 6 Challan No. 453819 dated 07.02.2013 for Rs.1000/- each, in respect of 2 Shipping Bills. It is noticed that though the claim was filed within 6 months, the letter for condonation of delay and the payment of late fee were made after a lapse of 6 months from the date of Let Export Order (in r/o OIO No.261/2013 dated 03.05.2013 ).*

*(a) The Let Export Order was issued on 01.06.2012 and the Drawback Claim was filed on 07.11.2012. As there was a delay in filing the claim, the exporter submitted a letter for condonation of delay and paid a late fee of (i) Rs.1000/-vide TR 6 Challan No. dated 453639 dated 29.01.2013 and (ii) Rs. 1000/- vide TR 6 Challan No. 453818 dated 07.02.2013 in respect of 2 Shipping Bills. As such though the claim was filed within 6 months, the letter for condonation of delay and the payment of late fee were made after a lapse of 6 months from the date of Let Export Order (in r/o OIO No.272/2013 dated 10.05.2013 ).*

*(b) In terms of Rule 5(1) of Re-export of imported goods (Drawback of Customs Duties) Rules, 1995 a claim for drawback, on re-export of the imported goods, shall be filed within 3 months from the date of Let Export Order. The said period, however, can be extended by the Assistant/Deputy Commissioner by another 3 months on payment of fee of Rs.1000/- and by the Commissioner of Customs for a period of further*

*six months on payment of a fee of Rs.2000/-, in terms of proviso (i) & (iii) of the said Rule 5(1). Thus, Assistant / Deputy Commissioner is empowered to condone the delay and sanction the drawback if the claim is filed within six months from the date of Let Export Order. However, in this case the application for condonation of delay has been filed and the fee has been paid beyond the period condonable by the Assistant/Deputy Commissioner as explained at (a) above.*

*(c) As such, the delay has not been condoned by the Officer Competent to do so, i.e., the Commissioner of Customs and requisite fee of Rs.2000/- has not been paid as prescribed under clause (iii) of proviso to Rule 5 (1) of Re-export of imported goods (Drawback of Customs Duties) Rules, 1995.*

*(d) Since, the claims were was filed beyond the normal period of limitation of 3 months prescribed under Rule 5(1), without the delay having been condoned by the Officer Competent to do so on payment of requisite fee, the claim should have been rejected in-limine.*

5. Commissioner (Appeals) vide impugned Orders allowed the appeal filed by the Commissioner of Customs, Bangalore and set aside the Orders-in-Original No.261/2013 dated 03.05.2013 and 272/2013 dated 10. 05. 2013 passed by the Deputy Commissioner of Customs (Drawback), Inland Container Depot, Bangalore.

6. Being aggrieved with the impugned Orders in Appeal, the applicant filed the instant Revision Applications mainly on the following common grounds:-

6.1 The impugned Order-in-Appeal has been passed by the learned Commissioner (Appeals) without appreciating the legal and factual position in proper perspective.

6.2 Rule 5(1) of Re-export of imported goods (Drawback of Customs Duties) Rules 1995, is relevant in the instant case (the applicant has reproduced the Rule 5(1) *ibid*).

6.3.1 They have all together exported 3 items under Shipping Bill Nos. 11 & 12 both dated 10.4.2012 which were earlier imported under Bill of Entry No.5302717 dated 26.11.2011 as per details mentioned in Annexure 'A' to the Order-in Original dated 3.5.2013. The re-exported goods were examined in presence of the Deputy/Assistant Commissioner of Customs, 1CD, Bangalore and the identity of the exported goods have been established as per examination report dated 18.4.12 in respect of both the Shipping Bills. In terms of sub-rule (1) of Rule 5 of the Re-export of imported goods (Drawback of Customs, Duties) Rules 1995, the claim should be filed within three months from the date of the proper officer of Customs having permitted clearance and loading of the goods for exportation under Section 51 of the Customs Act in the instant case the 'let export' order has been given by the proper officer of

Customs on 19.4.2012 in respect of both the Shipping Bills and as such the claim should have been filed on or before 19.7.2012. The claim was filed with the Department on 10.10.2012. Thus, there was a delay of 81 days in filing the claim by the Applicant which was condonable by the Deputy Commissioner/Assistant Commissioner of Customs under proviso (i) to sub rule (1) of Rule 5 of the Re-export of imported goods (Drawback of Customs Duties) Rules 1995.

6.3.2 They have exported items Pump Assy Hydraulics under Shipping Bill Nos. 584 & 585 both dated 29.05.2012 which were earlier imported under Bill of Entry Nos.3226325 dated 16.04.2011 and 4322173 dated 10.08.2011 as per details mentioned in Annexure 'A' to the Order-in Original dated 10.5.2013. The re-exported goods were examined in presence of the Deputy/Assistant Commissioner of Customs, 1CD, Bangalore and the identity of the exported goods have been established as per examination report dated 1.6.12 in respect of both the Shipping Bills. In terms of sub-rule (1) of Rule 5 of the Re-export of imported goods (Drawback of Customs, Duties) Rules 1995, the claim should be filed within three months from the date of the proper officer of Customs having permitted clearance and loading of the goods for exportation under Section 51 of the Customs Act in the instant case the 'let export' order has been given by the proper officer of Customs on 19.4.2012 in respect of both the Shipping Bills and as such the claim should have been filed on or before 19.7.2012. The claim was filed with the Department on 10.10.2012. Thus, there was a delay of 81 days in filing the claim by the Applicant which was condonable by the Deputy Commissioner/Assistant Commissioner of Customs under proviso (i) to sub rule (1) of Rule 5 of the Re-export of imported goods (Drawback of Customs Duties) Rules 1995.

6.4. The Deputy Commissioner of Customs / Commissioner of Customs, as the case may be, has discretionary power to extend the time limit for filing the claim on an application in this regard by the claimant as per proviso (ii) to sub rule (1) of Rule 5 of the Re-export of imported goods (Drawback of Customs Duties) Rules 1995. In the instant case the Deputy Commissioner has condoned the said delay, in filing the claim by the Applicant, on an application dated 29.1.2013 by the Applicant and after satisfying himself with reference to the deficiency memo dated 19.11.2012 issued under his signatures.

6.5.1 They deposited the fee for late filing of claim in respect of both the Shipping Bills vide Challan No.453640 dated 29.1.2013 for Rs.1000/- and Challan No.453819 dated 7.2.2013 for Rs.1000/- in terms of proviso (iii) to sub rule (1) of Rule 5 of the Re-export of imported goods (Drawback of Customs Duties) Rules 1995. The Applicant, vide their letter dated 29.1.2013, also requested the Deputy Commissioner of Customs for condonation of delay in filing their claim dated 10.10.12 in respect of both the Shipping Bills.

6.5.2 They deposited the fee for late filing of claim in respect of both the Shipping Bills vide Challan No.453639 dated 29.1.2013 for Rs.1000/- and Challan No.453818 dated 7.2.2013 for Rs.1000/- in terms of proviso (iii) to sub rule (1) of Rule 5 of the Re-export of imported goods (Drawback of

Customs Duties)Rules 1995.The Applicant, vide their letter dated 29.1.2013, also requested the Deputy Commissioner of Customs for condonation of delay in filing their claim dated 07.11.12 in respect of both the Shipping Bills.

6.6 The learned Commissioner (Appeals) has arbitrarily mis-interpreted the provisions of sub- rule (1) of Rule 5 of the Re-export of imported goods (Drawback of Customs Duties)Rules 1995 in holding that proviso (iii) to the said sub-rule does not prescribe that the application fee can be paid after the submission of the application for extension. The fact is that the statutory provision i.e. the said proviso specifies that 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. It does not have any mention as to whether the fee is payable before making the application for extension or it can be paid after making the application. The main intention of the statute seems to be that payment of fee is necessary for consideration of extension application by the Assistant Commissioner of Customs or Deputy Commissioner of Customs. In the instant case fee for extension has been paid by them under two separate challans dated 29.1.2013 and 7.2.13 for Rs.1000/- each against their extension application dated 29.1.2013. As such their claims were fully in line with the provisions of sub- rule (1) of Rule 5 of the Re-export of imported goods (Drawback of Customs Duties)Rules 1995 and accordingly there was no infirmity in the Order-in-Original passed by the Deputy Commissioner of Customs, ICD,Bangalore.

6.7 Sub-rule 3 and 4 of Rule 5 of the Re-export of imported goods (Drawback of Customs Duties) Rules 1995 deal with limitation of claim under Section 74 of the Customs Act 1962 and the said sub-rules read as under-

*"5(3) The date of filing of the claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on the claims which are complete in all respects, and for which an acknowledgement shall be issued in such form as may be prescribed by the [Commissioner of Customs].*

*5(4) (a) Any claim which is incomplete in any material particulars or is without the documents specified in sub-rule (2) shall not be accepted for the purpose of section 75A and such claim shall be returned to the claimant with the deficiency memo in the form prescribed by the [Commissioner of Customs] within fifteen days of submission and shall be deemed not to have been filed;*

*(b) Where exporter complies with requirements specified in deficiency memo within thirty days from the date of receipt of deficiency memo, the same will be treated as a claim filed under sub-rule (1)."*

6.8 It is submitted that the claims submitted by them on 10.10.2012 were never returned by the Department and the documents required under the deficiency memos were submitted in time by the Applicant. More over the main condition under Section 74 of Customs Act, 1962 is establishing identity of re-exported goods and export of goods within two years of import which have duly been complied. In this regard reliance is placed on the decision of

Ministry of Finance, Government of India on revision application filed by M/s XSERVE INDIA (PVT) LTD. reported as 2012 (276) E.L.T. 409 (G.O.I.) (the applicant has reproduced the relevant para 7 and 8 of which of the said Order).

6.9 The learned Commissioner (Appeals) has erred in holding that, by the time, they made the request for extension of period and deposited the fee, the period lapsed was beyond 6 months, which as per legal provisions, could have been extended by the Commissioner. Hence, the application for condonation of delay should have been filed with the Commissioner and on approval and on payment of fee of Rs.2000/, the drawback application should have been processed / sanctioned.

6.10 It is the settled position of law that time limit shall always be counted from the date of filing of the claim, unless it is returned as incomplete, which in this case is 10.10.2012 indicating a delay of 81 days in filing the drawback claim against goods re-exported vide shipping bill Nos. 11 & 12 both having 'let export' date as 19.4.12. The condonation of delay up to three months is well within the powers of Deputy Commissioner/Assistant Commissioner of Customs as per the provisions of sub-rule (1) of Rule 5 of the Re-export of imported goods (Drawback of Customs Duties) Rules 1995. The period of delay is not to be counted from the date of submission of application for condonation of delay or from the date of removal of defects mentioned in the deficiency memo. Even if it is assumed, as per the view taken by the Commissioner (Appeals), that the application for condonation of delay should have been filed with the Commissioner of Customs, it was for the Department to inform about it to the Applicant instead the Deputy Commissioner wrongly assuming the jurisdiction. There is no fault of the Applicant at all. In this regard reliance is placed on the decision of the Hon'ble High Court at Delhi in the case of M/s ILPEA PARAMOUNT LTD. Versus JOINT SECRETARY, DEPARTMENT OF REVENUE reported as 2013 (289) E.L.T. 151 (Del.) (the applicant reproduced para 7 of the Judgment).

6.11 Moreover, a liberal view is to be taken towards the condonation of delay in submission of drawback claims as also held by the Hon'ble CESTAT at Delhi in the case of RALLIS INDIA LTD. Versus COMMISSIONER OF CENTRAL EXCISE, BHOPAL reported as 2006 (202) E.L.T. 845 (Tri. - Del.) (the applicant has reproduced paras 6 and 7 of the CESTAT Order).

In view of its aforesaid submissions, the applicant prayed that the impugned Order in Appeal be set aside and Orders in Original No. 261/2013 dated 03.05.2013 and Order in Original No.272/2013 dated 10.05.2013 passed by Deputy Commissioner of Customs ICD Bangalore be upheld.

7. A personal hearing in these cases was fixed on 27.01.2021 through video conferencing which was attended online by Shri Srinivas, Chief Manager, Finance on behalf of the applicant. He submitted that original authority rightly sanctioned rebate, the same may please be maintained and procedural

requirement cannot take away substantive right when duty payment and export is not in doubt.

8. Government has carefully gone through the relevant case records and perused the impugned orders-in-original and orders-in-appeal.

9. The Customs, Central Excise & Service Tax Drawback Rules, 1995 and the Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995 had been amended prescribing the time limits for making various applications/claims of drawback under the Rules granting of extensions in case of delays and to delegate greater powers in that regard to the field officers at the level of the Assistant/Deputy Commissioner of Customs vide Notifications No. 49/2010-Customs (N.T) and 48/2010-Customs (N.T) both dated 17th June, 2010 and Circular No. 13/2010- Customs dated 24.06.2010. Thus claim under the said rules may be filed within 3 months from the date of Let Export Order. The period may be extended by 3 months by the Assistant/Deputy Commissioner of Customs and by another 6 months by the Commissioner. However, para 5 of Circular No. 13/2010-Customs dated 24.06.2010 specifically provided as under :-

*5. A new feature that has been incorporated in the Rules is that in all the above cases 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 AC/DC and an application fee of 2% of the FOB value of exports or Rs. 2000/-, whichever is less, shall be payable for applying for grant of extension by the Commissioner.*

10. On perusal of records, Government notes that the date of the filing claims and date of payment of fees in these cases is as under:-

RA No.	O-I-A No./Date	Date of LEO	Date of filing claim	The date till which AC/DC could extend filing of drawback	The date on which the application fee of Rs. 1000/- was paid
373/66/DBK/14	261/2013 dated 03.05.2013	19.04.2012	10.10.2012	18.10.2012	29.01.2013/07.02.2013
373/67/DBK/14	272/2013 dated 10. 05. 2013	01.06.2012	07.11.2012	31.12.2012	29.01.2013/07.02.2013

From the aforesaid Chart it is evident that the delay in filing drawback claim in both the cases was less than 3 months thus the Assistant/Deputy of



Customs are empowered to extend the initial period of 3 months by a period of the three months for filing application. However, application for condonation of delay in both these cases was filed in 29.01.2013 and fees of Rs.1000/- payable for applying for grant of extension by the Assistant/Deputy of Customs was paid on 29.01.2013 and 07.02.2013 in both these cases.

11. Government further observes that the Commissioner (Appeals) while allowing the appeal filed by the department and setting aside Orders in Original sanctioning the drawback claims of the applicant vide impugned order observed that :-

.....*"Payment of application fee is the statutory requirement under Clause (iii) of proviso to Rule 5(1) of Re-export of imported goods (Drawback of Customs Duties) Rules, 1995- ( Rules, 1995 for short). The said statutory provisions, does not prescribe that the application fee can be paid, after the submission of the application for extension. The statutory provision interalia makes it clear that the application fee shall be payable for applying for grant of extension. In the present case, by the time, the respondent made the request for extension of period and deposited the fee, the period was beyond 6 months, which as per legal provisions, could have been extended by the Commissioner. Hence, the application for condonation of delay should have been filed with the Commissioner and on approval and on payment of fee of Rs. 2000/-, as prescribed under the said Rules, 1995, the drawback application should have been processed/sanctioned. Hence, it is clear that the procedural irregularities tantamounted to contravention of statutory provision. Further there is no provision for the post -facto approval by the Commissioner"*.

*3. The applicant should have acted in accordance with the provisions of law. They cannot plead ignorance of law. Since the statutory provisions of law have not been complied with, the Orders-in-Original suffers from legal infirmity. In other words, the Drawback claim sanctioned by the DC is not legal and correct. The cross objections do not merit any consideration in view of legal provisions."*

Whereas the applicant in their grounds of appeal has submitted that:

*"The learned Commissioner (Appeals) has arbitrarily mis-interpreted the provisions of sub- rule (1) of Rule 5 of the Re-export of imported goods (Drawback of Customs Duties)Rules 1995 in holding that proviso (iii) to the said sub-rule does not prescribe that the application fee can be paid after the submission of the application for extension. The fact is that the statutory provision i.e. the said proviso specifies that 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. It does not have any mention as to whether the fee is payable before making the application for extension or it can be paid after making the application. The main intention of the statute seems to be that payment of fee is necessary for consideration of extension application by*

*the Assistant Commissioner of Customs or Deputy Commissioner of Customs. In the instant case fee for extension has been paid by them under two separate challans dated 29.1.2013 and 7.2.13 for Rs.1000/- each against their extension application dated 29.1.2013. As such their claims were fully in line with the provisions of sub-rule (1) of Rule 5 of the Re-export of imported goods (Drawback of Customs Duties) Rules 1995 and accordingly there was no infirmity in the Order-in-Original passed by the Deputy Commissioner of Customs, ICD, Bangalore”.*

12. Government also observes that in these cases the department had not challenged the genuinity of drawback claims but questioned the competency of AC/DC to condone the delay on the ground that condonation application was filed and fees were paid after six months. Facts clearly bring out that delay in filing the drawback claims in these cases was less than three months, thus clearly in the competency of AC/DC. Delay in making payment of fees is not the relevant point here. Once requisite fees are paid, condonation application has to be considered by the competent authority. The competent authority has condoned the delay and decided the drawback accordingly.

13. In view of the above discussion and findings Government sets aside Orders in Appeal No. 480-481/2013 CUS.(B) dated 23.12.2013 passed by Commissioner of Customs, (Appeals), Bangalore.

14. Revision Applications are disposed off in the above terms.

*Shrawan*  
21/03/21  
(SHRAWAN KUMAR)

Principal Commissioner & ex-Officio  
Additional Secretary to Government of India

106-101  
ORDER No. /2021-CUS (SZ) /ASRA/Mumbai Dated 31.03.2021

To,  
M/s. Nexteer Automatives India Pvt. Ltd.,  
Plot No.98-A, Phase-II, KIADB, Indl Area,  
Jigani, Anekal Taulak, Bangalore-562 105

Copy to:

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2. Commissioner Of Customs (Bengaluru Appeals),BMTc Building, Above BMTc Bustand, Old Airport Road,Domlur, Bengaluru-560071
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.