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F.No: 380/03/DBK/14-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. 8/8/18

Order No. 102/18-Cus dated 6-8-2018 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. 242/Cus/(DBK)/Kol(P)/2013 dated 01.11.2013, passed by the Commissioner of Customs (Appeals), Kolkata

Applicant : Commissioner of Customs, Kolkata (Port)

Respondent : M/s Hyundai Construction Equipment India Pvt. Ltd

ORDER

A revision application number 380/03/DBK//2014-RA dated 27.01.2014 has been filed by the Commissioner of Customs, Kolkata (Port) (hereinafter referred to as the applicant) against the Commissioner (Appeals)'s Order No. 242/Cus/(DBK)/Kol(P)/2013 dated 01.11.2013 whereby the appeal of the respondent against Order-in-Original dated 19.11.2012, passed by Assistant Commissioner of Customs, Drawback Department (Port), Custom House, Kolkata, was allowed. The Assistant Commissioner had, vide his above mentioned order, earlier rejected the drawback claim of the respondent on the ground that the goods were used by the respondent for more than 18 months from the date of payment of duty of customs on importation of the goods. However, the Commissioner (Appeals), vide his above mentioned Order-in-Appeal, set aside the order of the lower authority on the ground that the relevant date under the provision of Section 74 of the Customs Act, 1962 is the date on which the goods are entered for export and not the date on which the goods are permitted for export by the proper officer of customs i.e. let export order date.

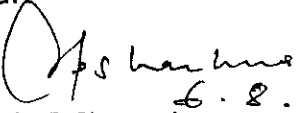
2. The revision application has been filed mainly on the ground that even though the drawback was admissible to the applicant in terms of Section 74(b) of the Customs Act, 1962 and Rule 5(i) of the Re-export of imported goods (Drawback of Customs Duties) Rules, 1995, yet the drawback payable to applicant is Nil in terms of Notification No. 23/2008-Customs dated 01.03.2008 because the re-exported goods had been used for a period of more than 18 months.

3. Hearing in this case was held on 18.05.2018 and it was availed by Mr. Dastagir Sayyad, consultant, on behalf of the respondent who opposed the department Revision Application for the detailed reasons given in their cross objection submitted during the personal hearing. On behalf of the applicant the hearing was availed subsequently on 22.05.2018 by Sh. Subrorto Mukherjee,

Assistant Commissioner(Drawback), Kolkata, Customs House, who reiterated the grounds of revision already pleaded in their application.

4. Government has examined the matter and it is observed that the admissibility of drawback in this case is not in dispute under Section 74 of the Customs Act, 1962 in respect of re-exported goods and the department's case in the revision application is only that drawback is not payable as the re-exported goods had been used for more than 18 months after importation of the goods. However, on meticulous examination of the Order-in-Original and the revision application it is noticed that the use of the goods has been wrongly calculated from the date of payment of customs duty which was made on 08.10.2010 and not from the date of the order for clearance of goods which was given on 26.10.2010 as per the Bill of entry itself. Thus the imported goods came under the control of respondent on 26.10.2010 only and thereafter these goods were re-exported on 10.04.2010 for which the Shipping bill was filed on 03.04.2012 and goods were handed over to customs authorities on 07.04.2012. As per Notification no. 23/2008 the period of use is to be calculated by considering the length of period between the date of clearance for home consumption and the date when the goods are placed under customs control for export. So the date of out of charge for the imported goods and the date of handing over of the goods to customs for export are relevant for measuring the period of the use of goods for determining the percentage of drawback admissible to the exporter. When these two dates are considered in this case, no doubt is left that the imported goods cleared to the respondent on 26.10.2010 were handed over to customs before 18 months for re-export purpose. Thus the re-exported goods remained in use of the respondent for more than 15 months but for lesser than 18 months and thereby drawback of duty at 60% is found admissible to respondent under Notification No. 23/2008-Cus dated 1.03.2008. Consequently no fault is found in the Order-in-Appeal and the revision application filed the revenue is found to be devoid of merits.

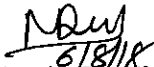
6. Accordingly, the revision application filed by the revenue is rejected.


(R.P.Sharma) 6.8.18

Additional Secretary to the Government of India

Commissioner of Customs (Port)
15/1 strand Road, Customs House,
Kolkata - 700001

ATTESTED


(Nirmla Devi)

SECTION OFFICER (REVISION APPLICATION)

Order No. 102 /18-Cus dated 6-8-2018

Copy to:

1. M/s Hyundai Construction Equipment India Pvt. Ltd, Plot No. A -2, MIDC, Chakan Phase-II, VIII Khalumbre, Pune-410501
2. Commissioner of Customs (Appeals), 15/1 strand Road, Customs House, Kolkata - 700001
3. The Assistant Commissioner of Customs (Drawback)(Port), 15/1 strand Road, Customs House, Kolkata - 700001
4. PS to AS(RA)
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