

REGISTERED POST
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.373/04-18/DBK/17-RA/1469

Date of Issue: 19.04.2022

ORDER NO. ¹²⁴⁻¹³⁸ /2022-CUS (SZ) /ASRA/MUMBAI DATED 19.04.2022
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 Carl Zeiss India (Bangalore) Private Limited,
Plot No. 3, Jigani Link Road,
Bommasandra Industrial Area,
Bangalore 560 099

Respondent : Assistant Commissioner of Customs, ACC, Bangalore

Subject : Revision Applications filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. 596 to
610/2016 dated 28.09.2016 passed by the Commissioner of
Customs (Appeals), Bangalore



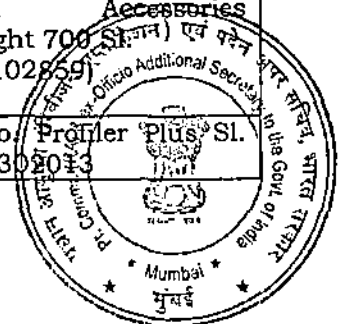
ORDER

These Revision Applications have been filed by M/s Carl Zeiss India (Bangalore) Private Limited, Plot No. 3, Jigani Link Road, Bommasandra Industrial Area, Bangalore 560 099 (hereinafter referred to as the 'applicant') against the Orders-in-Appeal No. 596 to 610/2016 dated 28.09.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

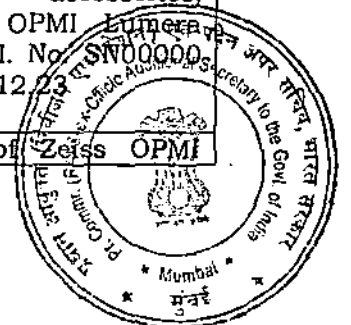
2. The facts briefly stated are that the applicant imported various goods/machines from time to time and filed 15 drawback claims under Rule 5(1) of Re-Export of Imported Goods (Drawback of Customs Duties) Rules 1995 (hereinafter called as the said rule) read with Section 74 of the Customs Act, 1962 (hereinafter called as Act). The issue involved in all these claims are identical and common. On verification by the Department these claims were found incomplete for want of documents and the same were communicated to the applicant through 'deficiency memo' for rectification of same within 30 days as stipulated in the Rule 5(4) of the said Rules.

3. The applicant in all the cases submitted the documents after a delay of 413 to 618 days as detailed below:

Sr No	OIO No and date	Deficiency memo dated	Delay in filing statutory document after deficiency memo raised	Drawback involved	% drawback claimed of the duty paid on imported goods	Description of goods imported
1	599/2016 dt 01.06.2016	09.09.2014	580 days	Rs. 4,70,894/-	95%	AT LISA TRI GIANT Model
2	600/2016 dt 01.06.2016	09.09.2014	580 days	Rs. 8,06,177/-	95%	1 Set of Microscope: AXIO Imager 2; Sl. No. 3350000111
3	601/2016 dt 01.06.2016	13.08.2014	607 days	Rs. 3,61,625/-	90%	1 set of Focussing Unit with Accessories resight 700 (Sl. No. 102859)
4	602/2016 dt	02.08.2014	618 days	Rs. 57,668/-	75%	1 No. Profiler Plus; Sl. No. 302013



	01.06.2016					
5	603/2016 dt 01.06.2016	02.08.2014	618 days	Rs. 1,12,581/-	85%	(i) 10 Nos of cutting tool ND-R2/Aperture Angle 120° Article no. 68043091238001 (ii) 2 Nos of Cutting tool 66/12 fixed inserts/man (68607112661200)
6	604/2016 dt 01.06.2016	02.09.2014	587 days	Rs. 7,25,039/-	75%	1 set of Zeiss Opmi Lumera Surgical Microscope with Accessories (S No. 6633123372)
7	605/2016 dt 01.06.2016	02.09.2014	587 days	Rs. 9,10,324/-	85%	1 set of Zeiss Opmi Lumera Surgical Microscope with Accessories (S No. 6633123463)
8	606/2016 dt 01.06.2016	26.06.2014	654 days	Rs. 1,14,781/-	95%	2 sets of Zeiss Visalis 1 Phaco Emulsification System with accessories (S No. 6403160014 & 6403160017)
9	607/2016 dt 01.06.2016	26.07.2014	625 days	Rs. 3,44,949/-	65%	(i) CP.2.15MM/T2, 9PL Feet(000000-1864-640) (ii) CP.2 35MM/T1, SPL Meter Super Speed (000000-1916-639) (iii) CP.2 50MM/T1, SEF FEET Super Speed (000000 1956-597) (iv) CP.2 85MM/T1, SEF FEET Super Speed (000000 1957-559) (v) Transportation case compact primes (000000 1775-468) (vi) LW Z.2 DEMO (000000 1775-876) (vii) LW Z.2-EF FEET (000000-1839-792)
10	608/2016 dt 01.06.2016	10.12.2014	482 days	Rs. 6,38,629/-	95%	4 sets of Surgical microscope for ophthalmic surgery with accessories, Model: OPMI Lumera 300, Sl. No. 19,20,212
11	609/2016	23.01.201	413 days	Rs.	95%	(i) sets of Zeiss OPMI



	dt 01.06.2016	5		7,92,783/-		Lumera Surgical Microscope for Ophthalmic surgery with accessories Model: OPMI Lumera 700,SI.No.6633122381 (ii)1 set of Zeiss Surgical Microscope for Ophthalmic surgery with accessories Model: OPMI Lumera 700, SI No. 6634142857
12	610/2016 dt 01.06.2016	23.01.2015	413 days	Rs. 2,05,282/-	70%	(i)I no of EC Assy, XRS PRS 400-000000-1286-511SI.No.50715 (ii)Ion Chamber, 0.02CC 304536-9000-004 SI. No.2208 (iii)Unidose E PTW Elktrom, PTB-CAL-000000-0485-223 SI.No.526 (iv)Assy.Photo Diode Array 304534-7000-003-SI.No.29 (v)Aligner/ion chamber holder patch -304534-6000 058 SI.No. 507181 (vi)Container Intrabeam recal kit-000000-1324-138
13	611/2016 dt 01.06.2016	23.01.2015	413 days	Rs. 2,44,206/-	65%	2 sets of Zeiss IOL Master 500PCI Biometer
14	612/2016 dt 01.06.2016	23.01.2015	413 days	Rs. 10,30,800/-	95%	2 sets of Surgical operating Microseepe with accessories (i)Model: OPMI PICO PM 9, SI.No.6030108636 ii)Model: OPMI PICO PM7,SI.No.6030108634
15	613/2016	23.01.2015	413 days	Rs. 43,05,379/-	95%	1 set of Surgical Operating Microscope with accessories Model: OPMI Pentero 900,SI.No.6637101936

3.1 The original authority rejected all these claims vide separate orders in originals as detailed above, on the grounds of being hit by limitation of time



and for contravention of Rule 5(4)(b) read with Rule 5(1) of the said Rules and Section 74 of the said Act.

4. Being aggrieved with the impugned orders, the applicant filed appeals before Commissioner of Customs (Appeals), Bangalore. The Appellate Authority vide Orders-in-Appeal No. 596 to 610/2016 dated 28.09.2016 upheld the impugned orders and rejected the appeals filed by the applicant. The Appellate Authority made the following observations.

i) Drawback is a beneficial piece of legislation where reimbursement/refund of customs duty on re-export of goods is provided. The Government of India has made special rules for such grant subject to verification, submission of documents and limitation which helps in identification of goods beyond doubt.

ii) In all the 15 Drawback cases, claims were filed initially with incomplete documents, as specified and mandated in Rule 5(2) of the said Rules.

iii) In many claims even the basic documents like Export airway bills, verification report of customs at the time of export, evidence of payment of duty, certificate of non-availment of cenvat credit were not filed/missing which are the basis of claim under Section 74 of the said Act. Such incomplete claims as per the mandate of Rule 5(4)(b) of the said Rules is "deemed not to have been filed".

iv) ~~Subsequent to such claim, Department issued deficiency memo in each case and which is again mandated to be replied within 30 days as per Rule 5(4) of the said Rules. The applicant however filed these deficit document after an inordinate delay of 413 to 618 days as against the prescribed statutory limit of 30 days as laid by Rule 5(4)(b) of the said Rules which is serious and uncondonable lapse. Thus the complete drawback claim was filed only after inordinate delay of 413 to 618 days as against prescribed time period of 135 days [90days Rule 5(i)] + 15 days (Rule 5(4)a)+ 30 days (Rule 5(4) (b)).~~



v) The compliance of statutory guidelines as laid through Act and Rules is must, as the drawback under Section 74 of the Act is dependent on strict identification of goods beyond any doubt.

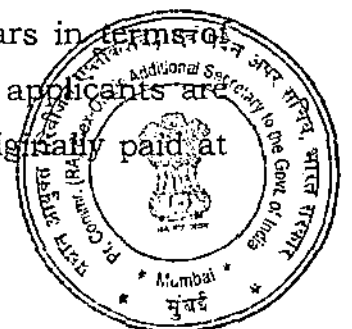
vi) Late submission of statutory document as prescribed in Rule 5(4)(a) will seriously impeditment such verification. Further, it is also not forthcoming whether these goods are used in process of manufacture/service or returned as such so as to disentile them from filing claim under Section 74 of the said Act. Inordinate delay will certainly vitiate such establishment of identity.

5. Aggrieved by the Orders-in-Appeal, the applicant has filed these Revision Applications on the following grounds, which are common for all the Revision Applications.

i) The Applicants have filed 15 drawback claims for amounts as mentioned in Para 3, for percentages varying from 65% to 95% of the duty paid on the impugned goods at the time of import. The applicants have submitted relevant documents alongwith the drawback claims filed. Subsequently, the drawback claims were processed and separate deficiency memos were issued to the applicants to produce the additional documents which were submitted by the applicant.

ii) That Section 74 of the Customs Act 1962 provides for claiming drawback in cases where the goods imported are re-exported as such. According to Section 74(1)(b), such goods are required to be entered for export within two years from the date payment of duty upon import. Further, the proviso provides for extension of such period of two years in case sufficient cause is shown for the same.

iii) That in (all) the cases, the goods have been imported on payment of duty and have been re-exported within a period of two years in terms of Section 74 of the Customs Act 1962 and consequently the applicants are entitled to duty drawback amounting to 98% of the duty originally paid at



the time of importation. Therefore the time limit specified under Section 74 of the Customs Act 1962 has been complied with by the applicants.

iv) That Rule 5(4) of the Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995 provides for return of a claim which is incomplete in any material particulars or is without the documents specified under sub-rule (2) of Rule 5 of the said Rules.

v) That the drawback claim has to be treated as having been filed on the date of filing the drawback application and further details as required by the Department were submitted thereafter and this cannot either mean that no drawback claim was filed or that the claim was complete once the deficiency memo was complied by the Applicants.

vi) That the applicants they have substantially complied with Rule 5(2) of the Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995 for claiming the drawback and have submitted all the requisite documents mentioned above is submitted by them to enable the processing of the claim under Section 74 of the Customs Act 1962

vii) That the Applicants have submitted the drawback claim supported by the specified documents within the prescribed time limit of three months ~~from the date of the let export order, the drawback claim of the applicants is~~ complete in all respects at the time of filing itself.

viii) That the Tribunals have held that the original date of filing the refund is to be computed from the date on which the refund claim was initially filed and not from the date on which the refund claim after removing defects was re-submitted. Further, it is settled law that date of filing of additional information subsequent to the filing of refund claim will date back to the date of the original claim. Hence, the filing of additional documents ~~in terms of the deficiency memo will date back to the date of the original drawback~~



claim which was within the period of limitation. The Applicant place has cited the following case laws in support of their contention:

(a) Goodyear India Ltd. Vs. Commissioner of Customs, New Delhi [2002 (150) ELT 331 (Tri-Del.)]

(b) Rubberwood India (P) Ltd. Vs. Commissioner of Customs (Appeals), Cochin [2006 (206) ELT 536 (Tri-Bang.)]

ix) That the Applicants further submit that the as per clause (4) of Rule 5 of Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995, a drawback claim even if considered to be incomplete shall not be accepted only for the purposes of section 75A of the Customs Act, 1962. Section 75A of the Act provides for payment of interest on the drawback amount by the department in case a drawback claimed under Section 74 or Section 75 has not been granted to the assessee within one month from the date of filing the same.

x) That the Applicants submit that Rule 5(4) of the Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995 provides for return of a drawback claim only for the purpose of calculation of the period for payment of interest under Section 75A of the Customs Act 1962 and not for the purposes of rejecting the claim of the assessee.

xi) That the Applicants submit that Section 74 of the Customs Act, 1962 provides for drawback in respect of goods which are imported into India on payment of duty and thereafter re-exported. The drawback which can be claimed under Section 74 the Customs Act 1962 is 98% of the duty paid at the time of import provided the conditions as mentioned thereunder are satisfied.

a. Goods being exported are capable of being easily identified as the imported goods.

b. Goods have been imported on payment of appropriate duty.



xvi) That the Applicant have submitted all the required documents mentioned in the deficiency memo and have re submitted the application along with the other documents such as application claiming the drawback, Non-availment of Cenvat credit Certificate, proforma duly signed by the Customs Officers and the examination report as mentioned in the deficiency memo.

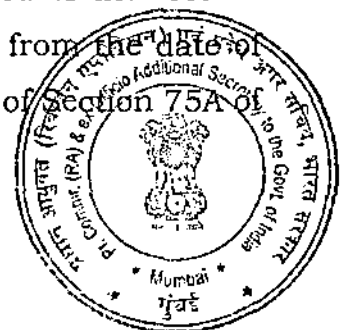
xvii) That Rule 5 deals with the manner and time of claiming drawback on goods under Section 74 of the Customs Act 1962, it is a procedural condition and any non observance thereof is condonable.

The Applicant place has cited the following case laws in support of their contention:

- i) Mangalore Chemicals & Fertilizers Ltd. vs Deputy Commissioner reported in [1991 (55) ELT 437 (SC)]
- ii) Novopan India Ltd vs Collector of C. Ex. and Customs, Hyderabad [1994 (73) E.L.T. 769 (S.C)].
- iii) Cotfab Exports vs. UOI [2006 (205) ELT 1027 (G.O.I)]
- iv) Gypsy Exports vs Commissioner of Customs, Amritsar [2001 (128) ELT 97 (Tri-Del)]
- v) Spic Ltd vs. CCE, Chennai [2007 (218) ELT 257 (Tri-Chennai)]
- vi) Modi Revlon Ltd. vs. Commissioner of Customs (Import), Mumbai [2007 (209) ELT 252 (Tri-Mum)]
- vii) Terai Overseas Limited vs. Commissioner of Customs, Mumbai [2001 (137) ELT 683] affirmed by the Calcutta High Court in 2003 (156) ELT 841 (Cal)

xviii) That the applicants therefore submit that the duty drawback claim should not be rejected based on procedural lapses. As far as all the documents to prove the main conditions of the drawback claim are fulfilled, drawback claim should not be rejected as it is beneficial to the assesseees.

xix) That the Applicants submit that they are also entitled to interest on the drawback for the period from the expiry of one month from the date of the drawback till the date of payment of drawback in terms of Section 75A of the Customs Act, 1962.



6. Personal hearing was scheduled in this case for 11.11.2021. Shri Syed P, Advocate and Ms. Meghna Lal, Advocate for the applicant appeared online for the personal hearing. They submitted that Rule 5(4)(a) of the Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995 is for Section 75 A for interest and not for Section 74 of the Customs Act, 1962. They informed that a written submission has again been submitted online through mail.

The applicant submitted further submissions through mail dated wherein further case laws were submitted in support of their contention.

7. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Orders-in-Appeal.

7.1 Government has meticulously considered all facets of the case and holds that the issue in question is whether the applicant is eligible for drawback on the goods re-exported and whether the drawback claims are barred due to limitation of time.

7.2 Government notes that the applicant filed 15 claims for drawback under Section 74 of the Customs Act read with Rule 5(1) of the Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995. The applicant has submitted that the following documents were submitted with each of the drawback claims

- i. Copy of the duty paid challan
- ii. Copy of the Import Airway Bill
- iii. Original Bill of Entry
- iv. Import Invoice
- v. Import packing list
- vi. Original Shipping Bill.
- vii. Re-export invoice and packing list
- viii. Drawback calculation sheet
- ix. Self-declaration for non-availment of Modvat credit
- x. Original GR waiver certificate
- xi. Self-declaration on no audit objection such as LAR/SOF/DAP & CRA
- xii. Authorization letter to process the duty drawback



7.3 In each of the drawback claims, deficiency memo was issued to the applicant for submission of additional documents. The applicant submitted the documents in respect of the deficiency memo after delay of 413 to 618 days. Government notes that the drawback claims were rejected by the sanctioning authority and the Appellate Authority on the sole grounds that the applicant had submitted the documents as per the deficiency memo after an inordinate delay and had thus not adhered to the time limit prescribed for filing of the drawback claims.

7.4 For a better understanding of the case, the provisions of Section 74 of the Customs Act, 1962 and Rule 5 of the Re-Export, of Imported Goods (Drawback of Customs Duties) Rules, 1995 are reproduced as under:

7.4.1 Section 74 of the Customs Act, 1962 states as under

“Section 74. Drawback allowable on re-export of duty-paid goods. - (1) When any goods capable of being easily identified which have been imported into India and upon which ¹[any duty has been paid on importation, -

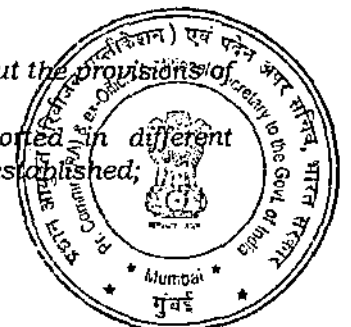
- (i) are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51; or
 - (ii) are to be exported as baggage and the owner of such baggage, for the purpose of clearing it, makes a declaration of its contents to the proper officer under section 77 (which declaration shall be deemed to be an entry for export for the purposes of this section) and such officer makes an order permitting clearance of the goods for exportation; or
 - (iii) are entered for export by post under ²[clause (a) of section 84] and the proper officer makes an order permitting clearance of the goods for exportation, ninety-eight per cent of such duty shall, except as otherwise hereinafter provided, be re-paid as drawback, if -
-
- (a) ~~the goods are identified to the satisfaction of the ³[Assistant Commissioner of Customs or Deputy Commissioner of Customs] as the goods which were imported; and~~
 - (b) the goods are entered for export within two years from the date of payment of duty on the importation thereof;

Provided that in any particular case the aforesaid period of two years may, on sufficient cause being shown, be extended by the Board by such further period as it may deem fit.

(2) Notwithstanding anything contained in sub-section (1), the rate of drawback in the case of goods which have been used after the importation thereof shall be such as the Central Government, having regard to the duration of use, depreciation in value and other relevant circumstances, may, by notification in the Official Gazette, fix.

⁴[(3) The Central Government may make rules for the purpose of carrying out the provisions of this section and, in particular, such rules may -

- (a) provide for the manner in which the identity of goods imported in different consignments which are ordinarily stored together in bulk, may be established;



- (b) specify the goods which shall be deemed to be not capable of being easily identified; and
- (c) provide for the manner and the time within which a claim for payment of drawback is to be filed.]

(4) For the purposes of this section –

- (a) goods shall be deemed to have been entered for export on the date with reference to which the rate of duty is calculated under section 16;
- (b) in the case of goods assessed to duty provisionally under section 18, the date of payment of the provisional duty shall be deemed to be the date of payment of duty.”

7.4.2 Rule 5 of the Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995 states 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.

(2) The claim shall be filed [* * * * *] alongwith the following documents, namely :-

(a) Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export.

(b) Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation.

(c) Import invoice.

(d) Evidence of payment of duty paid at the time of importation of the goods.

(e) Permission from Reserve Bank of India for re-export of goods, wherever necessary.

(f) Export invoice and packing list.

(g) Copy of Bill of lading or Airway bill.

(h) Any other documents as may be specified in the deficiency memo.

(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].

(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 claim filed under sub-rule (1).

(5) Where any order for payment of drawback is made by the [Commissioner of Customs (Appeals)], Central Government or any Court against an order of the proper officer of



customs, the manufacturer exporter may file a claim in the manner prescribed in this rule within three months from the date of receipt of the order so passed by the [Commissioner (Appeals)], Central Government or the Court, as the case may be.

7.5 Government notes that in the instant case the moot point for being eligible for drawback is that as per Section 74 of the Customs Act, 1962, the goods are entered for export within two years from the date of payment of duty on the importation thereof and as per the Rule 5 (1) of the Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995 the drawback claim has to be filed *"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 "*

7.6 As regards the contention in the impugned Orders-in-Original and the Orders-in-Appeal, Government notes that the Hon'ble High Court of Kerala at Ernakulam in Writ Petition No 17097 of 2011 in the case of Travancore-Cochin Chemicals Ltd vs Union of India [2017(346) E.L.T 228(Ker)] has ruled that Rule 5(4)(a) and Rule 5(4)(b) of the Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995 can be pressed into service only where claim is for interest on drawback under Section 75(A) of the Customs Act, 1962.

7.6.1 The relevant portion of the ruling in the said case is as under:

"In view of the rival pleas, the question to be considered is, whether Rule 5(4)(a) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 is applicable to a claim for drawback only, under S. 74 of the Customs Act. Since the question in controversy revolves around R. 5(4)(a), it is apposite and profitable to extract the relevant rule which is given below:

Rule 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 [Principal Commissioner of



Customs or Commissioner of Customs, as the case may be] 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).

7. In the instant case, it is not disputed that the application was submitted within 17 months from the date of import and within the prescribed time limit of two years under S. 74 of the Customs Act, 1962. But according to the respondents, the said application was defective for the non-production of certain documents and in that context, the respondents had issued deficiency memo to the petitioner; but the petitioner has not cured the defect by producing the required documents, within 30 days from the date of receipt of the deficiency memo. Admittedly, the claim was filed under S. 74 for drawback on re-export of duty paid goods only and more clearly, the petitioner has not claimed interest on drawback under S. 75A.

8. The statutory mandate under R. 5(4)(a) and (b) of Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 is that 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 S. 75A and such claim shall be returned to the claimant with the deficiency memo in the form prescribed by the Commissioner of Customs, within 15 days of submission and shall be deemed not to have been filed. It is pertinent to note that the rule specifically mandates that the application shall be deemed not to have been filed for the purpose of S. 75A, if the application is returned to the claimant with the deficiency memo in the form prescribed by the Commissioner of Customs. When the rule specifically says that the rigor of the rule can be applied to a specific purpose, the rule can be applied for that purpose only, and not for any other purpose.

9. Where the claimant has applied for drawback on re-export of duty paid goods only under S. 74 of the Customs Act, 1962, the time bar under R. 5(4)(a) and (b) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 cannot be applied; but it can be pressed into service, where the claim is for interest on drawback under S. 75(A) of the Customs Act, 1962.



claim for interest on drawback is returned to the claimant as incomplete in any material particulars or is without the documents specified, unless the requirements specified in deficiency memo are complied within thirty days from the date of receipt of deficiency memo, the same will not be treated as claim filed under sub-rule (1) of Rule 5 of the aforesaid Rules.

10. But in the instant case, claim is for drawback only under S. 74 and interest is not claimed. So, R. 5(4)(a) and (b) will not come into application; but the 5th respondent Revisional Authority went wrong by applying R. 5(4) and (b) of the above Rule. But the 5th respondent failed to appreciate the distinction between R. 74 and 75A in its correct perspective.

7.6.2 Government finds that rationale of aforesaid Hon'ble High Court order is squarely applicable to this case also. In view of the said ruling of the Hon'ble High Court, it is construed that the conditions for deciding whether the claims are not barred by limitation of time are that the goods should be re-exported within two years from the date of payment of duty on importation thereon as per Section 74 of the Customs Act, 1962 and the claim by the exporter has to be made within three months from the date of export which may be extended to 12 months as envisaged under the relevant provisions of Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995. Government notes that in the instant case both the criteria have been fulfilled as held in the impugned Orders-in-Original and the Orders-in-Appeal.

8. As regards the date for computation of time limit, Government observes that there are a catena of judgments wherein it has been held that time-limit to be computed from the date on which refund/rebate claim was originally filed. The High Court, Tribunal and GOI, have held in many cases that original refund/rebate claim filed within prescribed time-limit laid down in relevant Sections of and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time



limit cannot be held time-barred as the time limit should be computed from the date on which rebate claim was initially filed.

(a) In a case of M/s. IOC Ltd. reported as 2007 (220) E.L.T. 609 (GOI) as well as in a case of M/s Polydrug Laboratories (P) Ltd., Mumbai (Order No. 1256/2013-CX dated 13.09.2013) GOI has held as under :-

“Rebate limitation-Relevant date-time Limit to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after removing defects was submitted under section 11B of Central Excise Act, 1944.”

(b) Similarly in case of Goodyear India Ltd. v. Commissioner of Customs, Delhi, 2002 (150) E.L.T. 331 (Tri. Del.), it is held that

“claim filed within six months initially but due to certain deficiency resubmitted after period of limitation. Time limit should be computed from the date on which refund claim was initially filed and not from the date on which refund claim after removing defects was resubmitted. Appeal allowed. Sections 3A and 27 of Customs Act, 1962.”

(c) In a case of Apar Industries (Polymer Division) Vs Union of India [Special Civil Application No. 7815 of 2014 {2016 (333) E.L.T. 246 (Guj.)}], wherein the petitioner had submitted the rebate claim in time although, in wrong format and the said claim was returned to the petitioner upon which the petitioner represented the same claims along with necessary supporting documents later on and these applications were treated by the Department as time barred and claims were rejected. While disposing the petition, the Hon'ble High Court of Gujarat in its Order dated 17.12.2015, observed that

“Thus, making of the declarations by the petitioner in format of Annexure-19 was purely oversight. In any case, neither Rule 18 nor notification of Government of India prescribe any procedure for claiming rebate and provide for any specific format for making such rebate applications. The Department, therefore, should have treated the original applications/declarations of the petitioner as rebate claims. Whatever defect, could have been asked to be cured. When the petitioner represented such rebate applications in correct form backed by necessary documents, the same should have been seen



as a continuous attempt on part of the petitioner to seek rebate. Thus seen, it would relate back to the original filing of the rebate applications, though in wrong format. These rebate applications were thus made within period of one year, even applying the limitation envisaged under Section 27 of the Customs Act.....”

Government also observes that the aforesaid decision of High Court of Gujarat has been accepted by the department as communicated vide Board Circular No.1063/2/2018-CX dated 16.02.2018.

8.1 Hon'ble High Court of Delhi in the case of C.C.E. vs Arya Exports and Industries [2005(192) ELT 89] has also held that date of filing claim is the date on which claim was filed initially in form not prescribed or without documents.

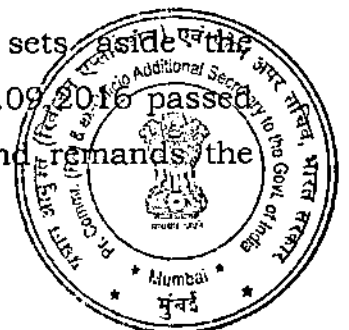
Government finds that rationale of aforesaid Hon'ble High Court orders are squarely applicable to this case also.

9. Government notes that the original sanctioning Authority and the Appellate Authority have rejected the claim merely on the basis of the claims being hit by limitation of time and not on the merits of the case.

10. In view of the discussions above and applying the ratio of the above judgments as discussed at para 7 and 8 supra, to the instant case, Government notes that the drawback applications filed by the applicant are not time barred and the surmises based on which the drawback claim have been rejected by the department are not sustainable.

11. In view of the above, Government holds that ends of justice will be met if the impugned Orders-in-Appeal are set aside and the case remanded back to the original authority for the purpose of verification of the claims on merits with directions that the claims be reconsidered on merits on the basis of documents submitted by the applicant.

12. In view of the above observations, Government sets aside the impugned Orders-in-Appeal No. 596 to 610/2016 dated 28.09.2016 passed by the Commissioner of Customs (Appeals), Bangalore and remands the



case back to the original authority for causing verification of the claim as stated in foregoing paras. The applicant shall submit the relevant documents to the adjudicating authority for consideration and acceptance in accordance with the law. The original authority will expedite the same within eight weeks from the date of receipt of this order. A reasonable opportunity for hearing will be accorded to the applicant.

13. The Revision Application is disposed off on the above terms

Shrawan
19/04/22
(SHRAWAN KUMAR)

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

124-138
ORDER NO. /2022-CUS (SZ) /ASRA/MUMBAI DATED 19.04.2022

To,

M/s Carl Zeiss India (Bangalore) Private Limited,
Plot No. 3, Jigani Link Road,
Bommasandra Industrial Area,
Bangalore 560 099

Copy to :

1. The Principal Commissioner of Customs (Airport Air & Cargo complex), Air India Sats Air Freight Terminal, Devanahalli, Bengaluru 560300
2. The Commissioner of Customs (Appeals), C.R. Building, P.B. No 5400, ~~Queens Road, Bengaluru 560 001~~
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.
5. Spare copy.

