



**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, Cuff Parade,
Mumbai- 400 005

F. NO. 380/41/DBK/14-RA / 5836

Date of Issue: ~~6.2020~~ 09.10.2020

ORDER NO. 182/2020-CUS (SZ) /ASRA/Mumbai DATED 04.09.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : The Commissioner of Customs (Export), Chennai-I.

Respondent : M/s W & P Equipments India,
No. 16, Paramount Apartments,
No.39-C, North Parade Road,
St. Thomas Mount,
Chennai - 600 016.

Subject : Revision Applications filed, under Section 129DD of the Customs Act, 1962 against the Orders-in-Appeal No.C. CUS No. 1506/2013 dated 24.10.2013 passed by the Commissioner of Customs (Appeals), Chennai-I.

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F. NO. 380/41/DBK/14-RA

ORDER

This revision application is filed by the Commissioner of Customs (Exports), Chennai-I (hereinafter referred to as "the Department") against the Order-in-Appeal No. C.CUS No. 1506/2013 dated 24.10.2013 passed by the Commissioner of Customs (Appeals), Chennai-I.

2. Brief facts of the case are that M/s W & P Equipments India, Chennai (hereinafter referred to as 'the respondent') had filed a drawback claim under Section 74 of Customs Act, 1962 for re-export of 14 Printers under the cover of Shipping Bill No. 108887 dated 13.08.2010 which were imported vide Bill of Entry No. 56067 dated 02.03.2010 and 954378 dated 02.11.2009. The lower authority sanctioned 98% of the duty in respect of 8 nos. of printers and 75% in respect of 6 nos. of printers and accordingly sanctioned the drawback amount of Rs. 2,80,159/- (Rupees Two Lakh Eighty Thousand One Hundred Fifty Nine Only) and rejected Rs. 54,893/- (Rupees Fifty Four Thousand Eight Hundred Ninety Three Only) vide F. No. S.Mis/RC/06/2011 dated 31.03.2011 on the grounds that the printers were used.

3. Being aggrieved by the said order, the respondent filed an appeal before the Commissioner of Customs (Appeals), Chennai-I. The Appellate Authority observed that the respondent tested the printers for functioning by connecting to the electrical connection and when the defect was confirmed, they attempted to rectify the same by reloading the software as per the advice of the manufacturer. The Appellate Authority held that once the main function of printers could not be achieved than only the equipment could be put to use. Hence, the contention of the department that the equipment had been taken into use was not correct. Therefore, the Appellate Authority allowed appeal with the consequential relief by holding that the respondent are eligible for 98% of the duty paid on the six number of printers against which only 75% of the duty paid was sanctioned as drawback under Section 74 of the Customs Act, 1962.

4. Being aggrieved and dissatisfied with the impugned order in appeal, the Department has filed this Revision Application on the following grounds that :

4.1 The Appellate Authority has erred in his decision that trial cannot be called as put into use.

4.2 The Department has relied upon the following Orders in support of their argument :

a) Seljgat Printers 2002 (143)E.L.T. 719 (GOI)

b) Milipore (India) Pvt.LTd. Vs. UOI 1999 (113) ELT 62 (Kar)

4.3 There is a difference between display and demonstration, Once a machine is operated, may be for a shorter time for demonstration or exhibition to show its performance etc. the machinery is used. If the machinery is put to use in exhibition for some time then it does not remain as new machinery. Once there is operation of machinery, it amounts to its use and as such, the refund could be claimed only under Section 74(2) i.e. (75%) and not under Section 74(1) i.e. (98%) of Customs Act, 1962.

5. A Personal hearing in the matter was granted on 21.05.2018, 05.12.2019 and 12.12.2019. Shri T.E. Shrikanth, Assistant Commissioner appeared for hearing on behalf of the department on 12.12.2019. No one appeared for the personal hearings so fixed on behalf of the respondent on the dated fixed for the same.

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

7. It is observed that the impugned drawback claim was rejected partially for 6 nos. printers on the ground that the equipment re-exported were said to have been put into use before re-exported. Thus, the drawback claim is processed as per the provisions of Section 74(2) instead of Section 74(1) of the Customs Act, 1962.

8. Therefore, it is pertinent to discuss the provisions of Section 74 of the Customs Act, 1962. The Rule 74 of the Customs Act, 1962 is 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 ¹any 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 section 82 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 ²[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.*

[(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."

9. On perusal of the provisions under sub-section (2) of Section 74 read as above, it is found that where the imported goods are used after importation, the amount of drawback will be sanctioned at the reduced rates as fixed by the Central Government having regard to the duration of use, depreciation in value and other relevant circumstances prescribed by relevant Notification.

10. In the instant case, it is observed that the department has contended that in respect of 6 nos. of printers the refund could be granted only to the extent of 75% as they were found to be defective on trial as admitted by the party and also as per the examination report of the Customs Officials on the reverse of the shipping bill. Hence the goods have to be treated as **used** for the purpose of granting drawback and accordingly the order of the lower authority sanctioning 75% of drawback is in order.

11. The Government finds that the reliance placed by the department on Case laws M/s Seljgat Printers Vs CC [2002 (143) ELT 719 (GOI)]. The said judgement has interpreted the term '**used**' in Section 74(2) of the Customs Act, 1962. The relevant portion of the said judgment is reproduced below.

"9. Now, the issue to be settled is the scope of the words used after the importation thereof.

10. The appellant's contention is hat the machineries imported were not used for commercial activity.

11. It is admitted by the applicant that the machine after importation was unpacked, installed and tested. The words

used in Section 74(2) are 'which have been used after the importation'. Then by interpreting it as 'used for the 'commercial activity' would amount to artificially restricting the scope of this section.

12. In this regard Hon'ble Karnataka High Court in Millipore (India) Pvt. Ltd. V. U.O.I- 1999(113) E.L.T. 62 (Kar) held that once a machine is operated, may be for a shorter time for demonstration or exhibition to show its performance etc. the machinery is usedOnce there is operation of a machinery, it amounts to its use and as such, the refund could be claimed only under Section 74(2) and not under Section 74(1) of Customs Act, 1962.

13. As discussed in detail in the O-in-A, it is well-established that the machine had been unpacked, installed and exported. The machine was installed during April, 1968 and the suggestion for replacement was made sometime in October, after about six months."

In the instant case, the respondent have admitted that as per the advice of the manufacturer, the six printers were opened from the boxes and checked for their displays in the monitor by giving electrical connection in their service room. Further, on confirming the defect, the software sent by the manufacturer was reloaded, as per the advice of the manufacturer. And since the defects continued to exist in the system, the respondents were advised to return the printers in the same packages.


The Government also opines that the testing of equipment is part of manufacturing activity and the equipment becomes marketable only on passing through the testing process. Hence, any attempt on the part of buyer to unpack the equipment and testing it would construe as 'used' as per the interpretation in the case law cited by the Department. The Government, therefore, maintain that as per the case laws relied upon by the Department, testing amounts to usage and hence the ratio of the judgment as discussed above is squarely applicable in the instant case.

12. In view of the discussion in foregoing paras, Government holds that the order of the lower authority to restrict the drawback amount to 75% in respect of 6 nos. of printers which were unpacked and thus used by the respondent is just and proper.

13. In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. C. CUS No. 1506/2013 dated 24.10.2013 and the Revision Application filed by the Department is allowed.

14. The revision application is disposed off on the above terms.

15. So ordered.



(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 82/2020-CUS(SZ) /ASRA/Mumbai DATED 04.03.2020

To,
The Commissioner of Customs (Export),
Chennai Seaport, Custom House,
No. 60, Rajaji Salai,
Chennai 600 001.

Copy to:

1. M/s W & P Equipments India, No. 16, Paramount Apartments, No.39-C, North Parade Road, St. Thomas Mount, Chennai - 600 016.
2. The Commissioner of Customs (Appeals), Custom House, No. 60, Rajaji Salai, Chennai 600 001.
3. The Deputy Commissioner Customs (Drawback), Chennai Seaport, Custom House, No. 60, Rajaji Salai, Chennai - 600 001.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.