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**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. 373/37/DBK/14-RA/1230

Date of Issue: 03.10.2020
~~08.2020~~

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ORDER NO./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 : M/s Sinicon Controls Private Limited,
Sinicon House, V/57,
Industrial Development Area,
Kanjikode West, Palakkad- 678 623
Kerala.

Respondent : Commissioner of Customs, Cochin.

Subject : Revision Applications Filed, under Section 129DD of the
Customs Act, 1962 against the letter from file No.
S35/40/2013-Ref.Cus. dated 20.12.2013 passed by the
Commissioner of Central Excise (Appeals), Salem.

ORDER

This revision application is filed by M/s Sinicon Controls Private Limited, Sinicon House, V/57, Industrial Development Area, Kanjikode West, Palakkad- 678 623, Kerala. (hereinafter referred to as "the applicant") against the letter No. S35/40/2013-Ref.Cus. dated 20.12.2013 from the Commissioner of Customs, Cochin.

2. Brief facts of the case are that the applicant had exported 500 boxes of Blue Cat Sanitary Items vide Shipping Bill No. 0017 dated 12.12.2012 and 187 boxes vide Shipping Bill No. 0013 dated 03.05.2013. They filed the drawback claim with the GR form from their bank and hence there was delay in filing the Drawback claims. The applicant filed the drawback claim for an amount of Rs. 6,21,616.23 and Rs. 2,15,552.98 on 25.11.2013. The applicant requested the Commissioner to condone the delay and allow drawback. A letter from the office of the Commissioner rejecting the drawback claims was received by the applicant on 26.12.2013. Aggrieved by the same, the applicant filed this appeal.

3. The applicant submitted the following grounds :

3.1 the decision of the Commissioner to reject the applicant's request to condone the delay is against the principle of natural justice.

3.2 They were under bonafide belief that the drawback claim has to be necessarily supported by attested GR form from the bank and hence there was delay.

3.3 The discretionary power conferred under Rule 5(1) of the Re-Export of Imported Goods (Drawback of Customs) Duties Rules, 1995 were not exercised.

3.4 The revenue is on the safer side as they have filed drawback alongwith GR.

4. A Personal hearing in the matter was granted on 23.05.2018, 05.12.2019 and 12.12.2019. Shri Gouri A.M., G.M. Operations appeared for hearing on behalf of the applicant on 12.12.2019. The department vide their letter dated 22.05.2018 had requested for exemption from personal

appearance on the hearing and requested to take the comments already submitted as submission from the side of the department.

5. 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.

6. It is found that the applicant claimed to have exported imported goods under two shipping bills. The applicant were under belief that the drawback claim can be filed only along with the GR Form from which resulted a delay ranging from 4 months to 8 months approximately as against time limit of three months prescribed under Rule 5(1) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995. Hence, applicant are stated to have presented the duty drawback claim application before the Commissioner of Customs, Cochin belatedly with a request to condone delay in filing the same. However, the same was not accepted by the department on the ground that claims were time barred. The details are as under :-

Sr. No.	Shipping Bill No./ Date	Let Export Order Date	Date of filing drawback claims	Delay period beyond prescribed limit of 3 months
1.	0017/12.12.2012	21.12.2012	25.11.2013	8 months 04 days
2.	0013/03.05.2013	03.05.2013	25.11.2013	3 months 24 days

The applicant are seeking for setting aside the order bearing S35/40/2013-Ref.Cus dated 20.12.2013 where under application filed by them for condoning delay in filing the application beyond the prescribed period.

7. Having heard the representative appearing for applicant and on perusal of the records, it would emerge that goods which have been exported were undisputedly imported and it was not put into use domestically and petitioner is stated to have exported the same. The relevant Bills of Entries and Shipping Bills would support the stand of the applicant that goods after importation with value addition had been exported.

8. The Government notes that under Section 74 of the Customs Act, 1962 deals with drawback allowable on re-export of duty paid goods and is entitled to be drawn on such exportation taking place and on account of goods imported having been exported by the applicant, after making such value additions. Further, it is observed that Rule 5 of the Rules, 1995 mandates that claim for drawback under the said Rules should be filed within three months from the date on which an order permitting clearance and loading of goods for exportation under Section 51 is made by the proper Officer of Customs. This condonation time limit for filing the drawback claim is further amended vide Notification No. 48/2010 - Customs (N. T.) dated 17.06.2010. As maintained by the said amendments, the Assistant / Deputy Commissioner of Customs, as the case may be, has been empowered to extend the aforesaid period of three months by a period of three months and that the Commissioner of Customs or Commissioner of Customs and Central Excise, as the case may be, may further extend the period by a period of six months.

In other words, the exporter would be entitled to file a claim for duty draw back within an outer limit of nine months after expiry of statutory limit of three months by explaining the delay. In the event of delay being beyond nine months and on such cause being shown, Central Government if satisfied that in relation to the export of any goods, the exporter or his authorized agent for reasons beyond his control, failed to seek for drawback within the period prescribed under Rule 5, exempt such exporter or agent from the provisions of Rule 5 or in other words, said authority it would be entitled to condone the delay.

9. In the instant case, reasons assigned by applicant for filing applications beyond the period prescribed is on account of their belief that the drawback claim can be filed only along with the GR Form. The said reasons have been explained in their representation No. SCPL/EXP/185/13-14 dated 13.11.2013. The Department did not dispute the factum of exportation of goods which have been imported and which is the subject matter of duty drawback having been exported by the applicant. Under the circumstances, such refusal would be inappropriate and even if time barred

applications are to be received in accordance with the relaxation granted under extant rules.

10. The Government finds that the Division Bench of Kolkata High Court in the case of Commissioner of Customs, Mumbai v. Terai Overseas Ltd. reported in (2003) 156 ELT 841 (Cal.) has held that while considering an application for drawback, documents filed in support of the claim should be considered liberally and drawback cannot be denied on mere technicalities or by adopting narrow and pedantic approach, since duty drawback is an incentive scheme. In the instant case, undisputedly petitioner having carried out exportation after making value addition of imported goods and has earned foreign exchange for the Country, dicta laid down by High Court of Kolkata is squarely applicable to the facts of the present case and this Court is in respectful agreement with the said view. It has been held by the Kolkata High Court which reads as under:

"21. On a reasonable construction of the various provisions of the Drawback Rules, this Court is of the opinion that the same is an incentive oriented scheme for augmenting export and claim for drawback cannot be withheld on the basis of mere technicality. This Court finds that if it is ultimately found that benefit of the Drawback Claim has been given to a party unauthorisedly, there are provisions under Rule 16(a) of the said Rules for its recovery where the export proceeds were not realized. Therefore, at the time of granting the Drawback Claim, the authorities have to proceed on a reasonable basis and cannot accept a narrow and pedantic approach. Apart from that, this Court also finds that the Tribunal held that the rebate of duty can be claimed on any imported or excisable materials used in the manufacture of certain goods which are manufactured in India and exported. Therefore, the main purpose of the said Rules is to boost export and earn foreign exchange. Admittedly, in the instant case, the export had taken place and the foreign exchange involved in the process had also been earned.

23. As the Court has to interpret the said rule, the language of Rule 13(2) assumes considerable importance. The said sub-clause 2 used

the expression 'should' instead of the expression 'must' or 'shall', the express shall has been used in Rule 13(3) and Rule 13(3) provides that if the claim for drawback is incomplete in any material particulars or is without any document specified in sub-rule (2), the same shall be returned to the claimant with a deficiency memo in the form prescribed by the Commissioner of Customs within 10 days and shall be deemed not to have been filed for the purpose of Section 75A of the Act."

11. It is also seen that in case of Union of India vs. Wipro Ltd. reported in (2010) 255 ELT 226 (Kar.), the assessee filed application claiming duty drawback under the Brand Rate System, which was rejected on the ground of delay. One of the contentions raised by the Revenue was that, there is no power to condone the delay under Rule 15 of the Drawback Rules. The assessee referred to the discretionary power vested with the Central Government in para 70 of the Export and Import Policy framed by the Union of India. The Division Bench held that the non-filing of the application for condonation of delay was beyond the control of the party, as he could not have initiated parallel proceedings and accordingly, confirmed the order passed by the Single Bench. The decision was affirmed by the Hon'ble Supreme Court, as the appeal filed by the Revenue was dismissed.

12. Further, in the case of Acer India Pvt. Ltd. vs. Union of India reported in (2015) 325 ELT 519 (Kar.), the Single Bench of the Karnataka High Court examined the question as to whether it is primordial to condone the delay in filing the application for duty drawback exemption under Section 74 of the Customs Act, as it has been filed beyond the prescribed period. It is held that if it is found that claim is not a false claim or in other words, it is genuine claim, they would be liberal in condoning delay.

13. The rulings in these cases clearly indicate that authorities while examining the application for relaxing or for condonation of delay has to be more pragmatic or in other words if it is found that claim is not a false claim or in other words, it is genuine claim, they would be liberal in condoning delay. While examining the sufficiency of cause shown by the exporter or his authorized agent, liberal approach ought to be adopted and technicalities even if any should yield to substantial justice. The Government takes note of the decisions in the cases of Terai Overseas Ltd. (supra), Wipro Ltd. (supra)

and Acer India Pvt. Ltd. (supra) and holds that drawback cannot be denied on mere technicalities.

14. The Government opines that as regards whether the applicant are entitled for drawback claim or not will have to be examined by the department and it would be within the ambit of the department to consider such claim keeping in mind the observations made hereinabove. As such, the Government holds that it would suffice if impugned order is set aside and matter is remanded to the department with a direction to consider the drawback applications filed by the applicant and pass orders thereon by keeping in mind observations made herein above and the amendment which has been effected to Rule 5 of the Rules, 1995.

15. In view of above discussion, Government sets aside the impugned Order No. S35/40/2013-Ref.Cus. dated 20.12.2013 and remands the case to the original adjudicating authority for processing the impugned drawback claim of the applicant. The Applicant are directed to file the drawback claim to the department within a period of four weeks from the date of receipt of this order for necessary verification.

15. The revision application is disposed off in terms of above.

16. So ordered.

(SEEMA APORA)

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

ORDER No. 183/2020-CUS (SZ) /ASRA/Mumbai DATED 04.03.2020

To,
M/s Sinicon Controls Private Limited,
Sinicon House, V/57, Industrial Development Area,
Kanjikode West, Palakkad- 678 623, Kerala. .

Copy to:

1. The Commissioner of Customs, Customs House, Cochin, Willingdon Island, Kochi - 682 009.
2. The Deputy Commissioner (Refunds), Customs House, Cochin, Willingdon Island, Kochi - 682 009.
3. S. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.