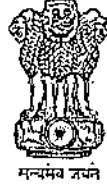


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**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

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F.No.373/166/DBK/15-RA / 2922

Date of Issue: 12.07.2022

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ORDER NO. 203 /2022-CUS (SZ) /ASRA/MUMBAI DATED 07.07.2022  
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 Allison Transmission India Pvt Ltd,  
A-21, SIPCOT Industrial Growth Park,  
Orgadam Sriperumpadur Taluk,  
Kancheepuram District,  
Tamil Nadu 620 105

Respondent : Principal Commissioner of Customs, Chennai

Subject : Revision Applications filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. 128/2015  
dated 30.01.2015 passed by the Commissioner of Customs  
(Appeals-II), Chennai

**ORDER**

This Revision Application has been filed by M/s Allison Transmission India Pvt Ltd, A-21, SIPCOT Industrial Growth Park, Orgadam Sriperumpadur Taluk, Kancheepuram District, Tamil Nadu 620 105 (hereinafter referred to as the 'applicant') against the Order-in-Appeal No. 128/2015 dated 30.01.2015 passed by the Commissioner of Customs (Appeals-II), Chennai

2. The facts of the case briefly stated are that the applicant had originally Imported 6 Nos. of Transmission Assembly 118610A vide Bill of Entry No.6693105 dated 30.04.2012 and cleared the same after payment of total duty of Rs. 41,39,772/- vide TR6 challan No.2003540774 dated 11.05.2012. They have re-exported 5 Nos. of Transmission Assembly 118610A vide Shipping Bill No.131526 dated 13.6.2014. The duty paid on the re-exported goods works out to Rs. 34,49,810/-.

3. The Original Authority rejected the refund claim on the grounds of limitation as the goods were cleared for home consumption after payment of duty on 11.05.2012 and the same goods were entered for re-export examination on 17.06.2014 and thus, re-export had not taken place within a period of two years as required under Section 74 of the Customs Act, 1962. The claim was also rejected as the applicant had not submitted GR waiver, BRC and any declaration of non availment of cenvat credit on the CVD amount paid at the time of importation.

4 Being aggrieved with the impugned order, the applicant filed an appeal before Commissioner of Customs (Appeals-II), Chennai. The Appellate Authority vide Order-in-Appeal No. 128/2015 dated 30.01.2015 upheld the impugned order and rejected the appeal filed by the applicant. The Appellate Authority made the following observations.

i) That according to Section 74 (1)(b) of the Customs Act, 1962, Drawback is eligible only *"if the goods are entered for re-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 period as it may deem fit.*" and that in the case, it was clear on facts that the claim was time barred as it was re-exported beyond 2 years from the date of payment of duty at the time of importation.

ii) That as regards the claim of the applicant that they had submitted a letter to Commissioner of Customs and only after the receipt of the letter, the Original Authority should have passed the order was in the realm of regulation for which the Appellate Authority did not find himself competent to enter as what the Commissioner of Customs would have done is a matter known only to the Commissioner and the Original Authority had taken a correct decision based on the facts which was available to him at that time and there was nothing to be speculated upon in this case.

5. Aggrieved by the Orders-in-Appeal, the applicant has filed the Revision Application on the following grounds:

5.1 That vide Notification No.33/94 Cus (NT), the powers for extending the time period as provided under proviso to Section 74(1)(b) of the Customs Act had been delegated to the Principal Collector/Chief Commissioner and the finding of the Original Authority to the effect that there was no provision under Section 74 to grant drawback if the re-export was effected after two year and hence, the application for condonation of delay was not acceptable and was not tenable.

5.2 That vide letter dated 07.07.2014, the applicant had requested the Commissioner of Customs to condone the delay in re-export of the impugned goods under claim drawback under Section 74 and since the said request was pending with the Commissioner, it was not proper on the part of the Original Authority to deny the drawback claim in the absence of any communication of the decision of the Commissioner. Further, it was also relevant note that the Original Authority was not vested with the powers for extending the period of re-export beyond two years as provided in the proviso to Section 74 (1) (b) of the Customs Act, 1962.

5.3 That since had been no response from the Commissioner of Customs on above application dated 07.07.2014, the issue had been escalated the Chief Commissioner of Customs, Chennai vide the letter dated 12.05.2015 by the applicant and thus the rejection of the drawback claim under Section 74 on the grounds of delay, in the absence of rejection of the application for condonation by the Commissioner/Chief Commissioner, was not legally sustainable.

5.4 That all the documents mentioned under Rule 5 (2) of the Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995 had been filed and there was no requirement to file the GR waiver, BRC and declaration of non availment of Cenvat Credit on the CVD amount paid at the time of importation as mentioned in the impugned order. That even without deficiency memo which was required for non submission of documents, the requisite documents were filed except BRC which is required to be filed only upon receipt of the export proceeds and not before that.

5.5 That the Appellate Authority had merely rejected the appeal on the grounds of delay in re-exporting the goods.

6. Personal hearing was scheduled in this case for 06.04.2022. Shri M. Karthikeyan, Advocate for the applicant and Shri Suresh, Assistant Commissioner, representative for the department appeared online for the personal hearing. Shri Karthikeyan submitted that their request for condonation of delay was not decided by Competent Authority. Shri Suresh submitted that the claim was deficient in respect of other documents also. Shri Karthikeyan stated that all documents were available but they were never asked to submit any document.

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

7.1 Government observes that the drawback claim was rejected on the grounds that the Re-Export had not taken place within a period of two years

from the date of importation as required under Section 74 of the Customs Act, 1962 and also as the applicant had not submitted GR waiver, BRC and declaration of non availment of cenvat credit on the CVD amount paid at the time of importation.

7.2 The applicant on the other hand has stated that all the requisite documents were submitted and also the department had erred in rejecting the claim before a decision was taken by the Competent Authority on their application for condonation of delay which was submitted to the Commissioner of Customs and later on to the Chief Commissioner of Customs for consideration.

7.3 For a better understanding of the case, the provisions of Section 74 of the Customs Act, 1962 is reproduced as under:

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 <sup>1</sup>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 <sup>2</sup>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 <sup>3</sup>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 Government notes that while Section 74(b) of the Customs Act, 1962 specifies that the re-export of the goods is to be effected within two years from the date of payment of duty on the importation thereof, proviso to Section 74 (1) (b) of the Customs Act, 1962 states that period of two years may, on sufficient cause being shown, be extended by the Board by such further period as it may deem fit.

7.5 Government observes that initially on importation, the goods in question were cleared by the applicant for home consumption after payment of duty on 11.05.2012 and the part of the same goods were entered for re-export examination on 17.06.2014. Thus it is clear that the re-export did not take place within a period of two years and was re-exported after a delay of a month after the period stipulated under Section 74 of the Customs Act, 1962.

7.6 Government also notes that it is on record that the applicant, on 07.07.2014, in terms of the provisions in force, had submitted a request before the Commissioner for condonation of delay. Government observes that in the backdrop of the sequence of events, it in the interest of justice that the Original Authority should have taken into consideration the decision of the Competent Authority on the application for condonation of delay filed by the applicant before rejecting the claim on the grounds that there was a delay in re-export of the goods.

7.7 As regards non submission of documents by the applicant as mentioned by the Original Authority in the impugned order, the applicant, during the personal hearing had stated that all the documents were available but they were not asked to submit the same.

8. Government holds that ends of justice will be met if the impugned Order-in-Appeal is set aside and the case remanded back to the Original Authority who shall wait for the decision of the Competent Authority on the request of condonation of delay of the applicant and thereafter carry out verification of the claims on merits on the basis of documents submitted by the applicant.

9. In view of the above observations, Government sets aside the impugned Order-in-Appeal No. 128/2015 dated 30.01.2015 issued by the Commissioner of Customs (Appeals-II), Chennai and remands the case back to the Original Authority with above directions. The applicant shall submit the relevant documents to the Original Authority for consideration and acceptance in accordance with the law. A reasonable opportunity for hearing will be accorded to the applicant.

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

*Shrawan*  
*7/7/22*

(SHRAWAN KUMAR)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER NO. 203 /2022-CUS (SZ) /ASRA/MUMBAI DATED 07.07.2022

To,

M/s Allison Transmission India Pvt Ltd,  
A-21, SIPCOT Industrial Growth Park,  
Orgadam Sriperumpadur Taluk,  
Kancheepuram District,  
Tamil Nadu 620 105

Copy to :

1. The Commissioner of Customs (Chennai IV), Custom House, No. 60, Rajaji Salai, Chennai-600 001
2. The Commissioner of Customs (Appeals-II), Custom House, 60, Rajaji Salai, Chennai-600 001
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.
5. Spare copy.