

REGISTERED
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. 375/21/DBK/16-RA/3311

Date of Issue: 01.08.2022

ORDER NO. 227 /2022-CUS (WZ)/ASRA/MUMBAI DATED 27.7.2022
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. Cummins Technologies India Pvt. Ltd.

Respondent: Commissioner of Customs, Indore.

Subject : Revision Applications filed, under Section 129DD of the
Customs Act, 1962, against the Order-in-Appeal No. BHO-
Excus-001-App-256/2015-16 dated 01.03.2016 passed by the
Commissioner of Customs(Appeals-I), Zone-2, Bhopal

ORDER

This Revision Application has been filed by M/s. Cummins Technologies India Pvt. Ltd., Industrial Area No. A.B. Road, Dewas (M.P.)-455001 (hereinafter referred to as "the applicant"), against the Order-in-Appeal No. BHO-Excus-001-App-256/2015-16 dated 01.03.2016 passed by the Commissioner of Customs (Appeals-I), Zone-2, Bhopal.

2. Brief facts of the case are that the applicant is registered with the department having registration no AABCT20188XM001 are manufacturing Turbo Charger and components thereof of Chapter heading 84. The applicant had filed an application under Rule 6 (1) (a) to Drawback Rules 1995 for fixation of brand rate of drawback on Shafts and Wheels for Turbo Chargers exported under Bill of entry no 6510299 dated 28.09.2007 and Bill of Entry No 6513995 dated 01.10.2007 exported through Air Cargo Complex Sahar Mumbai. The Additional Commissioner vide Order in Original no 06/ADC/CUS/IND/09-10 dated 08.02.2010 had fixed the brand rate which was reviewed by the Commissioner Central Excise Indore in exercise of the powers conferred upon him by virtue of Sub Section (2) of Section 129 D of the Customs Act 1962. Commissioner appeals vide Order in Appeal No. IND25-APPL/Indore/2011 dated 21.01.2011 allowed the revenue appeal. In the meantime show cause notices issued to the applicant were also decided by the adjudicating authority vide order-in-Original No. 11/ADC/CUS/IND/2013-14 dated 13.01.2014 issued by the Additional Commissioner (Tech), Central Excise Division Indore (M.P.) rejecting the application for fixation of brand rate for export product i.e. Shaft & Wheel filed on 29.11.2007 which was exported from Air Cargo Complex Sahar Mumbai in respect of Bill of entry no 6510299 dated 28.09.2007 and Bill of Entry No 6513995 dated 01.10.2007. Being aggrieved by the aforesaid order-in-original the applicant filed appeal before Commissioner of Customs (Appeals-I), Zone-2, Bhopal, who vide Order-in-Appeal No. BHO-Excus-001-App-256/2015-16 dated 01.03.2016 rejected their appeal.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application under Section 129 DD of the Customs Act, 1962 before the Government on the following grounds :

- i. the applicant filed the application for fixation of Brand Rate of Drawback on 29.11.2007 in Ujjain-Division of Central Excise Dept. However, at the time of filing the application at Ujjain-Division Office, some of the statutory statements such as DBK-I, DBK-II, DBK-II A, DBK-III, DBK-IIIA, copies of Bill of Entries were not submitted along with the application. These documents were later submitted in the office of the Hon'ble Commissioner, Central Excise and Customs, Indore on 18.01.2008. This date was treated as the date of filing the claim which is not correct. The Ld. Additional Commissioner has erred in rejecting the claim of the applicant for fixation of brand rate of drawback considering the date of application as 18.01.2008.
- ii. the filing of the documents with the wrong office is merely a technical default. The company should not be penalized for this default. The Revision Application of the applicant should be allowed on this ground itself.
- iii. they were under the genuine belief that the application was required to be filed with Division Office, Ujjain. The applicant should be given the benefit of Rule 17 which empowered them for relaxation of rules for reasons of default beyond the control of the company.
- iv. it is a settled legal position that refund/rebates should not be disallowed on procedural/technical grounds. The Ld. Additional Commissioner has overlooked the decision of the Hon. Bombay High Court in the case of Phil Corporation Ltd. Vis. UOI reported in 2004 (168) ELT p.24, wherein it was categorically held that, the rules are there to protect the interest of the manufacturers and export and merely on technical/ procedural lapse on the part of the company, it should not be penalized.

4. Personal hearing in the case was held on 09.02.2022, the hearing was attended online by Narendra Dharmavat, manager(Customs), Nishikant Gaikwad, Advocate, Sunil Kumar, Advocate, on behalf of the Applicants and reiterated their earlier submissions.

5. Government has carefully gone through the relevant case records available in case files, perused the impugned Order-in-Original, Order-in-Appeal. It is observed that the applicant is aggrieved by Order-in-Appeal No. BHO-Excus-001-App-256/2015-16 dated 01.03.2016 wherein their appeal was rejected on ground of limitation of time and the Revision application is filed against the same. The issue to be decided in the instant case is whether the date 18.01.2008 on which application was re-submitted with complete documents for fixation of brand rate is the proper date or not.

6. Government reproduces the text of Rule 6(1)(a) and Rule 7(1) of the Drawback rules 1995, here for easy reference:

“Rules 6. Cases where amount or rate of drawback has not been determined.-

(1) (a) Where no amount or rate of drawback has been determined in respect of any goods, any manufacturer or exporter of such goods may, within sixty days from the date relevant for the applicability of the amount or rate of drawback in terms of sub-rule (3) of rule (5), apply in writing to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, having jurisdiction over the manufacturing unit, of the manufacturer exporter or, of the supporting manufacturer, as the case may be, for determination of the amount or rate of drawback thereof stating all the relevant facts including the proportion in which the materials or components or inputs services are used in the production or manufacture of goods and the duties paid on such materials or components or the tax paid on input services:

Provided that such Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, may, if he is satisfied that the manufacturer or exporter was prevented by sufficient cause from filing the application within the aforesaid time allow such manufacturer or exporter to file such application within a further a period of thirty day;

Rule 7. Cases where amount or rate of drawback determined is low. -

(1) Where, in respect of any goods, the manufacturer or exporter finds that the amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4, for the

class of goods is less than four-fifth of the duties or taxes paid on the materials or components or input services used in the production or manufacture of the said goods, he may within sixty days from the date relevant for the applicability of the amount or rate of drawback in terms of sub-rule (3) of rule (5), make an application in writing to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise having jurisdiction over the manufacturing unit, of the manufacturer or, of the supporting manufacturer, as the case may be, for determination of the amount or rate of drawback thereof stating all relevant facts including the proportion in which the materials or components or input services are used in the production or manufacture of goods and the duties or taxes paid on such materials or components or input services :

Provided that the Commissioner of Central Excise or the Commissioner of Customs and Central Excise may, if he is satisfied that the manufacturer or exporter was prevented by sufficient cause from making the application within the aforesaid time, allow such manufacturer or exporter to make such application within a further period of thirty days;"

It is clear from the above text that application for brand rate shall be filed within 60 days from the date relevant for applicability of amount or rate of drawback in terms of sub rule (3) of Rule (5) in writing to the Commissioner of Central Excise or the Commissioner of Customs having jurisdiction over the manufacturing unit of the manufacturer exporter or, of the supporting manufacturer, as the case may be, may allow such exporter to file such application within a further period of 30 days if he is satisfied or sufficient cause has been shown to him for the delay. Besides, Para 3 (d) (viii) of Board's circular No 14-Cus/2003 dated 06.03.2003 specifies the time limit for filing brand rate applications, which may be filed within a period of sixty days from the let export date of the first shipping bill and delay up to 30 days may be condoned on receipt of the exporter's application in this regard. Government observes that the maximum time including the condonation of delay for filing of claim for the purpose of fixation of brand rate is 90 days.

7. Now the point comes which date should be taken as the date of filing of claim for fixation of brand rate in accordance with the rule 13(3) (b), the

date 30.11.2007 on which the initial submission was made with incomplete documents or the date 18.01.2008 on which the application was resubmitted with complete documents. The Department had considered 18.01.2008 as the date of filing claim when the complete documents were resubmitted by the applicant in accordance with the rule 13(3) (b) of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 which is reproduced as:-

"(3) (a) If the said claim for drawback is incomplete in any material particulars or is without the documents specified in sub-rule (2), 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.

(b) where the exporter resubmits the claim for drawback after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed under sub-rule (1) for the purpose of section 75A."

It is clear from the above text that said rule is meant only for the purpose of section 75A of Customs Act, 1962 which deals with interest on Drawback claim and it is nowhere specified therein to reject the entire drawback claim. Therefore, the entire drawback cannot be denied to the applicant as per rule 13(3) (b) even when the initial submission was incomplete.

8. Furthermore, it is an admitted fact that the application was incomplete when submitted initially on 30.11.2007. The department had failed in issuing the deficiency memo to the applicant within 15 days of the claim submission prescribed under rule 13(3)(a). Therefore rule 13(3)(b) which has to be read in conjunction with rule 13(3)(a), would not be applicable in the instant case. For that reason the date i.e. 30.11.2007 on which the claims were initially filled would be the proper date for filing of claims.

9. In the light of the detailed discussions hereinbefore, the Government has come to the conclusion that since rule 13(3)(b) is not applicable in the

instant case and claim filed by the applicant within the time limit of 90 days , the claim cannot be denied to the Applicant on the grounds of being time barred.

10. In view of above, Government sets aside the Order-in-Appeal No. BHO-Excus-001-App-256/2015-16 dated 01.03.2016 and remands the case back to original adjudicating authority for denovo adjudication for the purpose of fixation of brand rates on merits.

Shrawan
27/7/22
(SHRAWAN KUMAR)

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

ORDER No. 227/2022-CUS (WZ)/ASRA/Mumbai DATED 27.07.2022

To,

M/s. Cummins Technologies India Pvt. Ltd.,
Industrial Area No. A.B. Road,
Dewas(M.P.)-455001

Copy to:

1. The Pr. Commissioner of Customs, Manik Bagh Palace Indore-452001.
2. The Commissioner of Customs(Appeals-I), 178, Bhagya Bhawan , M.P. Nagar Zone -2, Bhopal, Madhya Pradesh.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file.