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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, Cuffe Parade,
Mumbai- 400 005

F NO. 380/24-A/DBK/15-RA /4017

Date of Issue: 22.09.2022

ORDER NO 270 /2022-CUS (WZ) /ASRA/MUMBAI DATED 20.09.2022
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 : Commissioner of Customs, Mundra.

Respondent : M/s. Liebherr India Pvt. Ltd.

Subject : Revision Application filed, under section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. Mun-
Custm-000-App-028-14-15 dated 13.05.2015 passed by the
Commissioner (Appeals) Customs, Ahmedabad.

ORDER

This Revision Application is filed by the Commissioner of Customs Mundra (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. Mun-Custm-000-App-028-14-15 dated 13.05.2015 passed by the Commissioner (Appeals) Customs, Ahmedabad.

2. The facts of the case are that Liebherr India Pvt. Ltd. (hereinafter referred to as "the Respondent") had filed manual shipping bill No. 11 dated 18.02.2014, under section 74 of the Customs Act, 1962 for reexport of old and used tools and accessories along with SOC container No. UNDU252940 falling under RITC82079090 and claimed drawback @60% of the duty paid at the time of import. The goods were cleared vide Bill of Entry No. F-755601 dated 01.08.2012 on payment of customs duty Rs.17,35,056/- vide TR-6 Challan no. 2004336745 dated 23.08.2012. The respondent re-exported the goods under section 74 of the Customs Act, 1962 with claim of drawback @ 60% of the duty paid at the time of import and claimed drawback of Rs.9,81,699/- on the goods exported vide manual shipping bill No. 11 dated 18.02.2014. Adjudicating authority vide order-in-original No. MP & SEZ/DC/988/DBK/2014 dated 25.09.2014 sanctioned the drawback claim. Being aggrieved by the aforesaid order-in-original the applicant filed appeal before Commissioner (Appeals) Customs, Ahmedabad, who vide Order-in-Appeal No. Mun-Custm-000-App-028-14-15 dated 13.05.2015 rejected their claim by holding that the date of placing the goods under custom control is relevant and thus within the 18 months period as per Notification 19-Customs dated 06.02.1965.

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

- i. The Commissioner of Customs (Appeals), Ahmedabad passed the impugned Order-in-Appeal No.-CUSTM-000-APP-028-15-16 dated 13.05.2015 without going into the facts and legal provisions under which the claim for drawback can be filed by the claimant. The Commissioner of Customs (Appeals), Ahmedabad ought to have

- checked the provisions of Section 16, Section 74 of the Customs Act, 1962 as well as Notification No.19-Cus. dated 06.2.1965 (as amended) issued under Section 74(2) of the Customs Act, 1962.
- ii. Section 74(2) of the Customs Act, 1962 provides that 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. Notification No.19-Cus., dated 06.2.1965 (as amended) issued under Section 74(2) *ibid* notified the rates of drawback. As per this notification, percentage of import duty to be paid as drawback is 'Nil' if the goods are exported after eighteen months from the date of clearance for home consumption.
 - iii. Section 74(4) (a) of the Customs Act, 1962 provides that "For the purposes of this section 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."
 - iv. Section 16(1)(a) of the Customs Act, 1962 provides that "The rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force, in the case of goods entered for export under section 50, on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51."
 - v. The importer cleared the goods imported vide B/E No. F-755601 dated 01/08/2012 on payments of customs duty Rs.1735056/- vide TR-6 Challan no.2004336745 dated 23/08/2012. The Shipping Bill No.11 Dated 18/02/2014 was filed for re-export of the goods under claim for duty drawback for which Let Export was given on 08.04.2014. Therefore, the length of period between the date of clearance for home consumption and the date when the goods shall be deemed to have been entered for export was more than 18 months and

as per Notification No. 19-Cus. dated 06.2.1965, percentage of import duty to be paid as drawback was 'Nil', as discussed above.

- vi. The Commissioner of Customs (Appeals). Ahmedabad has erred in holding that the date of 'Let Export' order is not relevant for the Notification No. 19-Cus., dated 06.2.1965, instead it is the date of placing the goods under Customs control which is relevant.
- vii. A notification cannot override the provisions/definitions/explanations/clarifications, etc. of its parent authority, i.e. section 74 under which it has been issued.
- viii. Applicant has prayed to set aside the impugned Order in Appeal No. Mun-Custm-000-App-028-14-15 dated 13.05.2015 and to pass an order for recovery of Drawback paid erroneously along with the interest.

4. Personal hearing in the matter was scheduled on 18.12.2018, 19.12.2018, 20.07.2021, 16.07.2021. However, neither the applicant nor respondent appeared for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

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

6. On perusal of the Revisions Application, the Government notes that Adjudicating authority vide order-in-original No. MP&SEZ/DC/988/DBK/2014 dated 25.09.2014 sanctioned the drawback claim which was upheld by the Appellate authority by holding that date on which the goods were placed under Customs control is the relevant date for the calculation of period(duration) mentioned at Column 2 of the Notification 19-customs dated 06.02.1965 as amended by notification No. 23/2008-customs dated 01.03.2008. The issue to be decided in the instant case is

whether the date on which goods were placed under customs control or the Let Export date is the relevant date as per Notification 19-customs dated 06.02.1965.

7. Applicant argued that the section 74 provides that 'the 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 ' and therefore the 'Let Export Date' would be the relevant date instead of the date when the goods were placed under custom control for export as prescribed in column(2) of Notification 19-customs dated 06.02.1965 as amended by notification No. 23/2008-customs dated 01.03.2008. Applicant further argued that by considering the Let Export date to be the relevant date, percentage of import duty to be paid as drawback to the respondent is 'Nil' as the goods are exported after eighteen months from the date of clearance for home consumption. In this regards, it is pertinent to reproduce the content of Notification 19-Customs dated 06.02.1965 as amended by notification No. 23/2008-customs dated 01.03.2008 for easy reference:

" G.S.R. (E).- In exercise of the powers conferred by sub-section (2) of section 74 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 19-Customs, dated the 6th February, 1965, which was published in the Gazette of India vide S.O. 426 of the same date, namely:

In the said notification,

(i) in the preamble, for the word, brackets and number "column (2)", the word, brackets and number "column (3)" shall be substituted:

(ii) for the TABLE, the following TABLE shall be substituted, namely:

"TABLE"

Sr. No.	Length of period between the date of clearance for home consumption and the date when the goods are placed under Customs control for export	Percentage of import duty to be paid as Drawback
(1)	(2)	(3)
1	Not more than three months	95%
2	More than three months but not more than six months.	85%
3	More than six months but not more than nine months	75%
4	More than nine months but not more than twelve months	70%
5	More than twelve months but not more than fifteen months	65%
6	More than fifteen months but not more than eighteen months	60%
7	More than eighteen months	Nil

(iii) after the TABLE, the first proviso shall be omitted;

[F.No.334/1/2008-TRU]"

From the above it is unambiguously clear that the date when the goods are placed under Custom control for export would be the relevant date for calculating the duration as specified in column 2 of the aforesaid table. Government notes that any notification, being an exception to the general rule, must be strictly construed. Therefore, by no stretch of imagination it can be interpreted in other way. In the instant case, the goods were cleared for home consumption on 23.08.2012 and goods were placed under customs control for export on 18.02.2014 which is confirmed by the report furnished by the Deputy Commissioner of Customs, Mundra. The length of period between the date of clearance for home consumption and the date when the goods are placed under Customs control for export is well within 18 months. Therefore, percentage of import duty to the extent of 60% as drawback has

rightly been sanctioned to the respondent as they have fulfilled the criteria specified under Sr. No. 6 of the above said notification.

8. In view of above, Government finds no infirmity in the impugned order-in-appeal No. Mun-Custm-000-App-028-14-15 dated 13.05.2015 passed by the Commissioner (Appeals) Customs, Ahmedabad and upholds the same.


(SHRAWAN KUMAR)

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

ORDER No. 270 /2022-CUS (WZ) /ASRA/Mumbai Dated 20.09.2022

To,

1. M/s Liebherr India Pvt. Ltd. D-16/3,MIDC,TTC Industrial Area, Turbhe, Navi Mumbai-400703.
2. The Commissioner of Customs, Customs House, Mundra -370401.

Copy to:

1. The Commissioner (Appeals) Customs, Ahmedabad, 7th Floor, Mridul Tower, times of India, Ashram rd., Ahmedabad-380009.
2. Sr. P.S. to AS(RA), Mumbai.
3. Guard File