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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, Cuff Parade,  
Mumbai- 400 005**

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F. NO. 380/91/DBK/14-RA/1498

Date of Issue: 01.02.2021

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ORDER NO. 46/2021-CUS (WZ) /ASRA/Mumbai DATED 24.02.2021 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 :** The Commissioner of Customs (Export), JNCH, Raigad.

**Respondent :** M/s Time Technoplast Ltd.,  
103, Todi Complex,  
Saki Vihar Road, Andheri (East),  
Mumbai - 400 071.

**Subject :** Revision Applications filed, under Section 129DD of the Customs Act, 1962 against the Orders-in-Appeal No. 2277(DRAWBACK)/2014(JNCH)/EXP-94 dated 02.06.2014 passed by the Commissioner of Customs (Appeals), Mumbai Zone- II.

## ORDER

This revision application is filed by the Commissioner of Customs (Exports), JNCH, Raigad (hereinafter referred to as "the Department") against the Order-in-Appeal No. 2277(DRAWBACK)/2014(JNCH)/EXP-94 dated 02.06.2014 passed by the Commissioner of Customs (Appeals), Mumbai Zone- II.

2. Brief facts of the case are that M/s Time Technoplast Ltd., Mumbai – 400 072 (hereinafter referred to as 'the respondent') had imported 1 set 'Machine for working plastics blow moulding machine', second hand CG vide Bill of Entry No. 953421 dated 15.06.2010 at New Custom House, Mumbai. The impugned goods were re-exported vide Shipping Bill No. 3000005173 dated 06.01.2011 claiming duty drawback under Section 74 for Rs.21,79,248/- (Rupees Twenty One Lakhs Seventy Nine Thousand Two Hundred Forty Eight Only) i.e. 98% of duty paid at the time of import (i.e. 985 of Rs. 22,23,723/-). The Let Export Order was granted on 08.01.2011. At the time of import, the declared gross weight of the impugned goods was 143395 Kgs. Whereas at the time of export the net weight declared was 15,540 Kgs. Also the description of the imported goods given in the import invoice No. 10398 dated 15.03.2010 and packing list did not match with the description of the exported goods given in the export invoice no. TTL/EXP/TPCL/101/1-11 dated 29.12.2010 and the packing list. Since the machine imported was refurbished and some new part were added before export, the machine exported was not the same machine which was imported. Since the identity of the exported goods was not established with respect to the goods imported, the adjudicating authority rejected the drawback amount of Rs.21,79,248/- as per provisions of Section 74 of the Customs Act, 1962.

3. Being aggrieved by the said order, the respondent filed an appeal before the Commissioner of Customs (Appeals), Mumbai Zone-II. The Appellate Authority set aside the Order in Original with consequential relief to the respondent. The Appellate Authority while passing the impugned Order in Appeal observed that :-

3.1 The export consignment was subjected to 100% examination under supervision of Asstt. Commissioner (Docks).

3.2 The examination report read as under:-  
"Inspected lot, checked marks and Nos. examined 100% under AC/DC supervision. Identity established on goods w.r.t. import documents B/E No. 953421 dated 15.06.2010. Goods are not used. FOB and PMV fair. GR seen"

3.3 The jurisdictional Assistant Commissioner had satisfied himself with the identity. Thereafter, the goods were permitted for export under claim of Drawback

under Section 74. In that case, then in order to dispute the identity, it is the onus on the department to prove otherwise.

3.4 Except for the which were re-exported with excess weight of 7145 Kg was re-furbished to increase productivity, there was no real evidence to positively prove that the duty paid on imported goods and the re-exported goods were not the same.

3.5 On perusal of the import and export documents, it was seen that the description of import and export goods were same. There was difference in the packing list, which at the time of personal hearing, the respondent had explained that the difference was due to dismantling of the machine to fit in export containers.

3.6 The proper officer had permitted clearance and loading of the goods for exportation under Section 51 and the goods were identified to the satisfaction of the proper officer as the goods which were imported. It would not be appropriate for the department to dispute the identity post export and deny the drawback.

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 It was clear that the machine imported was not re-exported, where has the same has been re-furbished and then exported.
- 4.2 As per necessary condition mentioned in the Section 74 of the Customs Act, 1962 and "Re-export of imported goods (drawback of Customs Duties) Rules, 1995" the identity of the exported goods has to be established with the identity of the imported goods.
- 4.3 The respondent had not declared or mentioned about the refurbishment of the imported goods at the time of inspection by the Docks officers. This fact with reference to refurbishment was mentioned only at the time of personal hearing on 07.10.2013.

4.4 Therefore, in the absence of complete information regarding re-furbishing of machine to enhance the productivity before the shed officers, the examination report cannot be considered as proper.

5. A Personal hearing in the matter was granted on 04.06.2018, 11.10.2019, 07.11.2019 and 03.02.2021 21.05.2018, 05.12.2019 and 12.12.2019. No one from Department's side appeared for any of the personal hearings so fixed in the matter. Shri Ashok Shukla, General Manager (Exim) and Shri Gopal Jadhav, Assistant Manager (Exim) attended the personal hearing fixed on 04.02.2021. they requested to maintain the OIA as the Original Authority had rejected their claim on minor technical grounds.

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 on the ground that the goods re-exported were said to have been re-furbished before re-exported. Thus, the respondent have not fulfilled the conditions 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 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 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<sup>2</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.*

*[(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.”*

8.1 On perusal of Section 74, it is found that the basic condition for grant of drawback under Section 74(1) of the Customs Act, 1962 is that the exported goods should be identified w.r.t. goods which were imported. The Government finds that the impugned goods being machine i.e. tangible in nature, such identification is feasible in the instant case and hence the drawback claim has been correctly filed under provisions of Section 74 (1) of the Customs Act, 1962

8.2 On perusal of the records and the impugned order, the Government finds that the impugned goods were properly examined by the Customs Officers before allowing the shipment. Further, the proper officer had certified that inspection with respect to lot, marks and nos. were examined 100% under the supervisions of the AC/DC. It is categorically certified by the proper officer that the identity of goods had been established on goods with respect to import document i.e. Bill of Entry No. 953421 dated 15.06.2010 and impugned goods were not used. Thus the identity of the impugned goods given by the exporter i.e. 'Machine for working plastics blow moulding machine' was also found correct by proper officer who examined the impugned goods and allowed the same for export / shipment. Under such circumstances, the allegations that the re-exported goods were re-furbished and not the one imported under impugned Bill of Entry does not hold any legitimacy.

8.3 In view of above factual position the Adjudicating authority's observation that the identity of the exported goods was not established with respect to the goods imported is absolutely unjustified and uncalled for when the subject goods have already been exported under inspection of Customs Officer and the proper authority at the material time had certified the description of the exported goods is correct as declared, and their finding is final unless proved wrong and there appears to be no way to do so after the goods have been exported nor the Department does have any conclusive evidence as seen from the impugned order to prove that the impugned goods were not the one imported under Bill of Entry No. 953421 dated 15.06.2010.

8.4 From the foregoing, the Government finds that the impugned order in original is not based on any concrete/clear evidence and is rather based on capricious grounds and is arbitrary. On the other hand, the respondent's drawback claim is based on firm evidence with regard to description of goods exported, which has been clearly mentioned in all the relevant documents like shipping Bill, Export Invoices etc. and which was duly verified and certified by the Proper Officers of Customs who allowed the shipment, as already stated above. Commissioner (Appeals) had, after considering the factual position, allowed the claim of the respondent. Therefore, the Government finds no alternative but to uphold the impugned order in appeal and reject the application filed by the department.

9. Accordingly, the impugned order is upheld and appeal allowed and it is ordered that the respondent be allowed drawback amount applicable at the relevant time to exported goods, as per the drawback claims of the respondent and as shown in relevant invoices/AR-4 duly verified/certified by the jurisdictional officers and in the

shipping Bill, export for which was allowed by the concerned officer of the customs.

10. In view of above circumstances, Government upholds the impugned Order-in-Appeal No. 2277(DRAWBACK)/2014(JNCFI)/EXP-94 dated 02.06.2014 passed by the Commissioner of Customs (Appeals), Mumbai Zone- II and the Revision Application filed by the Department is rejected.

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

  
(SHRAWAN KUMAR)

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

ORDER No. 26/2021-CUS(WZ) /ASRA/Mumbai DATED 24.02.2021

To,  
The Commissioner of Customs (Export), Mumbai -II,  
Jawaharlal Nehru Customs House, Nhava Sheva,  
Tal: Uran, Dist. Raigad, Maharashtra- 400 707.

Copy to:

1. M/s Time Technoplast Ltd., 103, Todi Complex, Saki Vihar Road, Andheri (East), Mumbai - 400 071
2. The Commissioner of Customs (Appeals), Mumbai Zone II, Jawaharlal Nehru Customs House, Nhava Sheva, Dist. Raigad, Maharashtra- 400 707
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.