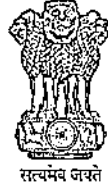


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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**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. 373/159/DBK/15-RA / 751
F. No. 373/160/DBK/15-RA

Date of Issue: 21.02.2022

ORDER NO. 72-73/2022-CUS (SZ) /ASRA/MUMBAI DATED 17.02.2022
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 Kennametal India Ltd
8/9th Mile Nagasandra Road,
Off Tumkur Road,
Bangalore 560 073

Respondent: Pr Commissioner of Customs, Air Cargo, Bengaluru

Subject : Revision Applications filed, under Section 129DD of the Customs
Act, 1962 against the Order-in-Appeal No. 84 & 85/2015 dated
22.01.2015 passed by the Commissioner of Customs (Appeals),
Bengaluru

ORDER

These Revision Applications has been filed by M/s Kennametal India Ltd 8/9th Mile, Nagasandra Road, Off Tumkur Road, Bengaluru 560 073 (hereinafter referred to as the 'applicant') against the Order-in-Appeal No. 84 & 85/2015 dated 22.01.2015 passed by the Commissioner of Customs (Appeals), Bengaluru.

2. Briefly stated the facts of the case are that the applicant submitted drawback claim for Rs 1,74,586/-and Rs 2,13,592/- respectively under Section 74 of the Customs Act, 1962 for the exports made vide Shipping Bill Nos 2915/29.10.2011 on 23.01.2012 and Shipping Bill No 2910/28.10.2011 on 23.01.2012. The Adjudicating Authority vide OIO Nos 803/2013 dated 21.09.2013 & 804/2013 dated 24.09.2013 held that the identity of the goods are not established and drawback claims for Rs 1,74,586 and Rs 2,13,592/- were rejected under Section 74 of the Customs Act, 1962.

4. Aggrieved by the orders-in-original, the applicant preferred appeals before the Commissioner of Customs (Appeals), Bengaluru. The Appellate Authority vide Orders-in-Appeal Nos. 84 & 85/2015 dated 22.01.2015 passed by the Commissioner of Customs (Appeals), Bengaluru rejected the appeals and averred with the decision of the sanctioning authority that the identity of the exported goods were not established and the drawback claims were rightly rejected by the sanctioning authority.

5. Aggrieved by the Orders-in-Appeal, the applicant filed separate Revision Applications with the Central Government against the impugned order under Section 129DD of the Customs Act, 1962, on the grounds that

i) The facts of the case, documentary evidences and the valid legal grounds produced by the applicant have not been considered by the Learned Commissioner and have not been discussed and no findings have been arrived at and hence the impugned order is illegal and unjust and totally an non speaking order.

ii) All the relevant documents required for sanction of drawback claim had been submitted and there is no dispute from the department also in this regard but the impugned orders passed by both the authorities is totally silent on the submission of the documents.

iii) The endorsement made by the department in the shipping bills, wherein there is a clear endorsement by the department that the goods meant for re-export contained inserts, Drills, Tool holders which were verified with the import documents and the part numbers on goods tallies with both import and export invoices. This endorsement itself establishes that the goods meant for re-export were opened and examined and were the same goods imported by the applicant. This vital piece of evidence that too given by the department is not at all finding a place in the findings recorded by both the authorities and this proves that the impugned order is not only illegal and unjust but is perverse. ❧

iv) In the re-export certificate issued by the department it is mentioned that part number on goods meant for re-export tallies with import and export invoices and to this extent the identity established and the goods are solely on the ground that there was no examination report at the time of import and hence the identity of the goods cannot be established, The denial of the drawback claim and the allegation was not correct since the department had itself verified the claim for drawback and given an endorsement to the effect the goods meant for re-export were identical to goods imported.

v) The department totally erred in denying the drawback claim on the ground that the goods at the time of importation were not opened and examined and cleared under RMS, is no ground to give an endorsement to the effect that the identity of the goods re-exported could not be established.

vi) It is highly illegal and unjust to reject the drawback claim on the ground that the examination was not carried out at the time of import. This finding

given by the Learned Commissioner to say the least is very causal in as much as other documentary evidences are available to prove that the goods imported were only being re-exported under draw back claim.

vii) The letter and clarification regarding a letter issued by the ADC of Customs dated 29.09.2011, in the case of another company wherein it was stated that "The Commissioner has observed that in such cases drawback u/s 74 has to be allowed on the basis of documentary evidence during import with sl. no and duty payment particulars" has been ignored by the department. This clarification was specifically issued in respect of cases where no examination of imported goods was prescribed for bills of entry facilitated under RMS. It is further mentioned in the said letter that the identity of the goods requires to be established on the basis of export/import documents only.

viii) The applicant had also obtained certificates from the jurisdictional officers to the effect that they had not availed CENVAT credit in respect of import duty paid in respect of the goods re-exported and this evidence was also available on record and all the evidences have been totally ignored.

ix) The allegation in para 4 of the SCN is vague as the AC-Shed had not given any grounds under which the identity of the goods not established, except vaguely stating that no examination was done at the time of import. Even the Appellate Authority has not given any ground as to how the identity of the goods could not be established the observation of the AC -Shed is not as per the clarification dated 28.09.2011.

6. Personal hearing was scheduled in this case for 06.10.2021 and 13.10.2021. Shri Raghavendra Hanjir appeared online on behalf of the applicant on 13.10.2021 before the Revision Authority and reiterated his earlier submissions. He submitted that though the Assistant Commissioner had remarked that identity not established, customs officer had reported that

identity was established. He further submitted that the Appellate Authority has allowed drawback in subsequent cases.

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

It is observed that the impugned drawback claim was rejected on the ground that the identity of the goods re-exported were not established and thus the applicant 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. Rule 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 ¹any 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 ²[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 of the Customs Act, 1962, 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 with respect to goods which were imported. The Government finds that the impugned goods are inserts, drills, tool holders, cutters, adaptors, top cut drills and spares are tangible in nature and such identification is feasible in the instant cases 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. Government also notes that from the examination report and the re-export certificate, there has been 100%

examination of the goods under the directions and supervision of the AC/DC. The said reports state that the goods were examined and verified with the import documents and that the part numbers on the goods tallied with the import and export invoices and to that extent the identity of the goods were established. Thus the identity of the impugned goods given by the exporter i.e. inserts, drills, tool holders, cutters, adaptors, top cut drills and spares 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 identity of the re-exported goods were not established does not hold.

8.3 The objection of the department and the reason for rejecting the rebate claim despite the identity being established is that the goods, at the time of import were cleared under RMS and no open examination report was available and thus the officers construed and concluded that the identity was not established despite the reports being to the contrary, cannot be justified.

8.4 Government notes that CBEC, vide circular no 46/2011-Cus dated 20.10.2011, has clarified that in case of goods imported and cleared under RMS, goods not examined at the time of import, the AC/DC should attempt to establish the identity on careful examination and verification of various parameters such as physical properties, weigh, marks and numbers, test report etc as may be available with reference to the import documents.

8.5 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 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 verified and certified the description and part numbers of the exported goods tallied as declared in the import and export invoice and their findings are final unless proved wrong.

8.6 From the foregoing, the Government finds that the impugned orders are not based on any concrete/clear evidence. On the other hand, the applicants drawback claims are based on firm evidence with regard to description and part numbers of goods exported, which has been clearly mentioned in all the relevant documents and which was duly verified and certified as regards the identity, by the proper officers of Customs, who allowed the shipments, as already stated above. Therefore, the Government finds no alternative but to set aside the impugned orders-in-appeal and allow the revision applications.

9. Accordingly, the impugned orders are set aside and appeals allowed and it is ordered that the applicant be allowed drawback amount applicable at the relevant time to exported goods, as per the drawback claims of the applicant and as shown in relevant documents.

10. In view of above, Government sets aside the impugned Orders-in-Appeal Nos. 84 & 85/2015 dated 22.01.2015 passed by the Commissioner of Customs (Appeals), Bengaluru and the Revision Applications filed by the applicant are allowed.

11. The revision applications are disposed off on the above terms.


17/2/22

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

ORDER NO ~~2~~-73/2022-CUS (SZ) /ASRA/MUMBAI DATED 17.02.2022

To,

M/s Kennametal India Ltd
8/9th Mile Nagasandra Road,
Off Tumkur Road,
Bangalore 560 073

Copy to :

1. The Commissioner of CGST, Bengaluru North West, 2nd Floor, BMTC Bus Stand Complex, Shivaji Nagar, Bengaluru-560051
2. The Commissioner (Appeals II), Bengaluru, Traffic & Transit Management Centre, BMTC Bus Stand, HAL Airport Road, Dommalluru, Bengaluru-560071
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare copy.