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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 371/31/DBK/16-RA

8067

Date of Issue

28.11.2018

ORDER NO. ¹⁵⁸7/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.09.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : M/s. Crompton Greaves Ltd.,

Respondent: Commissioner of Customs (Export), Drawback Department, 3rd floor, Annexe Bldg., New Custom House, Ballard Estate, Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No.MUM-CUSTOM-SXP/262/15-16 dated 17.02.2016 passed by the Commissioner of Customs (Appeals), MUMBAI.

ORDER

The revision application is filed by M/s Crompton Greaves Ltd., against the Order in Appeal No.MUM-CUSTOM-SXP/262/15-16 dated 17.02.2016 passed by Commissioner of Customs (Appeals), Mumbai in respect of Order in Original No. S/10-147/2013/DBK/AC/SGA Dated 12.02.2013 passed by the Assistant Commissioner of Customs, Drawback Section, Mumbai.

2. The facts of the case in brief are M/s Crompton Greaves Ltd re-exported duty paid goods and claimed drawback of the import duties under Section 74 of the Customs Act, 1962. The original adjudicating authority has sanctioned the same vide order in original no. S/10-147/2013/DBK/AC/SGA Dated 12.02.2013. The aforesaid order was reviewed by the department and appeal was filed with the Commissioner (Appeal). The Commissioner (Appeal) allowed the appeal concurring with the departments view that goods once repaired can't be considered same as imported and the identity can't be considered as deemed to have been established. Aggrieved by the commissioner (Appeal) Order the exporters preferred Revision Application.

3. A Personal Hearing was held on 27.09.2018. Shri Nitin Mehta, Consultant appeared on behalf of the applicant and reiterated the submissions made in Revision Application and pleaded for allowing the Revision Application. None appeared from the department side.

4. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the applicant's submissions and related Case Laws.

5. It is evident from the record that the applicant M/s. Crompton Greaves Ltd. re-imported the goods i.e. 'Non-operational power transformer main unit (gas filled) for repair and reconditioning on returnable basis' at invoice value of \$162,000 (Rs,73,62,900/-) from Oman vide Bills of entry no. 3395431 dated 03.05.2011 and the same were exported as 'generator transformer main unit (gas filled)' at total invoice value of \$1,152,000 (Rs.5,16,67,200/-) vide Shipping bill no.1000000064 dated 13.06.2011 and the export value was bifurcated into value of generator transformer i.e. \$ 162,000 and repair value of transformer i.e. \$990,000. Imported goods were exported under claim of drawback of imported duties under Section 74 of the Customs Act, 1962 and the claim was sanctioned by the original adjudicating authority at the rate of 98% of the total import duties i.e. Rs.17,24,168/- (Rupees Seventeen Lakhs Twenty Four Thousand One Hundred Sixty Eight only).

6. The Commissioner (Appeal), while deciding the appeal against the order of original adjudicating authority, in the impugned Order-in-Appeal held that goods can't remain the same after undergoing repair and re-conditioning and therefore are not capable of being easily identified with imported goods as envisaged under Section 74 of the Customs Act, 1962; in view of substantial value addition the goods can't be considered same as the imported one; the adjudicating authority did not clarify in detail about the manner in which identity is established and reasons for arriving at the conclusion that the goods are unused and therefore not complied with the instructions contained in Board Circular 46/2011-cus dated 20.10.2011.

7. The applicant in the instant application has pleaded that -

i) The examination report and the finding of adjudicating authority explicitly mentions that the goods are unused after re-import.

ii) Placing reliance on CCE Vs Karnataka Vidhyut Karkhane Ltd [2009(239) ELT 162 (Tri. Bangalore)], applicants argue that repair doesn't bring into existence any new commodity and the identity of the product before and after repairs remain the same.

iii) Drawback, under Section 74 of the Customs Act, 1962, is not dependent on the value declared at the time of re-export but on the actual duty paid at the time of import. Difference in value at the time of exportation can't be a ground for rejection of Drawback.

Hence the applicant pleaded that the application be allowed and Order-in-Appeal be set aside.

8. The main issues to be decided upon in the instant case are –

- (i) whether the identity of re-exported goods w.r.t imported duty paid goods is deemed to have been established even after undergoing repair and reconditioning at a cost several times more than the value of the goods and
- (ii) whether the proper officers are required to describe in detail the reasons for arriving at the decision that the identity of the goods is established w.r.t to the imported goods?

9. The Government finds that drawback is allowable on re-export of goods under Section 74 when goods are capable of being easily identified with the imported goods and the same are identified to the satisfaction of the Assistant Commissioner/Deputy Commissioner and the goods are entered for importation within two years from the date of importation. In the instant case, goods were first exported by the applicants in the year

2008 at invoice value of Rs.6,79,25,250/- (Rupees Six Crores Seventy Nine Lakhs Twenty Five Thousand Two Hundred and Fifty only) and the same were re imported at the cost of Rs.73,62,900/- (Rupees Seventy Three Lakhs Sixty Two Thousand Nine Hundred only) and the same was re-exported at the value of Rs.5,16,67,200/- (Rupees Five Crores Sixteen Lakhs Sixty Seven Thousand Two Hundred only) and charges towards repair and reconditioning were Rs.4,44,01,500/- (Rupees Four Crores Forty Four Lakhs One Thousand Five Hundred only) . It is seen that the repair value of the goods is more than six times the value of the exported goods and this certainly raises questions about the nature of repair and reconditioning the exported product has undergone. The question is whether after such substantial value addition whether goods would retain its identity as existed at the time of import and whether they are capable of being easily identified.

10. The Government observes that applicants have never explained the value component of repair and re conditioning charges and simply harping that the change in value would not alter the identity of goods and Section 74 does not deal with the value of the goods. Neither the export documents such as invoice packing list contain any details about the repair and reconditioning cost. When any engineering goods undergoes repair and reconditioning, the age, durability, value, items replaced, items reconditioned, valuation etc. are, as matter of routine, ascertained with the help of Chartered Engineers. No such evaluation is done by the applicants and simple declaration of repair and reconditioning value without any professional authenticity raises doubts on the integrity of the identity of imported goods vis a vis exported goods. Therefore the government opines that the applicants have failed to provide any documentary evidence to substantiate the claim that the identity of the imported goods remained the same at the time of export.

11. The Government further notices that the original adjudicating authority has not critically examined the facts of the case and blindly relied upon the examinations report without further probing and verifying how the identity is established and how come the goods retain their identity after repair and reconditioning with a value addition of six times more than the value of the goods and did not seek any explanation on these issues from the exporter.

12. The Board Circular No.46/2011 dated 20.10.2011 categorically states that the proper authorities shall explain the reasons and manner adopted in arriving at the conclusion of establishment and non-establishment of the identity of goods under the provisions of Section 74 of the Customs Act, 1962. Therefore Government concludes that neither the examination officers nor the original adjudicating authority have dealt with this aspect in the manner prescribed by the Board Circular.

13. The case laws cited by the applicants are not relevant to the facts of the case. The Government is of the view that value is important component to the identity of any goods and any value addition far in excess of the value of the goods itself makes the product incapable of being easily identified with the imported product as envisaged under Section 74 of the Customs Act, 1962 and can't be said to retain its features, characteristics and identity in existence at the time of import and therefore not remained the same and in the instant case the value addition has also morphed functionality of the impugned goods.

14. Moreover the instructions mentioned in the Board's Circular dated 20.10.2011 have not been followed by the original adjudicating authority while passing the order. The Government is inclined to agree with the findings of the Commissioner (Appeals) in the impugned order.

15. In view of the above discussion and findings, the government do not find any merit in interfering with the order of the Commissioner (Appeal). Therefore, Order-In-Appeal No. MUM-CUSTOM-XP/262/1516 dated 17.02.2016 is upheld and Revision Application is dismissed.

16. So ordered.

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ⁷⁵⁸/2018-CUS (SZ) /ASRA/MUMBAI DATED 28-09.2018

To,

M/s. Crompton Greaves Ltd.,
Transformer Export, T-I Division,
Kanjur Marg (E),
Mumbai-400 042.

Copy to:

1. The Commissioner of Customs,(Export), Drawback Department, 3rd floor, Annexe Bldg., New Custom House, Mumbai-400001.
2. The Commissioner of Customs (Appeals) Mumbai-I, 2nd floor, New Custom House, Ballard Estate, Mumbai-400001.
3. Assistant Commissioner of Customs, Drawback Section, 3rd floor, Annexe Bldg., New Custom House, Mumbai-400001.
4. Sr. P.S. to AS (RA), Mumbai.
- ✓ 5. Guard File.
6. Spare Copy.