



**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, Cuffe Parade,  
Mumbai- 400 005

F. No.371/310/DBK/2021-RA / 7088

Date of Issue: 22.11.2023

ORDER NO. 829 /2023-CUS (WZ) /ASRA/Mumbai DATED 16.11.2023  
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 Transformers & Rectifiers India (India) Limited,  
Survey 427P/3-4 and 431P/1-2, Sarkhej-Bavla Highway,  
Village Moraiya, Taluka Sanand,  
District Ahmedabad, Gujarat – 382 213.

Respondent : Commissioner of Customs (NS – II),  
Jawaharlal Nehru Custom House,  
Nhava Sheva, Tal. Uran, Dist. Raigad,  
Maharashtra – 400 707.

Subject : Revision Application filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
50(DBK)/2021(JNCH)/Appeals dated 22.07.2021 passed  
by the Commissioner of Customs (Appeals), Mumbai - II.

**ORDER**

The subject Revision Application has been filed by M/s Transformers & Rectifiers India (India) Limited, Ahmedabad (here-in-after referred to as 'the applicant') against the Order-in-Appeal dated 22.07.2021 passed by the Commissioner of Customs (Appeals), Mumbai - II, which decided an appeal filed by the applicant against the Order-in-Original dated 20.09.2019 passed by the Assistant Commissioner of Customs, Drawback Section, NS - II, JNCH, Nhava Sheva, Mumbai - II.

2. Brief facts of the case are that the applicant had exported 'Transformers' and 'Parts of Transformers' under the Advance License Scheme vide four Shipping Bills, three of them dated 19.05.2014 and one dated 16.04.2015. The exported products were imported back by them vide Bill of Entry dated 31.05.2016 without payment of duty by availing the benefit of notification no.158/95-Cus dated 14.11.1995 which provided exemption from payment of import duty subject to the fulfilment of conditions therein which included - re-export of the imported goods within six months from the date of import and furnishing of Bond and Bank Guarantee. The applicant having failed to comply with the conditions of notification no.158/95-Cus, paid duty of Rs.79,69,563/- along with interest of Rs.29,27,995/- on 08.11.2018.

3. Thereafter, the applicant re-exported the said goods vide Shipping Bill dated 01.12.2018 and filed an application on 13.02.2019 claiming Drawback under Section 74 of the Customs Act, 1962. The original authority vide Order-in-Original dated 20.09.2019 found that no duty was paid by the applicant on the goods in question at the time of importation as they had availed the exemption provided by notification no.158/95-Cus dated 14.11.1995. The original authority further found that the amount of Rs.79,69,563/- and interest of Rs.29,27,995/- paid by them was for contravention of notification no.158/95-Cus and proceeded to reject their claim for drawback on the grounds that any amount paid for the contravention of provisions of a notification and breach of condition of Bond cannot be considered for payment of drawback. Aggrieved by the said Order-in-Original, the applicant filed appeal before the Commissioner (Appeals) who vide the impugned Order-in-Appeal dismissed the same and upheld the order of the original authority.

4. Aggrieved by the impugned Order-in-Appeal, the applicant has filed the subject Revision Application on the following grounds: -

(a) They submitted the brief of the grounds of appeal filed by them before the Commissioner (Appeals); they submitted that the Commissioner (Appeals) had repeated the findings of the original authority which are in the nature of obiter/opinion/perception not based on any reasons and any justification and was the sole reason on which the Commissioner (Appeals) had rejected their appeal;

(b) That the issue of subsequent payment of duty as a condition of a notification or a bond was also a payment of duty on importation and on which drawback under Section 74/CA1962 was available was already a well settled law and is res judicata; they relied upon the decisions in the case of Reckitt Benckiser Healthcare India (P) Ltd, Versus Commr. of Cus, Noida [2016 (340) E.L.T532 (Tri. All)], FCI OEN Connectors Ltd. -2012 (281) E.L.T750 (G.O.I.) and Leighton Contractors (India) Pvt. Ltd.-2011 (267) E.L.T422 (G.O.I); that the Commissioner (A) had remained silent on the binding case laws and not rebutted the said case laws and hence the discussions and findings in the Order-in-Appeal are infirm and bereft of appreciation;

(c) That both the lower authorities have given the reason that Drawback under Section 74(1)/CA, 1962 cannot be paid as the duty on importation and interest thereon has been paid on alleged contravention of provisions of any notification and breach of condition of bond and, therefore, cannot be considered for payment of drawback and that they had not cited any provisions in the Act or the Rules made there under which prohibit grant of drawback under Section 74, if duty has been paid post importation in compliance with the conditions of the Notification and/or the bond; that the duty leviable on importation has been paid not because there was a contravention of a condition of the said Notification or the underlying bond as the Notification and the bond itself allowed the importer facility to avail the exemption under an obligation to either re-export within the stipulated time permitted or instead pay the duty saved upon failure to re-export in the time period prescribed; that compliance with the optional condition of re-export or payment of duty that was leviable is the fulfilment of the conditions of the Notification and the bond and that it cannot be said to be payment made because of the conditions of the Notification and the bond are contravened or breached; that duty had been paid and also accepted in

terms of and in compliance with the conditions in the Notification and the bond: that there was no allegation of contravention anywhere in the proceedings culminating into payment of duty; that the fact that no precipitate/penal action under the Act had been proposed or taken was sufficient to show that there was no contravention of the conditions of the Notification and/or the bond; that on the contrary there was compliance with the conditions that were required to be fulfilled; that under Section 74 in the Act and The Re-export Of Imported Goods (Drawback of Customs Duties), Rules 1995 there was no prohibition against grant of drawback of duties paid on importation if such duty has been paid subsequent to the date of importation in compliance with a bond condition;

(d) That in their appeal before the Commissioner (Appeals) they had contested the illegal peremptory collection of interest without any authority under the law; that the Commissioner (Appeals) had avoided mentioning anything about the said grounds; they sought to rely upon the following cases in support of their contention: -

- Reckitt Benckiser Healthcare India (P) Ltd. V/s CC, Noida [2016 (340) E.L.T.532 (Tri- All.)]
- FCI OEN Connectors Ltd [2012 (281) E.L.T. 750 (G.O.I.)]
- Leighton Contractors (India) Pvt. Ltd. [2011 (267) E.L.T. 422 (G.O.I.)]
- Super Tex Labels V/s CC, Bangalore [2005 (191) E.L.T. 766 (Tri. - Bang.)]
- Sandur Micro Circuit Ltd. V/s C. Cex.& Cus, Mangalore [2008 (227) E.L.T. 128 (Tri. - Bang.)]
- Unicure Remedies (P) Ltd. [2001 (133) E.L.T. 509 (G.O.I.)]
- Ion Exchange (India) Ltd. V/s CCus. (Adj.), Mumbai [2016 (344) E.L.T. 974 (Tri. - Mumbai)]
- Jaswal Neco Ltd., V/s CCus, Visakhapatnam [2015 (322) E.L.T. 561 (S.C.)]

In view of the above, the applicant prayed that the impugned Order-in-Appeal be set aside and Drawback claimed be granted to them and the interest paid be refunded.

5. Personal hearing in the matter was held on 25.07.2023 and Shri D.K. Singh, Advocate appeared online on behalf of the applicant. He submitted

that the policy of the Government was not to export taxes. He further submitted that though duty was paid due to contravention of notification fact remains that goods were exported after duty was paid. He requested to allow the application. No one appeared on behalf of the respondent.

6. Government has gone through the relevant case records, the written and oral submissions and also perused the impugned Order-in-Appeal.

7. Government notes that the issue for decision is whether the applicant is eligible for Drawback under Section 74 as claimed by them. Government finds that the lower authorities have held that the amounts paid by the applicant was for the reason that they had contravened the condition of notification no.158/95-Cus dated 14.11.1995. The applicant had imported the goods in question without payment of duty by availing the benefit of the said notification but had failed to re-export the same within the stipulated period and hence had paid the applicable duty along with interest after a period of two and half years from the date of import.

8. Government finds that at this juncture, it would be pertinent to examine the provisions of Section 74 of the Customs Act, 1962. The same is reproduced below: -

***“ 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 <sup>1</sup>[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 <sup>2</sup>[clause (a) of section 84] 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>3</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....”*

9. A reading of the above portion of Section 74 of the Customs Act, 1962 clearly indicates that the said Section pertains to the Drawback allowable on those goods which had been imported into India on payment of duty and were then exported. The present case differs from such cases that are covered by Section 74, as in the present case, the goods were first exported and then imported back into the country without payment of duty. Thus, Government finds that Section 74 will not be applicable to the present case, as it would cover only those cases where goods imported on payment of duty were sought to re-exported. Further, Government finds that the applicant had imported the goods exported earlier, without payment of duty by availing the benefit of notification no.158/95-Cus dated 14.11.1995 and that they had paid the applicable duty on the goods imported as they had failed to adhere to the conditions laid down therein inasmuch as they failed to export the goods within the time permitted. Government finds that such payment of duty due to non-compliance of a condition of a notification allowing duty free import, cannot be construed to be similar to a situation wherein goods were imported on payment of duty in the normal course. Given the above, Government finds that the said export consignment in question stands precluded from the situations envisaged under Section 74 of the Customs Act, 1962. Thus, Government holds that the applicant will not be eligible to claim Drawback under Section 74 of the Customs Act, 1962, for the consignment in question.

10. Government notes that the applicant has sought refund of the interest paid by them. Government notes that the said interest was paid on the delayed payment of duty as required by notification no. 158/95-Cus dated 14.11.1995. Government finds that the said notification, under which the



applicant had imported the goods in question without payment of duty, required the applicant to re-export the same within a period of six months, failing which they were required to discharge the duty applicable. Government notes that the applicant had also submitted a Bond to the extent that they would comply with the conditions prescribed by the said notification. Government finds that the duty was paid, albeit after a period of almost two and half years from the date of import, thus it follows that they were required to pay interest on such delayed payment. Government does not find any logic in the claim of the applicant seeking refund of interest paid by them on such delayed payment and hence rejects the same. Further, Government has examined the various case laws cited by the applicant and finds that none of them deals with a case where an exported product was imported back into the country without payment of duty and the conditions allowing such duty free import were violated, which is true in the present case. Thus, Government finds that none of the cases cited will have any application to the present case.

11. In view of the above, the subject Revision Application is rejected.

  
(SHRAWAN KUMAR)

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

ORDER No. ~~829~~/2023-CUS(WZ) /ASRA/Mumbai dated 16.11.2023

To,

M/s Transformers & Rectifiers India (India) Limited,  
Survey 427P/3-4 and 431P/1-2, Sarkhej-Bavla Highway,  
Village Moraiya, Taluka Sanand,  
District Ahmedabad, Gujarat - 382 213.

Copy to:

1. Commissioner of Customs (NS - II), Jawaharlal Nehru Custom House, Nhava Sheva, Tal. Uran, Dist. Raigad, Maharashtra - 400 707.
2. Commissioner of Customs (Appeals), Mumbai - II, JNCH, Nhava Sheva, Tal. Uran, Dist. Raigad, Maharashtra - 400 707.
3. Shri D.K. Singh, Advocate, Singh Associates, 69, 1<sup>st</sup> floor, DDA Flats, Ashoka Pharai, Link Road, Near Bhai Joga Singh School, Karol Bagh, New Delhi - 110005.
4. Sr. P.S. to AS (RA), Mumbai.
5. Notice Board.

