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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.373/390/DBK/2014-RA

2650

Date of Issue: 09.04.2021

ORDER NO. 86/2021-CUS(SZ)/ASRA/MUMBAI DATED 30.03.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHARVAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Orders-in-Appeal No. 1376 & 1377/2014 dated 30.07.2014 passed by the Commissioner of Customs (Appeals), Chennai.

Applicant : M/s Kubota Agricultural Machinery India Pvt. Ltd.

Respondent : Commissioner of Customs (Seaport-Export), Chennai.

ORDER

This Revision Application is filed by M/s Kubota Agricultural Machinery India Pvt. Ltd., No. 15, Medavakkam Road, Sholinganallur, Chennai - 600 019(hereinafter referred to as "the Applicant") against the Orders-in-Appeal No. 1376 & 1377/2014 dated 30.07.2014 passed by the Commissioner of Customs(Appeals), Chennai.

2. The issue in brief is that the Applicant, exporter had filed 02 drawback claims under Section 74 of Customs Act, 1962 for re-export of 12 and 18 units respectively of Kubota Combine Harvester with assessories (Model No. DC 68-G-IN) vide manual Shipping Bills No. 124863 and 124865 both dated 27.12.2012. As per the declaration made in the Shipping Bills, the said goods were originally imported through Seaport, Chennai vide Bill of Entry No. 5546592 dated 23.12.2012. The Assistant Commissioner of Customs (Drawback), Seaport-Export, Chennai vide Order-in-Original No. 21233/2013 and 21234/2013 both dated 05.07.2013 rejected the drawback claim of Rs. 12,92,485/- and Rs. 14,75,929/- respectively on the grounds that *"as per the examination report and Section 74 proforma, though the goods were tallied with the export documents, the identity of the goods could not be established with reference to import documents in the absence of chassis No. and Engine No. in the authenticated import packing list as certified by the Examination officers."* Aggrieved, the Applicant filed appeals with the Commissioner of Customs(Appeals), Chennai. The Commissioner(Appeals) vide Orders-in-Appeal Nos. 1376 & 1377/2014 dated 30.07.2014 rejected their appeals and upheld the Orders-in-Original. The details are as given below:

Sr. No.	Shipping Bill No & dt	No. of units of the goods	DBK Claim amount (Rs)	OIO No. & dt	OIA No. & dt
1	124863 dt 27.12.12	12	12,92,485	21233 /2013 dt 5.7.13	1376 & 1377/2014 dt. 30.7.14
2	124865 dt 27.12.12	18	14,75,929	21234 /2013 dt 5.7.13	

3. Aggrieved, the Applicant filed the current Revision Application before the Government of India on the following grounds:

- (i) The subject goods were imported on payment of all applicable import duties and same good were subsequently re-exported outside India. The Applicant had applied for duty drawback of the Customs duties paid on the subject goods as per provision of Section 74 of Customs Act, 1944. Rule 5 of the Drawback Rules, prescribes the manner and time of claiming drawback on goods export other than by post. All the documentary evidences as per provisions of Section 74 were submitted at the time of filing the claim for duty drawback. The import and export documents contain all details pertaining to the imported subject goods viz description of the goods, Model no. Serial/Chassis Number and quantity, etc. It is crucial to note that Chassis No. of a machined is nothing by Serial No. and represents one unique number of a particular good and no two goods will have same Serial/Chassis No. The export invoices further includes details of original import invoices establishing the corresponding machinery which was imported being re-exported. Based on export invoices correlated with import invoices it is expressly evident that goods imported are subsequently re-exported and the identity of the goods can be easily established.
- (ii) As per the Examination Report, it is stated that the identity could not be established in the absence of chassis no. and engine no. in the authenticated packing list. Such ground of rejection of drawback claims is without merits and liable to be set aside. The chassis no as mentioned in the export documents tally with the available marking on the goods. On perusal of the import and export documents, it was explicitly clear that serial/chassis number specified in the Shipping Bill generate at the time of export was matching with the serial/chassis number in the import documents and packing list issued at the time of import.
- (iii) The copies of GRN recorded at the time of receipt of the subject goods at the factory were also furnished before Commissioner (Appeals) at the time of personal hearing reflecting the Serial No./Chassis No. of the imported goods

and which was matching with the Serial No./Chassis No. of the goods exported (as per Shipping Bill).

- (iv) The Applicant had also received a confirmation from its suppliers certifying the Description and Serial No./Chassis No details of the imported goods which was matching with the Serial No./Chassis No. of the goods exported (as per Shipping Bill). The Applicant reserves the right to produce the certificates as evidence at the time of personal hearing.
- (v) They placed reliance on following decisions to support their grounds: (a) Star Wire (India) Ltd [2011 (272) E.L.T. 448 (G.O.I.)];
(b) Collector Of Customs Vs. Madura Coats [1993 (68) E.L.T. 270 (G.O.1.)];
- (vi) Based on the above submissions, it was clear that Applicant had complied with all the documentary requirements prescribed for drawback claim and documentary evidence furnished clearly establish that subject goods imported were subsequently re-exported. Therefore imported and exported goods are identical and documentary evidence already furnished was sufficient to establish the identity of the subject goods.
- (vii) The Applicant understands that all the import documents are available in the EDI system maintained by Customs (Imports - RMS-PCA). The Applicant further submits that, without admitting but presuming that the identity of the re-exported goods could not be established, they had already filed letters with Customs (Imports - RMS - PCA) requesting issue of relevant archived import documents from EDI system to establish that imported goods were subsequently re-exported. However, no response was received from Customs in this regard and the impugned order was passed by the Commissioner (Appeals) without review of the import documents as maintained by Customs EDI Systems. Therefore, the Applicant prayed that the Revisionary Authority review the import documents as maintained by Customs Authorities to ascertain the identity of the goods being re-exported and allow the submit drawback claims filed by the Applicant as per provisions of Sec 74 of Customs Act and Rule 5 of Drawback Rules.

- (viii) In this matter, neither a deficiency memo has been issued by the Customs (Drawback-Sea) Department nor had the Applicant been given an opportunity of personal hearing. Hence the impugned Order-in-Original Nos 21233/2013 and 21234/2013 were passed in violation of principles of natural justice. In this they placed reliance of the Delhi Tribunal in Meera Agencies Pvt. Ltd. Vs. Commissioner Of Customs, New Delhi, [2006 (206) ELT 956 (Tri. Del)].
- (ix) They prayed for grant of relief by directing the original authority to allow the drawback claims.

4. The Assistant Commissioner vide V.No. I(gen)19-24/Cus/T/17-18 dated 16.11.2017 filed cross-objections on the following grounds:

- (i) Relevance is placed on the case law of Bestnut Corporation Vs Asslstant Commr. Of Cus(DBK) on 24.07.2000 passed by Madras High Court and Board's Circular No.46/2011-Customs (F.No.603/01/2011-DBK), dated 20.10,2011 and Circular No.35/2013-Customs(F.No.603/01/2011-DBK) dated 05.09 2013, wherein it has been provided that

"3.1.1 Instructions relation to "identification of goods" and "determination of use" in terms of Section 74 of the Customs Act, 1962

a) in terms of the Section 14 of the Customs Act, 1962, the export goods are to be identified to the satisfaction of the Assistant/Deputy Commissioner of Customs. This may require examination and verification of various parameters, including but, not limited to physical properties, weight, marks and numbers, test reports, if any documentary evidence vis-a-vis import documents etc., for identification of the goods. If such export goods have been "used after import", the same is to be determined besides establishing the identity of the goods."

- (ii) As regards to the Applicant's submission that they have applied to the EDI for retrieval of the archived documents relevant to this case is not applicable in this case since the claims made under Section 74 are manual Shipping Bills and the claim is decided based on the documents available on record. Hence, the retrieval of data from EDI , as contested by Applicant do not have any substance. Since the drawback claim submitted by the Applicant was

failing in its primary criteria for deciding the case, the rejection of these claims are fully justified and are fully tenable in Law.

5. Personal hearings in the case was fixed on 29.05.2018, 15.10.2019, 25.02.2020, 11.02.2021 and 25.02.2021. On 25.02.2021 none appeared on behalf of the Applicant and Shri M Suresh, Assistant Commissioner appeared online for the Respondent Department and submitted that since chassis No. & Engine No. were not mentioned, therefore identity could not be established.

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

7. On perusal of the records, Government observes that, the Applicant exporter had filed 02 drawback claims under Section 74 of Customs Act, 1962 for re-export of 12 and 18 units respectively of Kubota Combine Harvester with accessories (Model No. DC 68-G-IN) vide manual Shipping Bills No. 124863 and 124865 both dated 27.12.2012. The Assistant Commissioner of Customs (Drawback), Seaport-Export, Chennai vide Order-in-Original No. 21233/2013 and 21234/2013 both dated 05.07.2013 rejected the drawback claim of Rs. 12,92,485/- and Rs. 14,75,929/- respectively on the grounds that *“as per the examination report and Section 74 proforma, though the goods were tallied with the export documents, the identity of the goods could not be established with reference to import documents in the absence of chassis No. and Engine No. in the authenticated import packing list as certified by the Examination officers.”*

8. Government notes that goods were cleared under Shipping Bills No. 124863 and 124865 both dated 27.12.2012 and Export Invoice Nos IN12-002238 dated 20.12.2012 and IN12-002239 dated 20.12.2012 respectively. The Export invoices clearly mentioned the Import Invoice No., Bill of Entry No. & Date, Re-export Qty, Serial Nos. The Shipping Bill No. 124863 dated 27.12.2012 shows the Invoice No. “IN12-002238” & date “20.12.2012”, *‘REEXPORTED UNDER SEC74’, ‘KUBOTA COMBINE HARVESTER WITH ACCESSORIES CONVENTIONAL TYPE MODEL DC-68G-IN (ST019-00000) SERIAL NOS: IN10398, IN10403, IN10405, IN10397, IN10400, IN10399, IN10402, IN10407, IN10408, IN10406, in10401, IN40404 VIDE IMPORT INVOICE NO.*

LNWE-11-10200-2, VIDE IMPORT BILL OF ENTRY NO 5780324 DT:19.01.2012” and the Shipping Bill No. 124865 dated 27.12.2012 shows the Invoice No. “IN12-002239” & date “20.12.2012”, ‘REEXPORTED UNDER SEC74”, “KUBOTA COMBINE HARVESTER WITH ACCESSORIES CONVENTIONAL TYPE MODEL DC-68G-IN (ST019-00000) SERIAL NOS IN10410, IN10414, IN10416, IN10412, IN10413, IN10424, IN10417, IN10418, IN10426, IN10415, IN10423, IN10425, IN10409, IN10411, IN10421, IN10419, IN10420, IN10422., VIDE IMPORT INVOICE NO. LNWE-11-102003, VIDE IMPORT BILL OF ENTRY NO 5546592 DT:23.12.2012”. The following details available in the Import Invoices, Export Invoices, Shipping Bills establishes the identity of the goods:

Sr.No.	B/E No & dt	Import invoice No & dt	Export invoice No & dt.	S/ B No & dt.	Model No	Serial/Chassis Number
1	5780324 dt 19.1.12	LNWE-11-1020-2 dt 23.11.11	IN12-002238 dt 20.12.12	124863 dt 27.12.12	DC-68G- IN(ST019- 00000)	IN10398, IN10402, IN10403, IN10407, IN10405, IN10408, IN10397, IN10406, IN10400, IN10401, IN10399, IN10404,
2	5546592 dt 23.12.11	LNWE-11-1020-3 dt 9.12.11	IN12-002239 dt 20.12.12	124865 dt 27.12.12	DC-68G- IN(ST019- 00000)	IN10410, IN10413, IN10426, IN10409 IN10414, IN10424, IN10415, IN10411 IN10416, IN10417, IN10423, IN10421 IN10412, IN10418, IN10425, IN10419 IN10420, IN10422,

9. The essential requirement of Section 74 of the Customs Act, 1944 is that the goods should be identified to the satisfaction of Assistant Commissioner to be the same goods which were imported. Normally, this satisfaction is reached by inspection of the goods/packages, comparing the examination report or other connected documents relating to import formalities with examination of goods as reflected in the shipping bill against which drawback is claimed. Merely observing that identity could not be established in absence of Chassis No. and Engine No. does not establish whether identity was established or otherwise. If these details are not available, goods would have several other details such as serial number, model number, make, capacity of harvesters, manufacturer particulars, etc. These details would establish identity of goods.

10. Government finds that there is corroborative documentary evidence to establish that that the goods that were imported vide Bill of Entry Nos. 5780324 dated 19.01.2012 and 5546592 dated 23.12.2011 were re-exported vide Shipping Bills No. 124863 and 124865 both dated 27.12.2012 as all the Serial numbers of

the goods are tallying with the import and export documents and thus the identity of goods appear to be established. Further, the Applicant along with the drawback claim has also enclosed a copy of BRC in token of having realized the export proceeds.

11. In view of the above, Government set aside the impugned Order-in-Appeal No. 1376 & 1377/2014 dated 30.07.2014 passed by the Commissioner of Customs(Appeals), Chennai and remands back the matter to the original authority to examine the claim in accordance with law after giving proper opportunity to the Applicant within eight weeks from receipt of this order.

12. The Revision Application is allowed in terms of above.


30/3/21
(SHRAWAN KUMAR)

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

ORDER No 86/2021-CX (WZ) /ASRA/Mumbai DATED 30.03.2021

To,
M/s Kubota Agricultural Machinery India Pvt. Ltd.,
No. 15, Medavakkam Road,
Sholinganallur,
Chennai - 600 019.

Copy to:

1. Commissioner of Customs, Customs House, No. 60, Rajaji Salai, Chennai - 600 001
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.
4. Spare Copy