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SPEED POST

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,

Mumbai-400 005

F.No.373/92/DBK/14-RA/8949 Date of Issue 25.08.2020

ORDER NO.98 /2020-CUS (SZ) / ASRA / MUMBAI/ DATED 20.07.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant: M/s Schneider Electric IT Business (I) Pvt. Ltd.,
(Formerly known as M/s American Power Conversion India (P) Limited)
1st floor, Plot No. 183 to 187 and 254 to 258,
Bommasandra Industrial Area,
Jigani Link Road, Bangalore- 562 106.

Respondent : The Commissioner of Customs, (ACC), Bangalore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 482-488/2013 dated 24.12.2013passed by the Commissioner of Customs (Appeals), Bangalore.

ORDER

The Revision Application is filed by M/s Schneider Electric IT Business (I) Pvt. Ltd., Bangalore (Formerly known as M/s American Power Conversion India (P) Limited) (herein after referred to as 'the applicant) against the Order in Appeal No.482-488/2013 dated 24.12.2013 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Brief facts of the case are that the applicant are engaged in trading of Uninterrupted Power Supply (UPS), Battery Accessories/ Net Shelter & Home UPS etc. The applicant are not registered with Central Excise Authorities and they import goods on payment of duty for trading and selling the same in domestic market on payment of VAT / CST as applicable. The applicant imported goods vide Bill of Entry No. 803697 dated 29.07.2008 through Bangalore Customs and re-exported the same vide Shipping Bill No. 001283 dated 12.03.2009 for RS. 6,25,997/- (FOB) under Section 74 of the Customs Act, 1962. The Let Export Order was given on 13.03.2009. The applicant filed a duty drawback claim on 23.05.2009 under Section 74 of the Customs Act, 1962 for the amount of Rs. 1,50,550/- which amounted to 98% of the total duty paid at the time of original import. The drawback claim was processed and a deficiency memo S.74/BACC/DBK/085/2009-10 EXP dated 15.06.2009 was issued to the applicant to produce the requisite documents listed therein. The applicant vide their letter dated 30.07.2009 furnished their reply to the deficiency memo enclosing the required documents. The department issued a Show Cause Notice proposing to reject the drawback claim filed by the applicant on the ground that the drawback claim filed by them was time barred under Rule 5(1) of the Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995. The Adjudicating Authority rejected the drawback claim vide Order in Original No. 555/2013 dated 17.05.2013.

2. The applicant filed an appeal against the impugned Order in Original before the Commissioner of Customs (Appeals), Bangalore. The Appellate Authority rejected appeal on the grounds that the drawback claim is rendered null and void as if no claim is filed since statutory period of one month cannot be extended in the absence of any enabling provisions.

3. Being aggrieved by the impugned order, the applicant filed instant Revision Application on the following grounds:-

3.1 Drawback claim filed by them is within time limit. The applicant submitted that the date of filing of additional information subsequent to the filing of refund claim will date back to the date of the original claim. Hence, the filing of additional documents in terms of the deficiency memo will date back to the date of the original drawback claim which was within the period of limitation.

3.2 Applicant have satisfied all the conditions prescribed for claiming the drawback. The applicant stated that they have complied with the provisions of Section 74 of the Customs Act, 1962 in as much as they have exported the goods within two years from the date of import. The claim for drawback does not provide any documents to be produced for claiming drawback. They have also complied with Rule 5(2) of the Drawback Rules by submitting the documents along with drawback claims. The deficiency memo directed the applicant to produce the documents which are not specified in the Section 74 of the Customs Act, 1962 or Drawback Rules.

3.3 The deficiency memo was not issued within the time limit specified in Rule 5 of the Drawback Rules. The applicant submit that the drawback claim was filed on 23.05.2009 and the deficiency memo was issued on 15.06.2009. As such the deficiency memo was not issued within 15 days of receipt of the claim.

3.4 Non observance of procedural conditions is condonable.

3.5 The applicants are entitled to interest on drawback.

4. Personal Hearing was held on 17.05.2018, 11.10.2019 and 06.11.2019. Neither the applicant nor the representative of the department attended the same. The case is taken for decision on the basis of documents available on records.

5. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the rival submissions.

6. The Government observes that the issued involved in the instant application is whether the benefit of drawback filed under Section 74 of the Customs Act, 1962 can be allowed to the applicant who have complied the requirements of deficiency memo beyond the period of 30 days from the date of its receipt. On examination of the revision application and other relevant records, it is noticed that the applicant had re-exported the imported goods on 13.03.2009. The department has received the drawback claim on 05.06.2009 which was filed by the applicant on 23.05.2009. The jurisdictional officer returned the impugned drawback claim along with deficiency memo on 15.06.2009requesting the applicant to furnish the additional documents as listed in the deficiency memo for processing the impugned drawback claim. The applicant replied to the said deficiency memo on 30.07.2009 i.e. beyond the 30 days from the date of receipt of memo. The Adjudicating Authority rejected the drawback claim being time barred.

7. The Government finds that, in order to claim drawback under Section 74 of the Customs Act, 1962, the goods should be entered for export within two years from the date of payment of duty on the importation thereof. Further it is provided that in any particular case the period of two years may on sufficient cause shown be extended by the by

the Central Board of Customs and Central Excise by such period as it may deem fit. Further it provides that the claims should be filed in the manner prescribed under Rule 5 of Re-export of Imported Goods(Drawback of Customs Duties) Rules,1995, read with Public Notices issued by the Custom Houses.

8. Thus it is pertinent to discuss the provisions of Rule 5 of the Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995. The Rule 5 of the Drawback Rules, 1995 is as under:-

Rule 5 :-Manner and time of claiming drawback on goods exported other than by post. –

(1) A claim for drawback under these rules shall be filed in the form at Annexure II within three months from the date on which an order permitting clearance and loading of goods for exportation under section 51 is made by proper officer of customs:

Provided that the Assistant Commissioner of Customs or Deputy Commissioner of Customs may, if he is satisfied that the exporter was prevented by sufficient cause to file his claim within the aforesaid period of three months, allow the exporter to file his claim within a further period of three months.

(2) The claim shall be filed alongwith the following documents, namely :-

(a) Triplicate copy of the Shipping Bill bearing examination r eport recorded by the proper officer of the customs at the time of export.

(b) Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation.

(c) Import invoice.

(d) Evidence of payment of duty paid at the time of importation of the goods.

(e) Permission from Reserve Bank of India for re- export of goods, wherever necessary.

(f) Export invoice and packing list.

(g) Copy of Bill of lading or Airway bill.

(h) Any other documents as may be specified in the deficiency memo.

(3) The date of filing of the claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on the claims which are complete in all respects, and for which an acknowledgement shall be issued in such form as may be prescribed by the Commissioner of Customs.

(4) (a) Any claim which is incomplete in any material particulars or is without the documents specified in sub-rule (2) shall not be accepted for the purpose of section 75A and such claim shall be returned to the claimant with the deficiency memo in the form prescribed by the Commissioner of Customs within fifteen days of submission and shall be deemed not to have been filed;

(b) Where exporter complies with requirements specified in d efficiency memo within thirty days from the date of receipt of deficiency memo, the same will be treated as a claim filed under sub-rule (1).

(5) Where any order for payment of drawback is made by the Commissioner (Appeals), Central Government or any Court against an order of the proper officer of customs, the manufacturer exporter may file a claim in the manner prescribed in this rule within three months from the date of receipt of the order so passed by the Commissioner (Appeals) Central Government or the Court, as the case may be.

9. In this regard, Rule 5(4)(a) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 stipulates that any claim which is incomplete in any material particular or is found without the documents specified in sub-rule (2) shall not be accepted for the purpose of Section 75A and such claim shall be returned to the claimant with the deficiency memo in the form prescribed by the Commissioner of Customs within fifteen days of submission and shall be deemed not to have been filed. In the instant case, the applicant's drawback claim was returned in accordance with the above stated rule on 15.06.2009 alongwith deficiency memo i.e. within prescribed limit of 15 days from the date of receipt of the same. Further, it is found that the applicant replied to the deficiency memo on 30.07.2009 i.e. beyond 30 days period from date of issuance of memo. Thus in view of provisions of Rule 5(4)(a) &(b) of the Drawback Rules, 1995, the Government holds that the

Adjudicating Authority has rightly held that the drawback claim is deemed not to have been filed on 05.06.2009.

10. In view of above position, Government do not find any infirmity in the impugned orders-in-appeal and therefore upholds the same.

11. The revision applications are thus rejected in terms of above.

12. So ordered.

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

To,

M/s Schneider Electric IT Business (I) Pvt. Ltd.,
(Formerly known as M/s American Power Conversion India (P) Limited)
1st floor, Plot No. 183 to 187 and 254 to 258,
Bommasandra Industrial Area,
Jigani Link Road, Bangalore- 562 106.

Copy to:
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1. The Commissioner of Customs, (Customs Bengaluru), C.R. Building, Queen's Road, P.B. No. 5400, Bengaluru- 560 001
2. The Commissioner of Customs, (Bengaluru Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru- 560 071.
3. The Additional Commissioner of Customs, Air Cargo Complex, Devanahalli, Bangalore – 560 300.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard File.
6. Spare Copy.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)