

SPEED POST



F.No. 373/141/DBK/2015-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 27/9/22

Order No. 300 /22-Cus dated 27-09-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

- Subject : Revision Application under Section 129 DD of the Customs Act 1962, against the Order-in-Appeal No. 52/2015 dated 30.01.2015, passed by the Commissioner of Customs (Appeals), Chennai.
- Applicant : M/s Tube Investments of India Ltd., Chennai.
- Respondent : Commissioner of Customs, Chennai-IV, Export Commissionerate, Chennai.
-

ORDER

A Revision Application, bearing no. 373/141/DBK/2015-RA dated 05.05.2015, has been filed by M/s Tube Investments of India Ltd, Chennai, (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 52/2015 dated 30.01.2015, passed by the Commissioner of Customs (Appeals), Chennai, vide which the appeal filed by the Applicant against the Order-in-Original No. 27796/2014 dated 23.07.2014, passed by the Assistant Commissioner of Customs, Seaport- Export, Drawback, Chennai, has been rejected.

2. Brief facts of the case are that the Applicant had filed a drawback claim in respect of Shipping Bill No. 130374 dated 10.03.2014, with the Assistant Commissioner of Customs, Drawback, Chennai, for a total amount of Rs.5,21,479/-, under Section 74 of the Customs Act, 1962. The claim was, however, rejected by the original authority on the ground that identity of the goods was not established to the satisfaction of Assistant/Deputy Commissioner of Customs. The goods were earlier re-imported, vide Bill of Entry No. 3334236 dated 21.09.2013, and cleared for repair and reconditioning after payment of Customs duty amounting to Rs. 5,32,121/-. Aggrieved, the Applicant herein filed an appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed, mainly, on the grounds that identity of the goods was established; that the principles of natural justice were violated as the Applicant was not given an opportunity to prove the identity of the goods; and that there is no requirement to produce copy of BRC or GR waiver but a copy of GR Waiver Ref. TSC/MDR/EXP/2014/2226 dated 12.03.2014, issued by HSBC, Chennai has been placed on record.

4. Personal Hearing, in virtual mode, was held on 26.09.2022. Sh. R. Srinivasan, Consultant, appeared for the Applicant and reiterated the contents of the revision application with the help of compilation emailed on 23.09.2022. Sh. R.S.

Sundaravathanam, Assistant Commissioner appeared for the Respondent department and supported the orders of the lower authorities.

5.1 The Government has examined the matter carefully. It is observed that for admissibility of drawback under the provisions of Section 74 (1) of the Customs Act, 1962 read with Notification No. 158/95-Cus, the re-exported goods should be identified to the satisfaction of Assistant/Dy. Commissioner of Customs as the goods which were imported.

5.2 In the present case, the original authority and Commissioner (Appeals) denied duty drawback to the Applicant on the ground that the identity of the goods was not established to the satisfaction of the Assistant/Dy. Commissioner of Customs. Government observes that the examining officer in his report had stated that the identity of the goods is established with reference to Shipping Bill, import documents and that the goods were in original packing. However, the Assistant Commissioner (Docks) had disagreed with the report of the examining officer by observing "how the goods are in original packing after repair". The Assistant Commissioner (Docks) further observed that the "identity of the goods which are imported and re-worked and cannot be the same/identical to that of the goods at the time of importation." In response, the fact that goods were in original packing was reiterated and confirmed by the examining officer. The Government observes that, in the instant case, the Assistant Commissioner (Docks) had not examined the goods himself but given his observation based on papers submitted to him. Therefore, his first observation regarding goods being in original packing, which has been rebutted by the officer who has actually examined goods, can not stand. The other issue that has weighed on Assistant Commissioner is that the goods were repaired/reworked after import. Hence, he was of the view that such repaired goods, tendered for export, cannot be same/identical to the goods that were imported. The Government finds that this view, upheld by the Commissioner (Appeals), is not correct. The goods, which were originally exported by the Applicant herein, were re-imported for repair/rework. After repair/rework these have been re-exported to the buyer. It is incorrect to say that

the goods after repair acquired different identity rather it was a process to make the goods usable to the satisfaction of the buyer. Further, in the present case, the goods after repair were repacked in the original packing and exported. The quantity has also remained unchanged. In the case of Groz Beckert Asia Pvt. Ltd. Vs UOI {2014(305)ELT30(Del)}, the Hon'ble Delhi High Court held that the drawback, under Section 74 would be applicable even when goods were re-packed in different packing and re-exported. As such, the Government holds that the view taken by the authorities below can not be sustained.

6. In view of the above, the revision application is allowed with consequential relief.


(Sandeep Prakash)

Additional Secretary to the Government of India


M/s Tube Investments of India Ltd,
4th floor, Dare House, 234 NSC Bose Road,
Parrys corner,
Chennai-600001

Order No. 300/22-Cus dated 27-09-2022

Copy to:

1. The Commissioner of Customs, Chennai-IV, Export Commissionrate, Chennai, No. 60, Rajaji Salai, Chennai 600001.
2. The Commissioner of Customs (Appeals), No. 60, Rajaji Salai, Chennai 600001.
3. Sh. R. Srinivasan, Joint Partner, Lakshmikumaran & Sridharan, No. 2 Wallace Garden 2nd Street, Chennai - 600006.
4. PA to AS(RA)
5. Guard File
6. Spare Copy

ATTESTED


27.09.22

(लक्ष्मी राघवन)
(Lakshmi Raghavan)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi