

SPEED POST



F. No. 373/235-237/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. 22/12/22

Order No. 393-395/22-Cus dated 22-12-2022 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 Applications, filed under Section 129 DD of the Customs Act 1962, against the Order-in-Appeal C.Cus. I. No. 202-204/2015 dated 24.04.2015, passed by the Commissioner of Customs (Appeals-I), Chennai.
- Applicant : M/s Hydriil Pressure Control Pvt. Ltd., Kanchipuram.
- Respondent : Commissioner of Customs, Chennai-VII, Air Cargo Complex, Chennai.
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ORDER

Three Revision Applications, bearing nos. 373/235-237/DBK/2015-RA dated 02.07.2015, have been filed by M/s Hydril Pressure Control Pvt. Ltd., Kanchipuram (hereinafter referred to as the Applicant), against the Order-in-Appeal C.Cus. I. No. 202 to 204/2015 dated 24.04.2015, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has rejected the appeals filed by the Applicants herein, against the Orders-in-Original No. 1016/2014, No. 1018/2014 and No. 1014/2014 all dated 24.12.2014, passed by the Assistant Commissioner of Customs (Drawback), Chennai-VII Commissionerate, Air Cargo Complex, Chennai.

2. Brief facts of the case are that the Applicant had imported Lower Compact double assembly, variable Ram Block Assy., BOP Bonnet Hinges, Hinge Manifold and various other spares for the purpose of repair and re-export. The said goods were repaired and the Applicant filed the Shipping Bills for the re-export of the same under claim of drawback under Section 74 of the Customs Act, 1962. The proper officer of Customs in his examination report stated that the identity of some parts had been established viz-a-viz the import documents but in respect of some parts the identity could not be established as the engraved Sl. No. on these parts were not visible. Accordingly, the drawback claims of the Applicant were sanctioned only in respect of those goods where the identity of the goods was established but in other cases, the claims were rejected. Further, the interest was not paid even in respect of drawback amount sanctioned though it was sanctioned beyond the statutorily prescribed period. Aggrieved, the Applicant filed appeals before the Commissioner (Appeals), which have been rejected.

3. The revision applications have been filed, mainly, on the grounds that the interest is payable under Section 75A of the Customs Act, 1962, in respect of the portion of drawback amount which had been sanctioned, since the same was sanctioned after the expiry of one month from the date of filing of the claim; that rejection of the drawback claim on the ground that the identity of the goods could not be established as the engraved Sl. Nos. are not visible with naked eyes is not valid; that apart from physical examination the identity of the goods can be established by other mode also, i.e., by attendant circumstances of the import and export and corroborative documentary evidence. i.e., other than by way of physical examination; and that in the subject cases they had submitted the Chartered Engineer's certificates that establish the identity of goods.

4. Personal hearing, in virtual mode, was held on 21.12.2022. Sh. J.C. Patel, Advocate appeared on behalf of the Applicants and supported the contents of the

revision applications with reference to the compilation emailed on 21.12.2022. Sh. Arvind Kumar, Appraiser appeared for the Respondent department and supported the orders of the lower authorities.

5.1 The Government has carefully examined the matter. At the outset, it is observed that the goods were imported in SKD condition, in three separate lots, for repair. After the repair, the goods were assembled and re-exported in three separate consignments. The identity of the goods in respect of certain parts has been held to be established as the engraved Sl. No. of these parts were visible. However, the identity of the other parts has been found to be not established as the engraved Sl. No. of these parts were not visible. It is the contention of the Applicants that the identity of the goods can be established either by way of physical examination or, in case, it is not possible to establish the identity by physical examination than with the help of documentary evidence, if any available on record. It is on record that the Applicants had submitted certificates from Inspectorate Griffith India Pvt. Ltd., a well known Chartered Engineer, wherein the Chartered Engineer has certified that the goods imported earlier in SKD condition were being re-exported after repair and overhaul. Government further observes that the Respondent department had themselves established the identity of some parts contained in the assembly by way of physical examination as the Sl. No. of these parts were visible but identity in the case of remaining parts was found to be not established only because the engraved Sl. Nos. were not visible. It has been correctly pointed out that as per Board's Circular No. 46/2011-Cus dated 20.10.2011, the identity of the goods can be established by modes not limited to physical examination and also, inter-alia, with reference to test reports, documentary evidences etc. Therefore, to establish the identity of the other parts where engraved Sl. Nos. were not visible, the department should have, in accordance with the Board's Circular dated 20.10.2011, taken cognizance of the documentary evidence, i.e., the Chartered Engineer's Certificates submitted by the Applicants. In fact, these Certificates are stated to have been produced at the stage of examination itself and have not been disputed with any evidence. Further, while dealing with this matter, it has to be borne in mind that the goods were imported in SKD condition but re-exported in assembled condition. It is only natural that some of the parts forming part of the assembly would have gone inside and in such a case the position where their respective Sl. Nos. were engraved would not be visible in physical examination. In this situation, there would be no option but to establish identity with reference to the documentary evidence. As already brought out, such documentary evidence was available in the present case in the form of Chartered Engineer's Certificates, which have not been disputed. In these facts and circumstances, Government holds that the identity of the goods in respect of remaining parts is established with reference to the Chartered Engineer's certificates available on record.

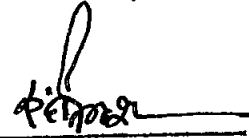
5.2 The other contention of the Applicants is that the interest is payable under the provisions of Section 75 A of the Customs Act, 1962 as the drawback was not paid within one month from the date of filing the drawback claim. Commissioner (Appeals) had rejected this claim of the Applicant on the grounds that the issue of interest was not raised before the original authority and, hence, claim for interest cannot be made at this stage. Relevant extracts of Section 75 A are reproduced below:

"Section 75A. Interest on drawback

(1) Where any drawback payable to a claimant under section 74 or section 75 is not paid within a period of one month from the date of filing a claim for payment of such drawback, there shall be paid to that claimant in addition to the amount of drawback, interest at the rate fixed under section 27A from the date after the expiry of the said period of one month till the date of payment of such drawback"

From a plain reading of the extracted provisions of Section 75A (1), it is clear that the payment of interest in case of delay is mandatory. There is also nothing in the plain language of said Section 75 A (1) to indicate that the exporter has to separately claim the interest if disbursement of drawback is delayed. In other words, it is clear that the interest is payable by the department suo-motu, in case, the drawback is not paid within one month from the date of filing of the claim. Since, in the instant case, it is not disputed that the drawback was not paid within one month from the date of filing of the claims by the Applicants, the interest is payable.

6. In view of the above, the Order-in-Appeal impugned herein cannot be sustained. The revision applications are, accordingly, allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India

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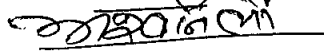
Order No. 373-395/22-Cus dated 22-12-2022

Copy to:

1. The Commissioner of Customs, Chennai-VII, New Customs House, Air Cargo Complex, Mennabakkam, Chennai-600016.

2. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Custom House, Chennai-600001.
3. Sh. Jaydeep Patel, Advocate, 801, Raheja Champers, 213, Free Press Journal Marg, Nariman Point, Mumbai-400021.
4. PA to AS(RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED



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