



OFFICE OF THE COMMISSIONER OF CUSTOMS, C.R. BUILDINGS,
QUEEN'S ROAD, BANGALORE 560 001.
C.NO.VIII/28/1417/2012 Cus. Review Date: 09 .01.2013

STANDING ORDER NO. 02/2013

**Sub: Re-export of goods with claim of Drawback under Section 74,
where the goods were facilitated in RMS at the time of import -
Reg.**

Section 74 of the Customs Act, 1962 provides for payment of Drawback of duties paid on the imported goods when the said goods are re-exported. Salient provisions of Section 74 are reproduced as under:

- (1) *When any goods capable of being easily identified which have been imported into India and upon which 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 ... or*
 - (iii) *are entered for export by postif -*
 - (a) *the goods are identified to the satisfaction of the 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*
- (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.*

(3) *The Central Government may make rules for the purpose of carrying out the provisions of this section and, in particular, such rules may*

(a) provide for the manner in which the identity of goods imported in different consignments which are ordinarily stored together in bulk, may be established;

(b) specifyidentified; and

(c) provideto be filed.

2. The Government have, vide notification no. 19/1965 - Cus. dated 06.02.1965, as amended vide notification no.23/2008 - Cus. dated 01.03.2008, fixed the rate of drawback to be paid based on the length of period between the date of clearance for home consumption and the date when the goods are placed under Customs control for export. The Government have also made Re-Export of Imported Goods (Drawback of Customs duties) Rules, 1965, in terms of the provisions of sub-section (3) of Section 74 of the Act.

3. Rule 4 of Re-Export of Imported Goods (Drawback of Customs duties) Rules, 1995, made under Section 74 of Customs Act, 1962, prescribes as under:

*"4. Statements/Declarations to be made on exports other than by post.
- In the case of exports other than by post, the exporter shall at the time of export of the goods -*

(a) state on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback under section 74 and make a declaration on the relevant shipping bill or bill of export that -

(i) the export is being made under a claim for drawback under section 74 of the Customs Act;

(ii) that the duties of customs were paid on the goods imported;

(iii) that the goods imported were not taken into use after importation;

OR

(iii) that the goods were taken in use."

4. Keeping in view the aforesaid statutory provisions, in a case of claim of drawback under Section 74, the officers' concerned need to ensure the following:

(i) The goods entered for export are identified as the goods, which were imported earlier;

(ii) It must be established whether the goods were put to use or otherwise;

(iii) *If the goods were put to use, the length of usage needs to be determined.*

5. In this regard, the Board, vide Circular No. 46/2011 - Customs, dated 20.10.2011, has clarified as follows:

"3.1 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 74 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 evidences vis-à-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. It may be ensured that in all such cases where drawback under section 74 is claimed, the Assistant/Deputy Commissioner of Customs shall pass a speaking order giving detailed reasons with regard to establishing the identity or otherwise of the goods under re-export, and determination of use, if any, while sanctioning Duty Drawback or otherwise. It may further be noted that the detailed speaking orders, following the principles of natural justice, are to be issued in both cases, i.e. where drawback is proposed to be sanctioned (either in full or part) or proposed to be denied".

6.1. Notwithstanding the above legal position and clarification issued by the Board, difficulties have been expressed in relation to examination of the goods for the purpose of identification of the same as per the requirement of Section 74(1)(a), specially in the cases where the goods were cleared without examination under the RMS system at the time of importation.

6.2 As stated hereinabove, the law provides for drawback of duties paid only if it is established to the satisfaction of Assistant / Deputy Commissioner of Customs that the goods entered for re-export are the goods, which were imported. Needless to say that it is not enough if the goods are identical, but the goods should be those, which were imported earlier. Keeping this position in view and as the goods were not examined at the time of import, the AC / DC (Export) should attempt to establish the identity on careful examination and verification of various parameters such as physical properties, weight, marks and numbers, test reports etc., as may be available with reference to the import documents. To illustrate, it may be possible to establish the identity of

the goods with reference to import documents in following cases, even though goods were not examined at the time of importation:

- (i) *In respect of machinery and equipment - where unique identification / serial nos. are available ;*
- (ii) *In respect of drugs, pharmaceuticals, food articles etc., - where batch nos. are available ;*
- (iii) *In respect of the goods not put to use - where goods are in original packing and marks & nos. can be tallied.*

Above examples are cited only by way of illustration and it is the duty of the AC/ DC (Exports) to, in each case, satisfy himself that the goods entered for export are the goods which were imported. The reasons, for which identity is found to be established, or otherwise, should be clearly brought out in the examination report.

6.3 In the cases where goods are originally imported on re-export basis, the importers / CHAs may be advised to seek examination of goods at importation stage, irrespective of the fact that the relevant Bill of Entry may have been facilitated under RMS, so as to avoid any complications in establishing of identity at re-export stage.

6.4 Further, besides establishing the identity of the goods, the claim whether the goods were put to use or not also needs to be verified. Therefore, the examination report should invariably indicate usage / non-usage of the goods. In the cases where the goods are found to have not been put to use, the reasons for arriving at such a conclusion should be recorded clearly in the examination report.

7. The above instructions should be followed strictly and any deviation shall be viewed seriously.


(Sandeep Prakash)
Commissioner

To,

1. Additional Commissioner of Customs, Air Cargo Complex, Bangalore
2. Additional Commissioner of Customs, ICD, Bangalore
3. Joint Commissioner of Customs, Air Cargo Complex, Bangalore
3. Deputy/ Assistant Commissioner, ICD/PAD/ACC, Bangalore
4. All Sections in the Commissionerate Hqrs.
5. Website