

**IN THE CUSTOMS EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
COURT-II**

Customs Appeal No. 52524/2018-CU(SM)

**Arising out of Order-in-Original No.09/2018, Dated: 19.03.2018
Passed by the Commissioner of Customs (Export), ICD, Tughlakabad, New
Delhi**

**Date of Hearing: 08.03.2019
Date of Decision: 08.03.2019**

M/s MITA INDIA PVT LTD

Vs

**COMMISSIONER OF CUSTOMS (EXPORT)
NEW DELHI
VICE VERSA**

**Appellant Rep by: Shri B L Garg, Adv.
Respondent Rep by: Shri P Juneja, DR**

CORAM: Anil Choudhary, Member (J)

Cus - Issue relates to conversion of Free Shipping Bill to Drawback Shipping Bill - The reasons given by Commissioner for rejection of conversion of Free Shipping Bill to Drawback Shipping Bill are not tenable as assessee had re-exported the goods under bond, which was, at the relevant time, alive and has not been examined by Customs - Further, the assessee has mentioned in body of shipping bill, wherein under the Col. "description", the assessee mentioned - Tractor Parts OCKSHAFT Assembly MC 750 CC SI + REMOTE /Re-Export against BOE - Thus, assessee has disclosed in shipping bill that they have re-exported the goods and all the information was on the record of Customs Department as is evident from the facts on record - At the relevant time, the bond had not been cancelled by Department - The fact of re-export under bond is established - Rejection of the request for conversion is not tenable - Accordingly, the impugned order is set aside and allow the conversion of the shipping bill to draw back shipping bill: CESTAT

Appeal allowed

FINAL ORDER NO. 50355/2019

Per: Anil Choudhary:

Heard the parties.

2. The issue in this appeal is whether the Commissioner of Customs is justified by the impugned order-in-original, in denying the request of conversion of Free Shipping Bill to Drawback Shipping Bill.

3. Facts leading to present request for conversion of free shipping bill no.7255722 dated 25.04.2016 to a drawback shipping bill are as follows:-

i. Party has vide Shipping Bill no.5979666 dated 24.10.2011 exported certain goods to M/s Turk Tractor, VE Ziraat Makineleri A.S. Guvercin Yolu NO.111-112, Gazi, 06560, Ankara Turkey and claimed the benefit of DEPB.

ii. The goods so exported claiming benefit of DEPB required certain repairs and were re-imported by them through ICD Tughlakabad, New Delhi against Bill of Entry N.7683830 dated 12.12.2014, claiming the benefit of Sl.No. of Notification No. 158/1995-Cus dated 14.11.1995. As per the said exemption, the goods imported for repairs and subsequent re-export are exempt from payment of whole of basic duty of customs and additional duty of customs, against submission of re-export bond and bank guarantee. One of the conditions of the said notification is that the goods imported have to be re-exported after repairs within six months/one year of clearance of goods.

iii. Due to late intimation by the overseas company regarding scope of repair, longer time elapsed in clearance of the said goods. Nevertheless the goods were re-exported vide shipping bill no.7255722 dated 25.04.2016 through ICD Tughlakabad (Export), New Delhi i.e. after about nearly sixteen months from the date of clearance of goods on importation (12.12.2014). The goods were still under Bond.

4. As subsequent to the re-export made in April, 2016, the appellant was entitled to get released the bond and bank guarantee, which was submitted by the appellant to the Customs in terms of notification no.158/95-Cus. They approached the Customs Authorities by their letter dated 9.8.2016 claiming for releasing the bond and bank guarantee for Rs.13,24,903/-. In response thereto, the Asstt. Commissioner of Customs by letter dated 28.09.2016 pointed out that the appellant has not submitted (i) copies of AR-4s in respect of submitted shipping bills, (ii) copy of the letter by foreign company of Turkey regarding repair/restructuring of the defective goods or for any other purpose. Further, it has also been noticed that the import was made on 12.12.2014, however, the re-export has not been made within six months of import as required under the said notification no.158/95-Cus. The appellant in response, chose to deposit the customs duty, as applicable on the date of re-importation vide challan dated 13.4.2017 with interest. Thereafter, they applied for the conversion of shipping bill to draw back shipping bill under Section 74 read with Section 149 of the Customs Act, 1962 read with Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995.

5. Section 149 of the Customs Act provides that the proper officer may, in his jurisdiction, authorize any document, after it has been presented in the custom house to be amended: provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorized to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or in the export goods have been exported, except on the

basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be.

6. The Id. Counsel submits that the reasons for rejection of their request of conversion as given in the impugned order are -

- The shipping bill is not a drawback shipping bill and it does not declare that exporter would be claiming the drawback under Section 74 of the Customs Act, 1962.

Further observing that apart from these two conditions, the conditions with reference to production of import documents, etc. have been substantially complied with, as is evident.

7. Ld. Counsel assailing the reasons for refusal states that the appellant has made all other declarations indicating re-export of the goods on the shipping bill itself as also observed by the Id. Commissioner, and such compliance coupled with the exemption/waiver and the documentary evidence were very much in existence at the time of export, as required under proviso to Section 149 of the Customs Act, 1962 and accordingly, prays for appropriate orders.

8. Ld.AR has reiterated the impugned order.

9. Having considered the rival contentions, I find that the reasons given by the Id. Commissioner for rejection of conversion of Free Shipping Bill to Drawback Shipping Bill are not tenable as the appellant had re-exported the goods under bond, which was, at the relevant time, alive and has not been examined by the Customs. Further, the appellant has mentioned in body of the shipping bill, wherein under the Col. "description", the appellant mentioned - Tractor Parts OCKSHAFT Assembly MC 750 CC SI + REMOTE /Re-Export against BOE No.7683830 dt.22/12/2014. Thus, the appellant has disclosed in the shipping bill that they have re-exported the goods, and all the information was on the record of the Customs Department, as is evident from the facts on record.

10. Further, at the relevant time, the bond had not been cancelled by the Department. The fact of re-export under bond is established.

11. In this view of the matter, I find that rejection of the request for conversion is not tenable. Accordingly, I set aside the impugned order and further, allow the conversion of the shipping bill to draw back shipping bill. Thus, the appellant is allowed and the appellant is entitled to consequential benefit, in accordance with law.

12. Ld. Counsel also informed that the claim of draw back has been processed by the Dy. Commissioner and the same is rejected on the same grounds given by the Id. Commissioner in the impugned order. Accordingly, the order of rejection of the draw back claim passed by the Dy. /Asstt. Commissioner being order no.C.NO.VIII/ICD/TKD/DBK/Mita/Sec.74/M/07/2017 is set aside for dated 18.12.2018 granting the substantial benefit to the appellant.

Accordingly, the Dy. Commissioner is directed to re-process the draw back claim of the appellant, in view of the order of this Tribunal.