

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75131 of 2022

(Arising out of Adjudication Order No. 01/-Cus/CC/Voith/2021 dated 16.06.2021 passed by the Commissioner of Customs (Preventive), Patna, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna – 800 001)

M/s. Voith Hydro Private Limited

: Appellant

SF-3/C, 2nd Floor, RishabhIpex Mall,
IP Extension, Delhi – 110 092

VERSUS

Commissioner of Customs (Preventive)

: Respondent

5th Floor, Central Revenue Building, Birchand Patel Path,
Patna – 800 001

APPEARANCE:

Shri Laxman Kr. Kadali, Chartered Accountant,
Shri Sandipan Banerjee, Chartered Accountant,
For the Appellant

Shri Subrata Debnath, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77637 / 2025

DATE OF HEARING / DECISION: 03.11.2025

ORDER: [PER SHRI R. MURALIDHAR]

The appellant has re-exported goods to Nepal on 03.01.2019. At the time of re-export, by mistake, in the shipping bill, they did not mention the fact that the goods were being re-exported under the duty drawback scheme. The appellant noticed the same while filing their drawback application, which was filed on 27.02.2020, through e-mail. Upon noticing the mistake as to non-fulfilment of the condition specified under Rule 4(a) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 [the

Drawback Rules' for short], the appellant requested the Commissioner to modify the free shipping bill into drawback shipping bill and consequently grant the drawback. The Id. adjudicating authority, after going through the factual details of the case, has held that the appellant has not fulfilled the condition specified under Rule 4(a) of the said Rules.

1.1. He has held that in the normal course, had it been the case, the goods would have been physically examined at the time of re-export, which was not done in this case. Subsequently, he observed that in terms of Rule 5 of the Rules, the appellant was required to file the drawback claim within three months from the date on which the order permitting the clearance and loading of goods for exportation was passed. This three-month period was extendable by another three months by the Assistant Commissioner/Deputy Commissioner and by another six months by the Principal Commissioner/Commissioner (totally twelve months) whereas by the time the appellant filed the drawback claim, more than thirteen months had already elapsed. Therefore, on the ground that neither Rule 4(a) nor Rule 5 of the Drawback Rules, 1995 had been followed by the appellant, the Id. adjudicating authority rejected the request for granting permission to change the free shipping bill into drawback shipping bill and also rejected their drawback claim.

2. Being aggrieved, the appellant is before the Tribunal.

3. The Ld. Counsel appearing on behalf of the appellant submits that High Courts and Tribunals have been regularly taking the view that free shipping bills can be allowed to be converted into drawback

shipping bills even when physical examination was not carried out at the time of export / import. He further submits that the Circular No. 36/2010-Cus. dated 23.09.2010 has been issued by the C.B.E.C. specifying the time-limit for granting this facility, but the same is not specified anywhere in the statute. It is submitted that on this ground, High Courts / Tribunals have been consistently holding that the said Circular is not binding and not enforceable. In view of these submissions, the Ld. Counsel for the appellant prays that the impugned order be set aside and a direction may be given to the adjudicating authority to convert the free shipping bill into duty drawback shipping bill and grant the drawback based on the documentary evidence to be placed before him.

4. The Ld. Authorized Representative of the Revenue submits that since it is a matter of re-export, as per the Rules, it is mandatory on the part of the appellant to follow Rule 4(a). It is submitted that unless the re-exporter specifically mentions the fact that they are claiming drawback on such a shipping bill, the Customs Officials may not take up the physical examination of the goods; that in such cases, physical examination is required to be carried out to ensure that only the goods which were imported earlier are being sent back [re-exported] after rectification of the defects therein.

4.1. Further, he points out that Rule 4 itself specifically grants power to the Principal Commissioner to condone any defect, if it is proved to his satisfaction that for the reasons beyond the exporter's control they could not fulfil any of the conditions prescribed therein. He draws our attention to page number 39 of the Appeal Paper book wherein

the Id. adjudicating authority has recorded the detailed findings so as to reject the request of the appellant.

4.2. He submits that it is clear that the condition specified under the proviso to Rule 4(a) has also not been fulfilled by the appellant.

4.3. The Ld. Authorized Representative of the Revenue further submits that the appellant has also not filed the drawback claim within the specified time-limit of twelve months; since admittedly the drawback claim has been filed after a period of thirteen months, there is no provision under the Drawback Rules, 1995 to condone the said delay and grant the drawback.

5. Heard both sides, perused the appeal papers and the submissions made by both the sides.

6. We find that the case-law cited by the Ld. Counsel appearing on behalf of the appellant are not applicable to the facts of the present case. We find that the appellant has not fulfilled the condition specified under Rule 4(a) as well as Rule 5 of the Drawback Rules, 1995. In case there was a contravention of only Rule 4(a), we may have relied on the case-law and directed the adjudicating authority to convert the free shipping bill into drawback shipping bill. However, we find that non-fulfilment of Rule 5 of the said Rules has proved fatal to the case of the appellant. We do not see any provision under these Rules for any further condonation after the expiry of twelve months, by any official. The Id. adjudicating authority has also dwelt on this and has held as under: -

"I find that although the above submissions of the said exporter are under Rule 13 (1) (a) of the Drawback Rules, which is not applicable in the instant case, I proceed to examine the same. Beyond one's control in ordinary terms means any act which is unforeseeable or unpredictable etc. The said exporter's reason for beyond one's control was due to lack of experience clearly does not come within the meaning of beyond control in as much as the said exporter is a private limited company incorporated in the year 2002 with vast experience. Accordingly, I find that exemption from clause 4 (a) of the Re-export of Imported Goods (Drawback of Customs Duties), 1995 cannot be given to the said exporter as reasons provided by them were not beyond their control. I hold the same.

Further, as per Rule 5 (1) of Re-export of Imported goods (Drawback of Customs Duties) Rules, 1995, I find that a claim for drawback shall be filed within three months from the date on which an order permitting clearance and loading of goods of exportation under Section 51 is made by proper officer of Customs. These three months may be extended by the Assistant Commissioner of Customs or Deputy Commissioner of Customs for the further period of three months if sufficient cause prevented the exporter to file claim. In the instant case, the said exporter imported the goods from an SEZ unit and subsequently exported the same to Nepal after an order permitting clearance of such goods for exportation under Section 51 of the Act was made by the proper officer on 03.01.2019. However, the claim for drawback of imported goods was filed by the applicant on 27.02.2020 (received through email dated 02.07.2020), which is beyond one year after the date of export. Thus, the claim for drawback was filed even beyond the condonable period of limitation as envisaged under Rule 5 (1) of Re-export of Imported goods (Drawback of customs Duties) Rules, 1995."

7. Therefore, we do not find that any case has been made out by the appellant.

8. Consequently, we dismiss the appeal filed by the appellant.

(Dictated and pronounced in the open court)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd