

ASSISTED BY:

K.NANCY, B.COM., B.L. (HONS.),
G.GAUTHAM RAM VITTAL, L.L.B.

CONSULTANTS:

GST, CUSTOMS, FOREIGN TRADE LAWS,
FOREIGN EXCHANGE MANAGEMENT ACT.

OPINION

1. **Queriest :**

M/s.Flyjac Logistics Pvt. Ltd. on behalf of M/s.Rane TRW India Pvt. Ltd.

2. **Facts :**

2.1 M/s.Rane TRW India Pvt. Ltd., one of the clients of the queriest, is a manufacturer of vehicle seat belts. They regularly import parts from their parent company for manufacture of these seat belts. In respect of import of one of the parts viz. 'Pretensioner Units', such units are imported with safety bolts attached for the purpose of safe transport. It is reported that these are supplied by TRW Airbag Systems GmbH, Germany and that pretensioner unit comes under dangerous goods for transport and are classified under Class 9. Accordingly, safety bolts are attached to such pretensioner units while shipment. After import when these units are taken for manufacturing activity, it is reported that the safety bolts are removed and re-exported to the supplier for further use. The manufacturer has made available a photograph of the pretensioner unit along with safety bolts.

2.2 It is also reported that these safety bolts will not have any identifiable marks or part numbers.

2.3 Rane TRW India intends to pay duty, as applicable, when these bolts are imported along with the pretensioner units. After unpacking and use of pretensioner units, these safety bolts will be re-exported and they intend to re-export these in terms of Section 74 of Customs Act 1962.

3. **Query :**

In this context, the querist would like to have clarifications on the following.

3.1 Whether the manufacturer will be eligible to claim drawback in terms of Section 74 of Customs Act in the absence of identification marks or part numbers.

3.2 Is there any restriction to import and export such re-used safety bolts.

...2



4. Opinion :

4.1 It may be noted that in respect of such safety bolts, there is no specific exemption available at the point of import. Notification No.104/94 dated 16.3.1994 provides for exemption in respect of durable containers and packages. It will be difficult to equate the safety bolts with durable containers and under such circumstances the manufacturer will not have any option except to pay duty at the time of import.

4.2 With regard to claiming drawback in terms of Section 74 which provides for payment of drawback when goods imported are re-exported, attention is invited to Section 74(1) which reads as follows:

“(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 to be exported as baggage and the owner of such baggage, for the purpose of clearing it, makes a declaration of its contents to the proper officer under section 77 (which declaration shall be deemed to be an entry for export for the purposes of this section) and such officer makes an order permitting clearance of the goods for exportation; or

(iii) are entered for export by post under clause (a) of section 84 and the proper officer makes an order permitting clearance of the goods for exportation,

ninety-eight per cent of such duty shall, except as otherwise hereinafter provided, be re-paid as drawback, if-

(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 from the date of payment of duty on the importation thereof.”

4.3 It may be noted that one of the conditions stipulated is that the goods are to be identified to the satisfaction of the Assistant Commissioner/Deputy Commissioner of Customs as the goods which were imported. For the purpose of easy identification normally the customs authorities use marks

and numbers or serial number of the product. Once these marks and numbers are recorded at the point of import and then subsequent re-export identification becomes easy. Normally in the absence of establishment of physical identification the customs authorities do not permit drawback in terms of Section 74 of Customs Act.

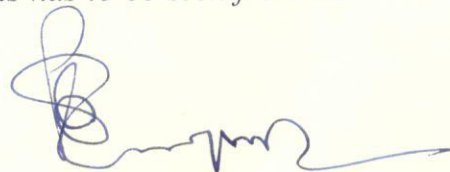
4.4 However, at the same time, it may be noted that there are a few decisions available to the effect that establishment of identity need not be only on the basis of physical verification of marks and numbers. It has been held that corroborative evidence as well as circumstantial evidence need to be taken into consideration while deciding identity. The provisions in Section 74 reads that the goods are to be identified to the satisfaction of the Assistant Commissioner / Deputy Commissioner of Customs and such identification need not be confined to physical verification alone. In this connection, attention is invited to two decisions as mentioned below:

i. Star Wire (India) Ltd. reported in 2011 (272) E.L.T. 448 (G.O.I.). In this case in para.9 the Revision Authority has made the following observations.

“Normally, this satisfaction is reached by inspection of the goods/packages, comparing the examination report or other connected documents relating to import formalities with examination of goods as reflected in the shipping bill against which drawback is claimed. In the said revision, Government had held that if there is corroborative documentary evidence to establish that the goods which were wrongly despatched/imported have been re-exported, the identity of goods gets established.”

ii. Lakshmi Mills Co. Ltd. reported in 1994 (74) E.L.T. 185 (Coll. Appl.). In this case, the Collector (Appeals) has made the following observations in para.8.

“In terms of Sec. 74 of the Customs Act, any duty paid on importation will be repaid as drawback if the goods are identified to the satisfaction of the Assistant Collector of Customs as the goods which were imported. This satisfaction of the Assistant Collector will depend on factors such as material evidence, i.e. physical verification/inspection of the goods, the documentary evidence relating the goods and the circumstantial evidence relating to the goods. I find the Assistant Collector had merely relied on only physical verification of the goods such as marks, numbers etc. When the goods were re-imported in lieu of the goods re-exported, the question of the same goods, same numbers, same marks etc. does not arise. This has to be seen from the relevant documentary evidence.”



- 4.5 Thus, there is scope to claim drawback based on the supplier's invoice and re-export documents along with the photographs or drawings of safety bolts.
- 4.6 Additionally, the manufacturer can keep inventory of these safety bolts with reference to each import shipment so that the quantity imported and re-exported can be matched on the basis of inventory / store room records with Bill of Entry.
- 4.7 It may be noted that with these documentations the manufacturer will be able to make out a strong case to grant drawback on re-export in terms of Section 74 of Customs Act.
- 4.8 There are no restrictions with regard to import and export of these bolts under the import policy.



S. MURUGAPPAN

sm/ss

Disclaimer:- The above opinion is provided based on the information and documents made available to us by the querist and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.