

REGISTERED
SPEED POST



F.No. 380/04-06/DBK/2014-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...8/8/18...

Order No. 107-109/18-Cus dated 6-8-2018 of the Government of India passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CC(A)/Cus/421-423/2013 dated 19.07.2013, passed by the Commissioner of Customs (Appeals), New Delhi

Applicant : Commissioner of Customs (Exports), Air Cargo, NCH, Delhi

Respondent : M/s Bright Point India Pvt. Ltd.

ORDER

A revision application number 380/04-06/DBK/2014-RA dated 24.01.2014 has been filed by the Commissioner of Customs, Air Cargo Export, New Custom House, New Delhi (hereinafter referred to as the applicant) against the Commissioner (Appeals)'s Order No. CC(A)/Cus/421-423/2013 dated 29.07.2013 whereby the appeal of the respondent, M/s Bright Point India Pvt. Ltd., against the Deputy Commissioner's three Orders-in-Original, all dated 16.11.2012, has been allowed by way of remand to original adjudicating authority.

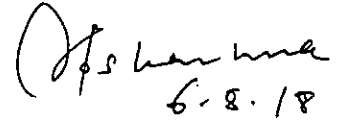
2. The revision application has been filed mainly on the ground that the remand order of the Commissioner (Appeals) is contradictory to his own findings in the above mentioned Order-in-Appeal wherein it is categorically held that identity of the goods could not be established at the time of export and accordingly the Commissioner(Appeals) should have straight away dismissed the appeal of the respondent.

3. Hearing in this case was held on 22.05.2018 and it was availed by Sh. Pradeep Sharma, Advocate, and Sh. Blasé Desouja, Authorized signatory, on behalf of the respondent who furnished written submissions dated 24.05.2018 emphasising that Order-in-Appeal is just and proper. However, no one appeared on behalf of the applicant and even also no request for another date of hearing was received from which it is implicit that the applicant is not interested in personal hearing.

4. Government has examined the matter and it is observed that the Commissioner (Appeals) has unequivocally recorded in his order that it is a case of mismatch of the goods and, therefore, he does not find any reason to interfere with the impugned Order-in-Original. But immediately after the above conclusion, he has remanded the matter to the original adjudicating authority for reconsideration of the case in the light of collateral evidences as discussed in Para 3 of the Order-in-Appeal. Hence, the Government fully agrees with the applicant that the findings and the final order of the Commissioner (Appeals) are self contradictory. However,

still the Government does not find any demerit in the final order of the Commissioner (Appeals) as the reconsideration of the issue will be in the interest of justice since the entire issue regarding admissibility of drawback of duty has been decided by the Dy. Commissioner earlier by considering the mismatch of model number in the Bill of entry and Shipping bill only and other vital factors like IMEI number, serial number and non-manufacturing of the mobile phones of model number by HTC as mentioned in the Bill of entry have not been considered by the Dy. Commissioner (Drawback). Moreover, no revenue interest is hurt merely by remanding the matter back to Dy. Commissioner (Drawback) and the whole issue is still open for both the department as well as the exporter.

6. In view of the discussions above, revision application filed by the revenue is rejected.

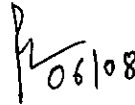

6.8.18

(R.P.Sharma)

Additional Secretary to the Government of India

Commissioner of Customs,
Air Cargo Export, New Custom House,
Near IGI Airport,
New Delhi 110037

ATTESTED


06/08

(Ravi Prakash)

OSD (REVISION APPLICATION)

Order No. 107-109/18-Cus dated 6-8-2018

Copy to:

1. M/s Bright Point India Pvt Ltd, G-9, B-1, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi -110044.
2. Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi 110037
3. The Assistant Commissioner of Customs (Drawback), Air Cargo Export, New Custom House, New Delhi 110037
4. PS to AS(RA) *Send file 6 spare copy*