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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No. 371/05/DBK/2017-RA / 2252

Date of Issue: 30.06.2022

ORDER NO. 194 /2022-CUS (WZ)/ASRA/MUMBAI DATED 28.6.2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE
CUSTOMS ACT, 1962.

Applicant : M/s. Swire Pacific Offshore Operations(Pte) Ltd.

Respondent: Pr. Commissioner of Customs, Jamnagar

Subject : Revision Applications filed, under Section 129DD of the
Customs Act, 1962, against the Order-in-Appeal No. JMN-
CUSTM-000-APP-041/16-17 dated 24.11.2016 passed by the
Commissioner of Customs(Appeals),Ahmedabad.

ORDER

This Revision Application has been filed by Ms. Swire Pacific Offshore Operations (Pte) Ltd., 105. Mahinder Chambers, 1 floor. WT Patil Marg. Opp. Pepsi factory, Chembur, Mumbai - 400071(hereinafter referred to as "the applicant") against the Order-in-Appeal No. JMN-CUSTM-000-APP-041/16-17 dated 24.11.2016 passed by the Commissioner of Customs(Appeals), Ahmadabad.

2. Brief facts of the case are that the applicants had filed two different claims for Drawback, on 23.09.2015 and the details of the same are given as under:

Sr.No.	Drawback Claimed(Rs.)	Goods Re-exported	Bill of Entry No. and Date.	Value in US \$	Customs duty paid in Rs.	Relevant Shipping Bill No. and Date	Value declared at the time of export in \$
1	51788786	Tug pacific Buccaneer	F-014/15-16 dated 01.08.15	9000000	54514512	F-017/15-16 dated 21.08.2015	9000000
2	6617456	Tug Coral Sea	F-015/15-16 dated 01.08.15	1150000	6965743	F-018/15-16 dated 21.08.2015	1150000

The declared FOB value of said Tug Pacific Buccaneer and Tug Coral Sea Fos, considering that the exchange rate was Rs. 64.70/-, came to be Rs. 58,23,00,000/- and Rs. 7,44,05,000/- respectively and 'Let Export Order' for the same was given on 22.08.2015 after necessary examination by officers of Customs, on the same date. For it appeared that the said two claims for drawback were pre-mature and liable to be rejected considering that (i) officers of Directorate of Revenue Intelligence, Regional Unit, Jamnagar had booked an offence case against them for illegal importation of said goods and said goods were placed under seizure on 20.07.2015 (ii)

subsequently, said goods were released provisionally by the Commissioner of Customs (Prev.),Jamnagar on execution of Bond of Rs. 60,21,00,000/- and Rs. 8,60,00,000/- and on furnishing of Bank Guarantee amounting to 25% of duty amount and they paid the Customs duty involved and furnished Bond along with Bank Guarantee (iii) with regard to the sanction of Drawback, the Deputy Director, DRI, Jamnagar informed that the decision may be taken safeguarding the government revenue and (iv) the matter was sub-judice in as much as the said case booked by DRI, Jamnagar was still under investigation and show cause notice issued if any, was not received by the lower adjudicating authority. Accordingly, they were issued a show cause notice dated 23.12.2015 by the Deputy Commissioner, Customs House, Pipavav proposing as to why said two claims should not be rejected. Subsequently, vide impugned order, lower adjudicating authority has rejected the said two claims under Section 74 of Customs Act, 1962. While rejecting the said two claims the lower adjudicating authority has mainly observed that at different point of times, both Tugs under reference, were engaged in some salvage of Barge GMS Sharqui 5603, carried out in the port limit of Muldwarka at Gujarat coast. M/s Swire Salvage Pte Ltd. Singapore was a wholly owned subsidiary of Ms, Swire Pacific Offshore Operations Pte Ltd. Mumbai, who were appointed as salvager, salvage operation was carried in Muldwarka from 29.06.2015 to 12.07.2015; the Applicant had neither filed Import General Manifest nor Bills of Entry at the time of import for both the tugs; and thus violated provisions of Section 30 and 46 of the Customs Act, 1962; the Applicants were fully aware that said two Tugs carried out salvaging operation and thereafter towed it to Pipavav port for its repairs; the Applicant had approached Settlement Commission and therefore in a way admitted their fault; both Tugs were used in salvaging operation without payment of customs duty. It is against said decision of rejection of their claim for drawback; the applicants preferred appeal before the Commissioner of Customs(Appeals),Ahmadabad who vide Order-in-Appeal No. JMN-CUSTM-000-APP-041/16-17 dated 24.11.2016 rejected their appeal.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application on the following grounds :

- i. Serious violation of principles of natural justice is committed; the Appellate Authority has made out entirely a new case, not made out in the SCN dated 23.12.2015: The Hon,ble Appellate Authority has erred in holding the impugned goods as smuggled goods. The Applicant submits that the Appellate Authority has made a new case, since in the SCN F. No.VIII/20-02/DBK/GPPL/14-15 dated 23.12.2015 neither Section 2(39) nor Section 111 was invoked. The SCN was issued for violation of Section 30 and 46 of the Customs Act, 1962 and the Applicant was asked to explain as to why the said drawback claims should not be rejected as per provisions of Section 74 of the Customs Act, 1962. It was not open to the Hon'ble Appellate Authority to make a new case of violations of Sections 2(39) & 111. Even in the order in original (para 17) the drawback claim was rejected only for contravention of Section 30 and 46 of the Customs Act, 1962. There being no intention to evade duty even the provisions of proviso to Section 28(1) were not invoked in the SCN.
- ii. There is no specific denial provision in Section 74 of the Customs Acts, 1962 about the drawback cases: The Applicant submits that there is no provision of specific denial in Section 74 of the Customs Acts, 1962 about drawback cases. This means that drawback cannot be rejected once conditions are fulfilled. As per Sections 74 the drawback is admissible for re-export of the 'ANY GOODS'. 'Any goods' means - any goods imported and re-exported. There is no specific mention of smuggled goods, prohibited goods, offending goods, etc. It is well settled that a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act, so as to make a consistent enactment of the whole: statute. Such a construction

has the merit of avoiding any inconsistency or repugnancy either within the statute or between a Section or other parts of the statute. If it was the intention of the statute to differentiate between the class of goods for eligibility of drawback claim u/s 74, there would have been a specific mention like in Section 23 of the Customs Act, 1962. Further, the Applicant submits that there is no provision in the Customs Act, 1962-u/s 74 as well as Drawback Rules for denying the benefit of drawback for violation of Section 30 and Section 46 of the Act. The provisions of Section 74 cover any goods capable of being identified. Section 74 does not impose any condition as to restricted or smuggled or what rate and under which notification or condition duty was paid on importation. Once the goods have been re exported, all conditions of Section 74 are complied with, then there is no provision in the Customs Act, 1962 to deny drawback.

- iii. The impugned export u/s 74 was permitted by the department itself: The Applicant vide letter dated 18.08.2015 had requested the Commissioner of Customs, Customs (Prev.), Jamnagar for permission to file Shipping Bills in non EDI mode, for the purpose of claiming drawback under Section 74 of the Customs Act, 1962, which was granted by the Commissioner of Customs (Preventive) on 20.08.2015. In view of the above, the Applicant is entitled for drawback in terms of the provisions of section 74 of the Customs Act 1962, which comes to Rs.5,84,07,241/-. The Appellate Authority has not cited a single condition of section 74 which has not been fulfilled. Once the conditions enunciated in the section 74 of the Customs Act, 1962 are complied with the authority cannot deny the drawback amount. There is no contravention of Section 30 of the Customs Act, 1962.
- iv. The applicant submits that delay in filing was caused by reasons beyond their control. The vessels were not intended to enter any port in India. Due to bad weather conditions in Arabian Sea, the

tow wire parted off, in spite of best efforts the crew was unable to reconnect tow wire and eventually this Act of God the barge drifted and grounded on 24.06.2015 at Chhara Village near Muldwarka. The other impugned vessel was also hired and emergency salvage operations were carried out round the clock. The Muldwarka Customs were informed immediately vide letter dated 28.06.2015 and the permission for the inward entry was obtained from the customs authorities. Due lack of sufficient time and no provision for filing IGM at office of Superintendent Customs, Muldwarka, filing of IGM got delayed and the same was filed as permitted by customs immediately on reaching Pipavav on 11.07.2015. Thus the IGM was permitted to be filed without any penalty. After the department's permitting filing of IGM, allegation of contravention of section 30 of the Customs Act is bad in law.

- v. No contravention of Section 46 of the Customs Act, 1962: The vessels in this case are covered under definition of 'imported goods' - Sections 2(25): "Imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption. Contention is once the goods are cleared for home consumption there cannot be violation of Section 46. The Appellate Authority has completely ignored the compliance of section 46 of the Customs Act. Bills of Entry F-014/15-16 dated 01.08.2015 and No. F-15/15-16 dated 01.08.2015 were filed before the Pipavav Customs. The said bills of entry were assessed for the duty amounting to Rs.5,45,14,512/- & Rs.69,65,743/-. The said goods were cleared for on payment of duty. Hence any claim of contravention of Section 46 of the Customs Act, 1962 or considering the goods as "smuggled" is without substance. The order in Appeal is liable to be set aside.
- vi. Substantive benefit cannot be denied for procedural condition of technical nature: Delay in filling of IGM and Bills of Entry were due to two reasons viz. due to situation beyond control of the

Applicant and no facility for filing IGM and Bill of Entry at Muldwarka. The department permitted filing of IGM and Bills of Entry at Pipavav without any query or SCN. Also re-export was permitted by the department under Drawback Shipping Bills. Thus the department, considering delay was not attributed to deliberate intent or casual approach did not impose any penalty although there is a provision for penalty of up to Rs.50,000/- u/s 30 of the Act. Thus delay in filing was considered a procedural condition of technical nature. Substantive benefit cannot be denied for technical / procedural lapses.

vii. Non application of mind by the Appellate Authority: The order passed by the Appellate Authority is without dealing with propositions, suffers from non-application of mind and non-consideration of material on record and is therefore, bad in law. All facts in support of its claim, were on record, but were ignored, as discussed below:

a) The vessels are imported under special circumstances: The impugned tug namely "Tug Pacific Buccaneer" towing barge "GMS Sharqi 5603" destined to Abu Dhabi had sailed from Shanghai. These vessels were not intended to enter any port in India. On 21.06.2015, while the Tug and the Tow were transiting the Arabian Sea off the coast of Gujarat, the vessels encountered heavy sea and adverse weather condition and the tow parted off. Despite the best efforts, the tow could not be re-connected; the said crane barge grounded on 24.06.2015 on a sandy beach at Chhara Village, Gujarat. Thus entry into port of India was due to adverse weather condition amounting to act of God on which Applicant had no control. Intimation letter dated 28.06.2015 was submitted to all the concerned Indian Authorities including custom. As the salvaging was not possible by a

single tug, another tug 'Coral Sea FOS' was operation & re-floating of the grounded barge. carry out the salvage

- b) There is no suppression; not even alleged in the SCN: The Applicant had reported to all the concerned departments including customs about each and every happening and moment of the vessels and applied for necessary permissions. Vide their letter dated 28.06.2015 all the concerned Indian Authorities including customs were informed about the facts, circumstances and further urgent action planned to ensure that the refloat was a success. Vide three letters all dated 29.06.2015, giving full details of the incident requested for permission to carry out salvage operations round the clock to re-float the grounded barge and that necessary IGM and all documents were being submitted to the to the Superintendent of Custom, Muldwarka. All requisite NOC, permission were received from the respective authorities like Coast Guard, Directorate General of Shipping, Marine Police Station, Navabandar and the Customs for the salvage operation. However, as Muldwarka was not an authorized port for imports, the IGM/Bill of Entry could not be filed at that place. The vessels arrived at Pipavav on 11.07.2015 and Pipavav being an authorized port for imports, relevant IGM/Bill of Entry were filed at Pipavav port. Under the circumstances the authorities permitted delay in filing of IGM without any penalty as provided in Section 30 of the Customs Act, 1962. The Applicant filed Bills of Entry nos. F/014/15-16 and F/015/15-16 both dated 01.08.2015 for the two tugs with bunker and consumables and customs duty was paid on the two tugs vide TR 6/GAR 7 challans no. Cus/256/15-16 and Cus 257/15-16 both dated 06.08.2015. The vessels were re exported after due clearance under Shipping Bills both

dated 21.08.2015 under claim for drawback and the jurisdictional customs authorities have issued certificates accordingly. The above sequence of events and the narrations clearly prove that the Applicant had taken utmost care to comply with all the formalities and had intention to follow the statute in all earnest.

- c) The Hon'ble Appellate Authority has failed to appreciate legal position - even the confiscated goods released after payment of applicable customs duty, redemption fine etc., are no longer offending goods: The Applicant submits even when the goods are confiscated because of any ITC prohibition in terms of Section 111 of the Act and an option to pay fine in lieu of such confiscation is given, the effect of such option is to lift the prohibition. As per the above statutory provisions, where the assessee has paid the duty along with interest (In the instant case duty has been paid in time and no interest was payable) no show cause notice should be issued. In the present case, as the Applicant filed Bills of Entry on 01.08.2015 and paid the Customs duty on 06.08.2015, i.e., much before the issue of the show cause notice, therefore, no show cause notice should have been issued by the department under section 28(1) of the Customs Act 1962 considering the aforesaid sub section (2) of section 28 ibid and the fact that, in the show cause notice, the department has nowhere alleged any collusion or willful mis-statement or suppression of facts. Further, there was no need to inform the department about payment of duty as provided in section 28(2) because the department already knew that the duty had been paid, a fact, which was reflected in the show cause notice itself.

- viii. The Case law relied upon by the Appellate Authority is not applicable to the present case: For rejecting the Drawback claim of the Applicant, the Appellate Authority has erred in relying upon the case law of the Apex Court COMMISSIONER OF CUSTOMS (PREV.), MUMBAI Versus M. AMBALAL & CO. (2010 (260) E.L.T. 487 (S.C.)); since the same is not applicable in the facts and circumstances of the present case. The Applicant submits that that the said case law pertain to large quantity of rough diamonds recovered from office premise; the persons concerned were neither able to offer any satisfactory explanation nor produce any documents in relation to the import of the said diamonds; rough diamonds were imported illegally into the country; the persons did not have the license to import diamonds and had smuggled rough diamonds into the country clandestinely without payment of duty. The issue was the grant of exemption to the prohibited goods. Sections invoked were 2(25), 2(39), 25, 111 and 125 of Customs Act, 1962. However in the present case the vessels were not intended to enter any port in India; the vessels entered Port in India under special circumstances, there was no suppression - not even alleged in the SCN; IGM was permitted to be filed by the department; Bills of Entry were also filed and applicable duty was paid. The issue in the present case is duty drawback after re-export of the vessels, Sections invoked are 30, 46 and 74 of Customs Act, 1962. In view of these different facts and circumstances of this case reliance placed by the Adjudicating Authority on M. Ambalal & Co. case is bad in law. The impugned Order in Appeal is not legally sustainable and hence liable to be set aside with consequential relief.
- ix. Applicant therefore submits that for the aforesaid reasons, the impugned Order-in-Appeal No. JIMN-CUSTM-000-APP-041-16-17, dated 24.11.2016 is illegal, incorrect, without any basis, bad in law and therefore liable to be set aside.

4. The Respondent, Commissionerate of Customs, Jamnagar, had filed additional submissions vide their letter dated 28.07.2017 :

- i. The OIA has been passed invoking the correct provisions of the Customs Act, 1962 taking into consideration all the facts on record and is just and proper. (1) The fact is that they did not follow the prescribed procedure of filing the relevant documents at the material point of time (2) Any act or omission, in relation to any goods which renders the goods liable for confiscation under Section 111 or Section 113 is "smuggling" and the goods involved therein are "smuggled" goods. In the SCN dated 14.12.2015 of the DRI issued to the applicant, which was decided by the Settlement Commission, Section 111 has been invoked and confirmed by the Settlement Commission. Hence, the observation of the Commissioner (Appeal) that the goods are "smuggled" is correct.
- ii. The repeated contention of the applicant that the section 111 was not invoked in the SCN for rejection of drawback is an effort on their side to project as to the goods were properly imported and subsequently exported under claim of drawback following all the procedure. In this effort they are trying to underplay that all the documentation carried out by them was after the case was booked by DRI for improper importation of the two Tugs, the offence of which was admitted by them and they had opted to approach the Settlement Commission to settle the issue and avoid penal provisions including prosecution. Thus the applicant is trying to conveniently avoid the basic fact of the issue and trying to impress that the drawback has been rejected on the legitimately exported goods.
- iii. The applicant is wrongly interpreting the meaning of any goods" mentioned in Section 74(1) for admissibility of drawback. The applicant has conveniently missed the expression "capable of being easily identified which have been imported into India". The applicant goes on to state any goods may also include smuggled goods,

prohibited goods, offending goods, etc. The contention of the applicant is misconceived and against the aim and intent of the legislation and the law of the land.

- iv. The applicant's contention that there is no violation of provisions of Section 30 and Section 46 is not sustainable because the offence case booked by them was essentially for the violation of these Sections. Had the applicant satisfied the requirements of these sections, there could not have been any case against them. Applicant is overlooking the fact that they have in a way admitted to the violations of these sections while seeking the settlement of the case in the Settlement Commission, where their tugs were confiscated and redemption fine was imposed. The contention of the applicant that there is no facility of filing IGM at Custom House Muldwarka is not correct. The contention that the vessels were imported under special circumstances cannot be a ground for not complying to the statutory provisions. The DRI SCN after discussing the acts of omission and commission of the applicant, has invoked Section 1110) of the Custom Act, 1962 and also proposed penalty under Section 112(a) of the Customs Act, 1962. The applicant has admitted to these charges in as much as they have opted for Settlement of the said SCN.
- v. The contention of the applicant that the Hon'ble Appellate Authority has failed to appreciate the legal position is not correct and the case laws cited by them are w.r.t. refund of redemption fine. In this instant case, the issue pertains to claim of drawback and the provisions regarding the nature of goods eligible for drawback is very clear regarding the identity of goods as "imported". The subject goods were not properly imported and therefore subsequent drawback is not eligible. The observation of the Hon'ble Appellate Authority in the para 12 (last 4 lines) of the OLA is very pertinent whereby it is held that "if Drawback is allowed in such circumstances, then smuggling would become a routine phenomena since smuggled goods could be re-exported claiming Drawback.

vi. The contention that the issue of offence case booked-by DRI and claim of drawback has to be treated separately is not correct as both the issues pertain to the same goods. Even though the applicant may have opted for Settlement Commission for speedy resolution of the matter, it also implies admission of the offence on their part and that they are seeking exemption for invocation of penal provisions. The contention is not correct in as much as that the applicant themselves have approached the Settlement Commission admitting the charges of the SCN.

5.1 Personal hearing in the case was held on 28.10.2021 , which was attended online by Shri Krishnan Venkat, Authorized representative on behalf of the Applicants and Shri Kamaljit Kamal , DC Pipavav on behalf of the respondent. They reiterated their earlier submissions. Authorized representative of the Applicant submitted that issue of import violations was settled by settlement commission, subsequently export of goods should make them entitled for drawback. DC Pipavav submitted that when goods were imported no documents were filed in time and an offence case was booked by DRI which was admitted by the applicant and was settled by the settlement commission. Therefore, he contended that DBK should not be allowed.

5.2 Government has carefully gone through the relevant case records available in case files, perused the impugned Order-in-Original, Order-in-Appeal, and order of the settlement commission. It is observed that the applicant is aggrieved by Order-in-Appeal No. JMN-CUSTOM-000-APP-041/16-17 dated 24.11.2016 passed by the Commissioner of Customs(Appeals),Ahmedabad and the Revision application has been filed against the same.

6. Government notes that disputes regarding improper import, evasion of customs duty, confiscation of goods, imposition of penalty, prosecution etc. have been settled by the Hon'ble Settlement Commission vide its order

dated 31.05.2016 and hence issues contested by the applicant except the issues mentioned herein under are no longer disputed and the decision in this regards has attained finality.

- i. Serious violation of principles of natural justice as the Appellate Authority has made out entirely a new case, not made out in the SCN dated 23.12.2015.
- ii. There is no specific denial provision in Section 74 of the Customs Acts, 1962 about the drawback cases.
- iii. The impugned export u/s 74 was permitted by the department itself.
- iv. The Appellate Authority has failed to appreciate legal position - even the confiscated goods released after payment of applicable customs duty, redemption fine etc., are no longer offending goods.

Thus Government without delving into the issues which have already settled by the settlement commission and accepted by the applicant, restricts itself to the above mentioned issues contended by the applicant.

7.1(a) Applicant has argued that the Appellate Authority has made out a new case, since in the SCN F. No.VIII/20-02/DBK/GPPL/14-15 dated 23.12.2015 neither Section 2(39) nor Section 111 was invoked. In this regards , Government after going through the above said notice, observes that one of the ground for rejection of drawback claim under provisions of Section 74 of the Customs Act, 1962 is 'provisional release of seized goods' which had been categorically mentioned in para 9 of the SCN dated 23.12.2015. Para 9 of the said SCN is reproduced as under:

" 9/-Whereas, it appears that said Drawback claims are pre-mature and liable for rejection under provisions of Section 74 of the Customs Act, 1962 on the following grounds:

- i. *D.R.I., Regional Unit. Jamnagar has booked an offence case against said. Importer for illegal importation of said tugs/Tug Pacific Buccaneer" and "Tug*

Coral Sea Fos" and some were placed under seizure vide F.No. DRI/JRU/INT-8/2015 on 20.07.2015.

- ii. *Subsequently, Noticee had approached the Commissioner of Customs (Prev.), Jamnagar for provisional release of seized tugs. Provisional release for both of the tugs mentioned above was given under the provisions of Section 110A of the Customs Act. 1962 by the Hon'ble Commissioner of Customs (Prev.) HQ, Jamnagar on execution of Bond of Rs. 60,21,00,000/ and Rs: 8,60,00,000/- and furnishing of Bank Guarantee amounting to 25% of the duty amount. Accordingly, Noticee had paid the Customs Duty and furnished Bond along with BG.*
- iii. *A reference was made to Deputy Director, DRI Jamnagar vide this office letter dated 19.10.2015, who had vide letter F.NO. DRI/JRU/INT-8/2015 dtd. 20.10.2015 in response to the said letter informed that "Issue regarding sanction of Drawback under section 74 of the Customs Act, 1962,-the decision, as deem fit, may be taken by you under the provisions of Customs Act, 1962 and safeguarding the govt. revenue."*

(b) As seen from the above text , it is clear that the seizure of the tugs/goods and booking an offence case by DRI was one of the grounds for rejection of drawback claim under section 74 of the customs act 1962. It is pertinent to note that the SCN dated 23.12.2015 can not be seen in isolation from the SCN issued by the DRI dated 14.12.2015 as both the issues pertain to same goods/tugs. Thus, it was necessary to delve into the notice issued by the DRI to ascertain the violations of imported goods. Government notes that the confiscation of goods under section 111(j) was clearly mentioned in the SCN issued by the DRI dated 14.12.2015. Thus to say the appellate authority has made a new case by going beyond the scope of SCN dated 23.12.2015 is not correct. Moreover, these violations have been admitted by the applicant before the settlement commission.

(c) It is evident that the goods/tugs on which the drawback was sought were the same goods/tugs on which DRI had booked case and found the goods to be smuggled goods. It is pertinent to refer to observations of settlement commission on the issue.Relevant portion of para 9.3 of the

settlement commission order SA@71-72/2016 dated 30.05.2016, is reproduced as under :

"Taking into account the overall facts and circumstances of the case, especially the voluntary payment of entire Customs duty, whole sequence of events particularly the extra ordinary circumstances under which the tugs came to be imported into India and co operation extended by them during investigation and in proceedings before Commission, the Bench is inclined to take lenient view in the matter and settle their case. However, the Bench observes that the tugs were imported without filing IGM/BE and payment of Customs duty and therefore applicant and co-applicant, for their acts of omission and commission as stated in the SCN, have rendered themselves liable to penal action under Customs Law. Similarly the illegally imported goods are also liable to confiscation. Therefore no case for complete immunity from penal consequences is made out"

(d) It is crystal clear from the above order of settlement commission that goods were 'illegally imported goods' and that goods were liable for confiscation. Though commission agreed to give immunity from prosecution, it did not give immunity from penalty.

7.2 Now as argued by the applicant, the question arises whether drawback under section 74 of the Customs Act, 1962 on illegally imported goods can be allowed. The eligibility criteria for the grant of Drawback under Section 74 of the said Act is as under:

- (i) The goods on which drawback is claimed must be imported earlier.
- (ii) Import duty should have been paid when imported.
- (iii) Goods must be entered for re-exported, within two years from the date of payment of import duty. The period of two years can be

extended up to three years by the Board or by the Commissioner of Customs.

- (iv) Goods must be actually exported out of India after their import.
- (v) Goods must be capable of being identifiable at the time of export, as the same goods which was earlier imported.
- (vi) Market price of such goods must not be less than the amount of drawback claimed.

Applicant's interpretation is that the meaning of any goods" mentioned in Section 74(1) for admissibility of drawback may also include smuggled goods, prohibited goods, offending goods, etc. Government is of the firm view that the expression 'the goods imported into India' here means that all those goods which have been imported legally. This, by no means it is to be interpreted liberally in one or the other way to get the benefits of drawback. Government notes that any provision of an act must be read keeping in mind the aim and intent of the legislation and the law of the land. The intent of the said Act is to discourage the illegal import and to facilitate the fair import. In the instant case it is admitted position that the goods were imported illegally and thus these fail to satisfy the conditions of section 74 of Customs Act,1962.

7.3. The applicant argued that the impugned export u/s 74 of the Customs Act,1962 was permitted by the department itself. In this regards, Government observes that permission from the department was for export of goods. Permission for merely filing of the shipping bill does not entitle the applicant to automatically get the claim. Filing of Shipping Bill for export, filling of drawback claim, and sanction of drawback claim in respect of re-export of imported goods are three distinct events. There is difference between sanctioning of the claim and filing of the drawback claim. The sanctioning of the drawback claim depends on the compliance of required conditions. Therefore, this contention is of no help.

7.4 The applicant contended that the Appellate Authority has failed to appreciate legal position that even the confiscated goods released after payment of applicable customs duty, redemption fine etc., are no longer offending goods. Government in this regards observes that any payment of penalty/redemption fine prescribed under law does not make an illegal import a legal import. The penal provisions prescribed in law are to create deterrence so that the offences would not be repeated. Allowing benefit of drawback rebate or any other benefit linked to export promotion would defeat the very purpose of the Act, which is to facilitate honest importer and penalize dishonest importer to create effective deterrence. The reasoning of the applicant in this regards is, therefore, not valid.

7.5 In the Instant case settlement commission vide order dated 31.05.2016 has settled the matter under section 127c(5) of Customs Act subject to certain terms and conditions. Payment of certain amount of duty, interest, penalty was a precondition for granting immunity from prosecution, immunity from payment of penalty in excess of determined amount etc. Payment of these amounts are non refundable otherwise conditions of settlement order would not be satisfied. Export incentives cannot be claimed on goods which were subject matter before settlement commission for determining civil, penal, and criminal liability. Thus claim of the applicant for benefit of drawback on the instant goods does not survive.

8. In view of the above discussion, the Government finds no infirmity in Order-in-Appeal No. JMN-CUSTOM-000-APP-041/16-17 dated 24.11.2016 passed by the Commissioner of Customs(Appeals),Ahmadabad and upholds the same.

9. The Revision Application is disposed off on above terms.

Shrawan
28/06/22
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 94/2022-CUS (WZ)/ASRA/Mumbai DATED 28.6. 2022

To,

Ms. Swire Pacific Offshore Operations (Pte) Ltd.,
105. Mahinder Chambers, 1st floor.
WT Patil Marg. Opp. Pepsi factory,
Chembur, Mumbai - 400071

Copy to:

1. The Chief Commissioner of Customs, Gujrat ,Ahemdabad.
2. The Commissioner of Customs(Preventive), HQ., Jamnagar
3. The Deputy/Assist. Commissioner of Customs, Customs House
Pipavav.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file.