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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. 373/48/DBK/16-RA / 3219

Date of Issue: 28.07.2022

ORDER NO. 224/2022-CUS (SZ)/ASRA/MUMBAI DATED 25.7.2022
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 Acer India Pvt. Ltd

Respondent: Pr. Commissioner of CGST, Pudicherry.

Subject : Revision Applications filed, under Section 129DD of the
Customs Act, 1962, against the Order-in-Appeal No.
04/2016(CXA-II) dated 12.01.2016 passed by the
Commissioner (Appeals-II), Chennai.

ORDER

This Revision Application has been filed by M/s Acer India Pvt. Ltd, R.S.No.57/1, Karasoor Village, Villianoor Commune, Puducherry-605111 (hereinafter referred to as "the applicant"), against the against the Order-in-Appeal No. 04/2016(CXA-II) dated 12.01.2016 passed by the Commissioner (Appeals-II),Chennai.

2. Brief facts of the case are that the Applicant had filed a drawback claim on 16.12.2013 under Section 74 of the Customs Act, 1962 in respect of Tablet PCs. A deficiency memo dated 24.12.2013 was issued to the Applicant for non submission of various documents. The Applicant re-submitted their claim on 30.04.2014 after making good the deficiencies pointed out. The Applicant however submitted the NOC from the respective Custom House stating that no refund was claimed by them, only on 16.07.2014. In this background, it appeared that the drawback claim had not been re-submitted by the Applicant within 30 days of the deficiency memo dated 24.12.2013 as stipulated under Rule 5 of the Drawback Rules, 1995. After due process of law, the Respondent vide the Impugned Order rejected the drawback claim of the Applicant on the ground of time bar as per rule 5(4)(b) of the Re-export of imported goods (Drawback of Customs Duties) Rules, 1995. Being aggrieved by the aforesaid order-in-original the applicant filed appeal before the Commissioner (Appeals-II),Chennai, who vide Order-in-Appeal No. 04/2016(CXA-II) dated 12.01.2016 rejected their appeal on being time barred.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application under Section 129 DD of the Customs Act, 1962 before the Government on the following grounds :

- i. the drawback claim filed by the applicant is within the statutory time limit and the rejection of drawback claim is only on technical grounds of delay in complying with the deficiency memo which was beyond the control of the Applicant;

- ii. time limit specified under rule 5(4)(a) of the re-export of imported goods(Drawback of Customs Duties) Rules,1995 is meant for section 75 A of the Custom Act.
- iii. the delay in replying to the deficiency memo was on account of the delay in issuing the NOC by the Customs authorities and such NOC was a purely internal communication between the two Departments to obtain such clarifications and NOC.
- iv. defect memo cannot be issued under rule 5(4) for documents not specified under rule.5(2).
- v. placed reliance on certain cases to state that substantial benefit should not be denied on account of procedural infractions
- vi. although the Applicant had sought for condonation of delay the same was not granted owing to procedural lapses.
- vii. set aside the impugned Order-in-Appeal No. 04/2016 (CXA-II) dated 12.01.2016 passed by the Commissioner of Central Excise (Appeals-11), Chennai rejecting the drawback claim along with consequential relief and grant refund of Rs. 12,65,966/- along with interest or pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case.

4. Personal hearing in the case was held on 30.03.2022 , the hearing was attended online by Ms. Anjali Hirawat, Consultant and Ms. Nidhi Agrawal,Consultant on behalf of the Applicant and reiterated their earlier submissions. They mentioned that claim was filed well with in the time. They further submitted that deficiency memo mentioned documents were not required under drawback rules. They further submitted that they still complied with the same and resubmitted within six month, the period which AC would have allowed. They requested to allow the claim.

5. Government has carefully gone through the relevant case records available in case files, perused the impugned Order-in-Original, Order-in-Appeal. It is observed that the applicant is aggrieved by Order-in-Appeal No.

04/2016(CXA-II) dated 12.01.2016 passed by the Commissioner (Appeals-II), Chennai wherein their appeal was rejected on ground of limitation of time as per rule 5(4)(b) of Re-export of imported goods (Drawback of Customs duties) Rules, 1995 and the Revision application is filed against the same.

6. Government finds that the rejection of Drawback claim by the Department was in accordance with rule 5(4)(b) of Re-export of imported goods (Drawback of Customs duties) Rules, 1995 which is reproduced as under :

" (4) (a) Any claim which is incomplete in any material particulars or is without the documents specified in sub-rule (2) shall not be accepted for the purpose of section 75A and such claim shall be returned to the claimant with the deficiency memo in the form prescribed by the ²[Principal Commissioner of Customs or Commissioner of Customs, as the case may be] within fifteen days of submission and shall be deemed not to have been filed;

(b) Where exporter complies with requirements specified in deficiency memo within thirty days from the date of receipt of deficiency memo, the same will be treated as a claim filed under sub-rule (1)."

It is clear from the above text that said rule is meant only for the purpose of section 75A of Customs Act, 1962 which deals with interest on Drawback claim and it is nowhere specified therein to reject the entire drawback claim if the deficiency memo is issued to the applicant. In the instant case, the applicant had filed the Drawback claims well within the time limit prescribed under sub rule(1) of rule 5 of Re-export of imported goods (Drawback of Customs duties) Rules, 1995 and therefore aforesaid reason to reject claim is not legal and sustainable.

7. With regards to the interest on drawback claim , applicant had failed to clear the deficiencies within 30 days of time limit as prescribed under rule 5(4)(b) of Re-export of imported goods (Drawback of Customs duties) Rules, 1995. The applicant argued that the delay in replying to the deficiency memo was on account of the delay in issuing the NOC by the Customs authorities which was a purely internal communication between the two

Departments and was beyond the control of the applicant. In this regards, Government notes that the documents prescribed in the deficiency memo other than the NOC were also submitted belatedly. The obtaining of NOC does not restrict the applicant to submit other documents on time. That be the case, applicant resubmitted the claim only on 30.04.2014 which is beyond the 30 days time limit specified under Rule 5(4)(b) and therefore made them ineligible for the interest in accordance with Section 75A in the Customs Act, 1962 read with rule 5(4)(b) of Re-export of imported goods (Drawback of Customs duties) Rules.

8. In light of the detailed discussions hereinbefore, the Government has come to the conclusion that since the rule 5(4)(b) deals only in interest on Drawback, the drawback claim cannot be denied to the Applicant.

9. In view of above, Government sets aside the impugned Order-in-Appeal No. 04/2016(CXA-II) dated 12.01.2016 passed by the Commissioner(Appeals-II), Chennai and adjudicating authority is directed to disburse the drawback claim within 8 weeks of the date of receipt of this order.


25/07/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 224/2022-CUS (SZ)/ASRA/Mumbai DATED 25.07.2022

To,

M/s Acer India Pvt. Ltd, R.S.No.57/1, Karasoor Village,
Villianoor Commune, Puducherry-605111.

Copy to:

1. The Pr. Commissioner of CGST, Post Box No. 104, Goubert Avenue, Beach Road, Pudicherry-605001.
2. The Commissioner(Appeals-II), Chennai, 26/1, Mahtma Gandhi Marg, Nungambakkam, Chennai-600034.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file.