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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 371/31-A/DBK/16-RA/1241 Date of Issue 12.10.2018

ORDER NO. 707 /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.09.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : M/s.Mercedez Benz India Pvt Ltd.

Respondent : Commissioner of Customs (Export), JNCH, Nhava Sheva.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-AppealNo.107 (Drawback)/2015(JNCH)-Appeal-I dated 18.11.2015passed by the Commissioner of Customs (Appeals) MUMBAI.

ORDER

The revision application is filed by M/s. Mercedz Benz India Pvt. Ltd. FG against the Order in Appeal No.107 (Drawback)/2015 9JNCH)-Appeal-I DATED 18.11.2015 passed by Commissioner of Customs (Appeals), JNCH, Nhava Sheva in respect of Order-In-Original No. 161/2014-15 dated 03.11.2014 passed by the Assistant Commissioner of Customs, Drawback Section, JNCH, Nhava Sheva.

2. Brief facts of the case are that M/s. Mercedez Benz India Pvt. Ltd. re-exported the imported goods, under Section 74 of the Customs Act, 1962. On satisfaction of the fulfilment of conditions set out under Section 74 of the Customs Act, 1962 and the Rules there under, the Assistant Commissioner of Drawback has sanctioned drawback of Rs.1,37,43,242/- (Rupees One Crore Thirty Seven Lakhs Forty Three Thousand Two Hundred Forty Two only) towards duty paid portion and Rs.31,67,671/- (Rupees Thirty One Lakhs Sixty Seven Thousand Six Hundred Seventy One only) as re-credit to the respective DEPB Licenses. The said Order has been challenged by the Department before Commissioner Appeal on grounds that the impugned order in original was passed without taking note of the provisions of Board Circular No.45/2011 dated 13.10.2011 pertaining to the re-export of goods imported under reward schemes and DEPB. The challenge was limited to the re-credit of DEPB Licenses. Board Circular, among other things, prescribes a time limit of six months for re-export from the date of import in respect of all reward schemes. Commissioner (Appeals) has allowed the appeal by setting aside the Order-in-Original for non compliance of the aforementioned Board Circular. Aggrieved by the said Order in Appeal, party filed the instant Revision Application.

3. Personal Hearing was held on 27.09.2018. Shri.Srinidhi Ganeshan and Shri. Nitin Kadam appeared on behalf of the applicant and reiterated the submissions filed with revision application along with case laws, pleading

for allowing the Revision Application. None appeared on behalf of the Department.

4. The revision application is filed on 28.04.2016 with a delay of 44 days. On perusal of the application for condonation of delay and on hearing the case, Government, in the interest of justice, condone the delay of 44 days in filing Revision Application and proceed to decide the case on merits.

5. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal, case laws and submissions.

6. The limited issue for consideration and decision is whether the re-export of goods, after a period of six months, under Section 74 of the Customs Act, 1962, are eligible for re-credit of duty to the respective DEPB licenses.

7. It is evident from the records that there is no dispute on the identity of re-exported goods nor the eligibility of the said goods. The goods imported under bills of entry no. 181 dated 30.05.2012 were re-exported against Shipping Bill No. 3000002499 dated 18.07.2013 and the identity of the said goods was established with the import documents and fulfilled all the conditions of Section 74 of the Customs Act, 1962 and the rules made there under. The only contention is that goods should have been re-exported within six months from the date of import as per the provisions of Board Circular 45/2011-customs dated 13.10.2011.The relevant paragraph of the Board Circular, interalia, clarifies that in respect of reward schemes specified under Chapter 3 of FTP and DEPB scheme, re-export of imported goods, which are found to be defective/unfit and/or for re-export on account of any other reason, may be permitted by the Commissioner of Customs, subject to the condition that:

i) re-export of goods shall take place from the same port of from where the goods were imported;

ii) the goods are re-exported within 6 months from the date of import;

iii) the Asstt./Dy. Commissioner of Customs is satisfied about the identity of the goods;

iv) the goods are not put into use after import;

8. The applicants have submitted that the goods were exported within the time limit specified under Section 74 of the Customs Act, 1962 and the duty debit under DEPB License shall be considered as duty payment and have further argued that Board Circular is procedural in nature and therefore, cannot take away substantive benefits available in law and further placed reliance on the Hon'ble Supreme Court order in case of Rochi Ram & Sons {2008(226) ELT 20(SC)}.

9. The Governments finds merit in the appellant arguments that substantive benefits cannot be denied on grounds of procedural lapse and in the instant case the re-export was in compliance of the provisions of Section 74 and rules made there under and therefore, the department cannot deny re-credit of DEPB licenses to the extent of duties debited against the re-export of imported goods, as no drawback is sanctioned against the said re-export.

10. The Government further observes that the ratio held by the Hon'ble Supreme Court in case of Rochi Ram & Sons {2008(226) ELT 20(SC)} is squarely applicable to the instant case as the facts involved are similar in nature. The observations of the Hon'ble Apex Court, in the said case, are reproduced below:

"Once the imported parts which were found to be defective/unusable are re-exported, assessee became entitled to either refund of duty, if paid in cash or adjustment of the duty if paid by way of debit in DEPB book either by reversing the entry or by issuing a fresh DEPB book, as provided in the public notice dated 30.06.2000. Public Notice dated 30.06.2000 is procedural in nature and it does not make any substantive changes in the policy. Procedural laws cannot be equated with substantive laws. Substantive laws are generally not retrospective unless specified to the contrary by the Legislature. Insofar as procedural laws are generally

concerned, they may be retrospective unless shown to the contrary. Otherwise also, once the imported parts which were found to be defective are re-exported, assessee under the policy itself without reference to the public notice would be entitled for adjustment of the duty paid by way of adjustment in DPEB. The revenue cannot be permitted to take the stand that it would not refund the duty as it was not paid in cash or deny the adjustment in DEPB book after the goods have been re-exported."

11. The said ratio of the Hon'ble Supreme Court was made applicable in respect of M/s. J.K. Industries Vs Commissioner of Customs (Import), Nhava Sheva by the CESTAT, where the facts involved are identical in nature. The Government opines that there are catena of judgments towards the judicial principle that the substantive benefits cannot be denied on procedural lapses and in the instant case, since the re-exported goods complies with the provisions of re-export under Section 74 of the Customs Act, 1962 and the benefit of re-credit to the respective DEPB Licenses cannot be denied on grounds of time limit prescribed under the Board Circular.

12. In view of the above discussion and findings, the Government set aside the Order-In-Appeal No. 107 (Drawback)/2015 9JNCH)- Appeal-I dated 18.11.2015 passed by Commissioner of Customs (Appeals), JNCH, Nhava Sheva and the revision application is allowed.

13. Revision application is allowed on above terms.

14. So ordered.

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No.701/2018-CUS (WZ) /ASRA/Mumbai DATED 28.09.2018

To,
M/s. Mercedez Benz India Pvt Ltd.
MIDC Chakan Phase-III, Chakan Indl. Area,
Kuruli & Nighonje, Chakan, Pune-410 501.

ATTESTED

12/10/18

S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of Customs, (Export), JNCH, Nhava Sheva, Tal-Uran.
2. The Commissioner of Customs (Appeals)-II, JNCH, Nhava Sheva, Zone-II.
3. Assistant Commissioner of Customs, Drawback Section, JNCH, Nhava Sheva, Tal-Uran.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.