

F. No. 373/36/SZ/DBK/2017-R.A.  
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**SPEED POST**



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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue 13/01/23

Order No. 07-10/23-Cus dated 13-01-2023 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

SUBJECT : Revision Applications, filed under Section 129DD of the Customs Act, 1962 against the Orders-in-Appeal Nos. 151/2016, 152/2016, 153/2016 & 154/2016 all dated 26.10.2016, passed by Commissioner of Customs (Appeals), Cochin.

APPLICANT : M/s Mondelez India Foods Pvt. Ltd., Mumbai.

RESPONDENT : The Commissioner of Customs, Cochin.

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## **ORDER**

Four Revision Applications, bearing Nos. 373/36,52,53 & 54/SZ/DBK/2017-RA dated 22.03.2017 & 21.04.2017, have been filed by M/s Mondelez India Foods Pvt. Ltd., Mumbai (hereinafter referred to as the Applicant) against four separate Orders-in-Appeal Nos. 151/2016, 152/2016, 153/2016 & 154/2016 all dated 26.10.2016, passed by the Commissioner of Customs (Appeals), Cochin. The Commissioner (Appeals) has, vide the impugned Orders-in-Appeal, upheld the Orders-in-Original passed by the Assistant Commissioner of Customs (Drawback), Customs House, Cochin whereby the drawback claims filed by the Applicants herein, under Section 74 of the Customs Act, 1962, were rejected.

2. Briefly stated, the Applicants herein had imported 1900 metric tonnes of 'Fermented and Dried Processed Sumatra Cocoa Beans' at Cochin Port in four separate consignments. The goods imported were subjected to tests by the Authorised Officer, Foods Safety & Standard Authority of India (FSSAI), who certified that the imported goods did not conform to the standards prescribed under the FSSAI Act and Rules made thereunder. The Applicants herein challenged the action of the Authorised Officer, FSSAI before the Hon'ble Kerala High Court, which vide Order dated 03.12.2014 directed the Commissioner of Customs to release the goods on the condition that the Applicants herein shall not use the Cocoa Beans for consumption without further orders of the Court. Vide another order dated 11.12.2014, the Hon'ble Court directed the Authorised Officer, FSSAI to analyse the samples by the Bureau of Indian Standards. In the judgment dated 04.02.2015, in Writ Appeal (WA) No. 1317/2014, the Division Bench of the Hon'ble High Court of Kerala directed the Authorised Officer, FSSAI to examine the imported goods at their place of storage, to conduct required tests and to take steps as necessary if the goods were unfit for human consumption. In compliance with the said judgment dated 04.02.2015, samples were drawn and in his report dated 24.04.2015, the said Authorized Officer certified that the samples did not conform to the requirements and directed the Applicants herein to recall the consignments. In the meantime, proceedings under the Customs Act were also initiated, vide show cause notices dated 20.11.2014 and 06.05.2015, seeking confiscation of the imported goods under Section 111 of the Customs Act, 1962 and proposing penal action under Section 112 of the Act *ibid*. These proceedings were finalised vide Order-in-Original No. COC-CUSTOM-000-COM-09-15-2016 dated 08.07.2015, passed by the Commissioner of Customs, Cochin. The Commissioner of Customs ordered for the confiscation of the imported goods under Section 111 (d) but gave an option to the Applicants herein to redeem the goods solely for the purpose of re-export on payment of fine of Rs. 15,00,000/-, under Section 125 of the Act *ibid*. A penalty of Rs. 5,00,000/- was also imposed under Section 112. Thereafter, the goods were redeemed by the Applicants herein and re-exported vide 04 separate shipping bills under

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claim of drawback, under Section 74 ibid. However, the drawback claims were rejected by the original authority on the grounds that the goods were in bulk packing and marks and numbers were not available. Therefore, their identity could not be established as required under Section 74 ibid. The appeals filed by the Applicants herein have been rejected by the Commissioner (Appeals). The RA wise details are tabulated below:

S. No.	RA No.	Bill of Entry No. & date	Description of goods & Wt.	Custom Duties paid (Rs.)	Shipping Bill No. & date	OIO No. & date	OIA No.& date
1	373/36/DBK/2017-RA	5566045 Dt.21.05.2014	Fermented and Dried Processed Sumatra Cocoa Beans (500 MTs)	39,98,724/-	191 Dt.30.07.2015	13/2016 Dt.19.02.2016	151/2016 Dt.26.10.2016
2	373/52/DBK/2017-RA	6730833 Dt.11.09.2014	Fermented and Dried Processed Sumatra Cocoa Beans (800 MTs)	68,12,731/-	190 Dt.30.07.2015	14/2016 Dt.19.02.2016	152/2016 Dt.26.10.2016
3	373/53/DBK/2017-RA	5560959 Dt.21.05.2014	Fermented and Dried Processed Sumatra Cocoa Beans (500 MTs)	39,98,724/-	188 Dt.30.07.2015	15/2016 Dt.19.02.2016	153/2016 Dt.26.10.2016
4	373/54/DBK/2017-RA	6730932 Dt.11.09.2014	Fermented and Dried Processed Sumatra Cocoa Beans (100 MTs)	8,01,705/-	189 Dt.30.07.2015	18/2016 Dt.11.05.2016	154/2016 Dt.26.10.2016

3. The revision applications have been filed, mainly, on the grounds that the Cocoa Beans imported were not allowed to be used for human consumption and, hence, re-exported; that, therefore, drawback claims should not be denied in absence of identity of goods as these goods were never consumed; that the genuine reasons were provided to Customs for not producing marks and numbers; that drawback claims are not contrary to the provisions of Section 74 since sufficient evidence has been provided for identification of goods; and, that, therefore, the impugned Orders-in-Appeal may be set aside and drawback may be allowed. The Respondent department has filed comments, vide letters dated 04.07.2017 and 15.06.2017.

4. Personal hearing was held, in virtual mode, on 09.01.2023. Ms. Srinidhi Ganesan, Advocate made submissions on behalf of the Applicants and requested that compilation emailed on 09.01.2023 may be taken on record. She highlighted that the goods in question were ordered to be confiscated by the Commissioner but allowed to be redeemed for re-export. They have accordingly re-exported the goods on payment of RF after taking permission of the department, which was granted in terms of the Commissioner's order. Hence, it is incorrect of the department to allege that the goods

could not be correlated to the originally imported goods. Sh. Jaison George, Superintendent submitted that the goods were stored in the Party's warehouse with no distinguishing marks & nos. Hence, the identity of the goods could not be established. At the request of Ms. Srinidhi Ganesh, time upto 11.01.2023 was granted to make additional submissions. Additional submissions have been received by email on 11.01.2023.

5. The condonation of delay applications have been filed on the grounds that the Applicants herein had earlier challenged the subject Orders-in-Appeal before CESTAT, which have been rejected by the Tribunal's Bengaluru Bench, vide Final Order No. 20271/2017 dated 17.02.2017 and Final Order No. 20407-20409/2017 dated 22.02.2017, as non-maintainable. Delay caused due to seeking remedy in wrong forum is condoned.

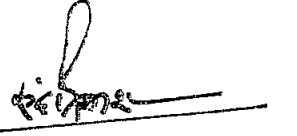
6.1 Government has carefully examined the matter. It is evident from the records that subject goods when imported were not found fit for human consumption in accordance with FSSAI Act and Rules made thereunder. These were, therefore, initially not released from Customs control. However, after the intervention of the Hon'ble High Court of Kerala and pursuant to its Order dated 03.12.2014 the goods were released but with the condition that they shall not be used for human consumption without further orders of the Court. The goods, thereafter, remained at the premises of the Applicant herein and were ultimately confiscated vide the Order-in-Original dated 08.07.2015, passed by the Commissioner of Customs, Cochin. These were redeemed upon payment of redemption fine in terms of Order of the Commissioner of Customs and re-exported. It is observed that before re-export, the Applicants herein sought permission from the Deputy Commissioner of Customs, vide their letter dated 21.07.2015, for re-export. The permission for re-export was sought after bringing out the chronology of case and after the redemption fine and penalty imposed was paid on 23.07.2015. It is evident from the endorsements made by the departmental officers on the face of the letter dated 21.7.2015 of the Applicants herein that the re-export was permitted in terms of Commissioner's Order obtained in File No. S25/143/2013 I & B-Cus. In the conspectus of these facts, it is evident that the goods which were imported in May & September, 2014 remained in Customs control till around 03.12.2014 and, thereafter, till their re-export based on the recall notice of the Authorized Officer, FSSAI and the Order-in-Original dated 08.07.2015, passed by the Commissioner of Customs, Cochin, these remained under injunction of the Hon'ble High Court at the premises of the Applicant till these were brought to the Port for re-export which was permitted after obtaining Orders of the Commissioner. Thus, the entire chain of events, custody and documents clearly establish that it is the imported goods which were re-exported. This is also confirmed from the department's own action of allowing re-export on the basis of permission sought by the Applicants herein, vide letter dated 21.07.2015. However, strangely, at the stage of re-export, under claim of drawback under Section 74, the officers concerned took a view that the identity of the goods could not be established as the goods which were imported earlier, as these were in bulk packing and there were no marks and numbers. The Government finds that the department has, unfortunately, taken inconsistent and self contradictory stands. On one hand, it has permitted the re-export of the goods, in terms of the Order dated 08.07.2015 of the Commissioner and the recall notice dated 24.04.2015 of the Authorized Officers, FSSAI, thereby confirming that the goods were the

same as those which were imported, but for the purposes of Section 74, it has taken a stand that the identity of the goods could not be established as there were no marks and numbers. If the later stand was to be accepted and goods were not identifiable as those imported and confiscated, the redemption and re-export could not have been allowed.

6.2 It would also be relevant to notice here that the Board has, vide Circular No. 46/2011-Cus dated 20.10.2011, clarified that the identification of goods may require examination and verification of various parameters, including but not limited to physical properties, weight, marks and numbers, test reports, if any, documentary evidence vis-a-vis import documents etc. Therefore, it was not open to the original authority to hold that identity was not established solely because marks and nos. were not available. He should have examined all evidences, including documentary evidences and thereafter taken a view. As already found hereinabove, the chain of events, custody and documentary evidences clearly establish that it is the imported goods which were re-exported in the present case.

6.3 In view of the above, the impugned orders denying the claim of drawback under Section 74, on the grounds that the identity of the goods is not established, cannot be sustained.

7. The Revision Applications are, accordingly, allowed with consequential relief.



(Sandeep Prakash)

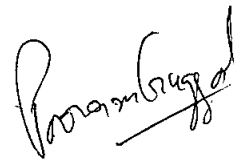
Additional Secretary to the Government of India

M/s Mondelez India Foods Pvt. Ltd.,  
Unit 2001, 20<sup>th</sup> Floor, Tower3  
(Wing C), Indiabulls Finance Centre,  
Mumbai-400013.

Order No. 07-10/23-Cus dated 13-01-2023

**Copy to:-**

1. The Commissioner of Customs, Custom House, Willingdon Island, Cochin-682009.
2. The Commissioner Customs (Appeals), Custom House, Cochin-9.
3. Sh. Lakshmikumaran & Sh. Sridharan, Advocates, No. 5, Link Road Jangpura Extension, New Delhi-110014.
4. P.S to A.S (RA)
5. Guard File
6. Spare Copy
7. Notice Board



ATTESTED

पूनम गुग्गल / Poonam Guggal  
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वित्त मंत्रालय / Ministry of Finance  
राजस्व विभाग / Department of Revenue  
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