

**SPEED POST**



F. No. 380/40-45/DBK/SZ/2020-RA  
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. 12/5/23

Order No. 182-187/23-Cus dated 12-5-2023 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 Seaport.Cus.II Nos. 864-869/2020 dated 14.07.2020, passed by Commissioner of Customs (Appeals-I), Chennai.

APPLICANT : The Commissioner of Customs, Chennai-IV (Export), Chennai.

RESPONDENT : M/s Teleflex Medical Pvt. Ltd., Chennai.

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**ORDER**

Six Revision Applications, bearing Nos. 380/40-45-DBK/SZ/2020-RA all dated 19.10.2020, have been filed by the Commissioner of Customs, Chennai-IV (hereinafter referred to as the Applicant) against the Orders-in-Appeal Seaport.Cus.II Nos. 864-869/2020 dated 14.07.2020, passed by the Commissioner of Customs (Appeals-I), Chennai, to the extent of grant of interest for delay in payment of drawback in respect of the CVD etc., from the date of expiry of one month from filing of the drawback claims, as per Section 75A of the Customs Act, 1962.

2. Briefly stated, M/s Teleflex Medical Pvt. Ltd., Chennai (hereinafter referred to as the Respondents) imported 06 consignments of medical devices falling under CTH 90183990, which required "No Objection Certificate" (NOC) from the Additional Drug Controller (ADC). As the Respondents could not obtain the ADC's NOC, in all 06 cases of such imports, they decided to re-export the goods from the Customs area itself. Accordingly, vide separate shipping bills the imported medical devices were re-exported in the month of February 2017, under claim of drawback in terms of Section 74 of the Act *ibid*. The original authority, i.e., the Assistant Commissioner of Customs (Drawback), Chennai-IV sanctioned drawback corresponding to 98% of the basic customs duty (BCD) but rejected the claims in respect of CVD and additional duty of customs. The claims in respect of CVD etc. were denied on the grounds that the Respondents had not submitted certificate for non-avilment/reversal of CENVAT credit from the jurisdictional Central Excise/IGST Authorities. In this regard, the original authority has relied upon the instructions contained in Board's Circular No. 21/2017-Customs dated 30.06.2017. The details of the Orders made by the original authority are as under:

O-In-O No. & Date	B. E. No. & Date	CVD Paid	Additional duty paid	Drawback sanctioned (98% of BCD)
72064/2019 31.10.2019	7102200 14.10.2016	2478637		1776258
72069/2019 31.10.2019	6886593 27.09.2016	518461	367724	606048
72072/2019 31.10.2019	6967629 04.10.2016	191255	135650	234799
72074/2019 31.10.2019	7021238 09.10.2016	1054679	748043	1232852
72073/2019 31.10.2019	6992235 05.10.2016	429271	319627	528121
72071/2019 31.10.2019	6886632 27.09.2016	399112	286634	472719

The Commissioner (Appeals), in appeals filed by the Respondents herein, held that the Deficiency Memo issued by the department for producing the certificate in respect of non-availment/reversal of CVD etc. was illegal and arbitrary. The Commissioner (Appeals) also held that the sanction of claims was inordinately delayed. It was, accordingly, ordered that the drawback claims to the extent of 98% of CVD and additional duty of customs may be sanctioned and interest for delay in payment may be paid from the date of expiry of one month from the date of filing of the subject claims.

3. The revision applications have been filed, mainly, on the grounds that the interest was not payable in as much as while the claims for drawback were filed on 08.03.2017, Deficiency Memo calling for certain documents was issued on 17.03.2017, which documents were submitted only on 10.10.2019 and, hence, a valid and complete claim was filed only on 10.10.2019; that the Commissioner (Appeals)'s findings that the Deficiency Memo was illegal and arbitrary is not correct in as much as it called for pertinent information; that there was no inordinately delay in sanction of drawback as after the issue of Deficiency Memo on 17.03.2017, the exporter was given an opportunity to appear for personal hearing on 01.05.2017 but the exporter, i.e., Respondent did not attend; that, therefore, another opportunity for personal hearing was given on 04.10.2019 which was attended by the Customs Broker, who subsequently submitted complete information, vide letter dated 10.10.2019; that the case laws relied upon by the Commissioner (Appeals) did not apply to be present case; and that, therefore, the interest liability on CVD amount does not arise.

4. Personal Hearings in the matter were fixed on 21.04.2023, 03.05.2023 & 12.05.2023. In the personal hearing held, in virtual mode, on 12.05.2023, Sh. R.S. Sundarvadanam, AC appeared for the Applicant department and reiterated the contents of the RA. No one appeared for the Respondent on any of the dates fixed for hearing nor any request for adjournment has been received. Since sufficient opportunities have been provided to the Respondent, the matter is taken up for final disposal.

5.1 The Government has examined the matter carefully. As already brought out above, the goods, i.e., medical devices imported by the Respondents herein remained within Customs area, even though respective Bills of Entry had been assessed and duty had been paid. This was due to the fact that ADC's NOC was not forthcoming. Subsequently, the Respondents re-exported the goods in February 2017 and claimed drawback under Section 74 in respect of duties paid. After the claims for drawback were filed Deficiency Memo dated 17.03.2017 was issued by the original authority, inter-alia, requiring them to produce the following: *"1. Please produce proper certificate from Central excise Authorities for Non-availment of CENVAT credit or reversal of the same/or a certificate from your statutory auditor to the effect that CENVAT credit has not been availed or that the same has been reversed"* and the duplicate copy of Bills of Entry. It is the contention of the department that the Respondents did not reply to the Deficiency Memo and it is only on 10.10.2019 that

the Respondents submitted the requisite documents, including CA's Certificate towards non-availment of CENVAT credit. Therefore, the complete and valid drawback claims shall be deemed to be filed only on 10.10.2019. Since the Assistant Commissioner passed an order on 31.10.2019, which is within 21 days of filing the valid claim, there was no delay in processing of the claim and, hence, interest is not payable. Per contra, the Respondents had submitted before the Commissioner (Appeals) that the goods were never cleared from the Customs area and did not reach their premises. Hence, the question of availing the CENVAT credit did not arise. It has also been brought out that, though Superintendent's certificate regarding non-availment was not submitted, the CA's certificate was indeed submitted.

5.2 The Government observes that, as per Rule 3(1) of the CENVAT Credit Rules, 2004, the CENVAT credit can be availed in respect of any input or capital goods received in the factory of manufacture of final product or premises of service provider. Receipt of goods in the factory/premises is a condition for availment of CENVAT credit, as per Rule 4(1) of the CENVAT Credit Rules, 2004, as well. Therefore, there is merit in the contention of the Applicants that the CENVAT credit could not have been availed as the goods throughout remained within customs area and were never taken to their registered premises. However, as per Rule 9(1) (c) of the Rules, *ibid*, the CENVAT Credit can be availed on the strength of "a bill of entry". In the present case, the bills of entry were in possession of the Respondents and the duplicate copies of the relevant bills of entry (i.e., the Cenvatable documents) were not submitted. Hence, the issue of DM to verify the non-availment/reversal of CENVAT credit cannot be held to be without any basis. Further, it is not denied that the Respondents did not immediately reply to the DM and it is only on 10.10.2019 that they submitted the requisite documents. It was open to the Respondents to reply to DM and bring out the position with reference to the Rules 3(1) and 4(1) *ibid*, which was not done. Thus, there is no doubt that the claim complete with all documents was filed on 10.10.2019, as correctly contended by the Applicant department.

5.3 Further, the procedure in respect of drawback claims, under Section 74 *ibid*, is prescribed vide Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995. As per Rule 5(4) (a), any claim which is incomplete in any material particulars/documents shall not be accepted for the purposes of Section 75A and such claim shall be returned to the claimant with the DM within 15 days of submission and shall be deemed not to have been filed. DM was issued by the department, in the present case, within 15 days. Further, as per clause (b) of Rule 5(4), ~~where~~ exporter complies with the requirements specified in DM within 30 days of receipt, the same shall be treated as a claim filed under sub-rule (1). Therefore, in terms of Rule 5(4) *ibid*, for the purposes of Section 75A, the claim is to be treated to have been filed on 10.10.2019. As such it has to be held that the interest is payable on expiry of one month from 10.10.2019.

6. In view of the above, the Government holds that the interest on drawback allowed on CVD etc. portion, in terms of the impugned Orders-in-Appeal, shall be payable w.e.f. the expiry of period of one month from 10.10.2019. The revision applications are disposed of in the aforesaid terms and the impugned Orders-in-Appeal are modified accordingly.

  
(Sandeep Prakash)

Additional Secretary to the Government of India

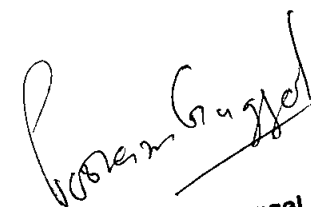
The Commissioner of Customs,  
Chennai-IV, (Export) Customs  
House, 60, Rajaji Salai,  
Chennai-600001.

Order No. 182-187/23-Cus dated 12-5-2023

**Copy to:-**

1. M/s. Teleflex Medical Pvt. Ltd., Old No. 10, No. 19, 1<sup>st</sup> & Ground Floor, Harington Road, Chennai-600031.
2. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Customs House, Chennai-600001.
3. PPS to AS (RA)
4. Guard File
5. ✓ Spare Copy
6. Notice Board

ATTESTED

  
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