

F. No. 380/56/DBK/2018-RA
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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
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue..17/02/23

Order No. 65-67/23-Cus dated 17-02-2023 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.107/2018 dated 07.03.2018, 135/2018 dated 19.03.2018 & 134/2018 dated 19.03.2018, passed by the Commissioner of Customs (Appeals), Bengaluru.

APPLICANT: The Pr. Commissioner of Customs, Air Cargo Complex, Bengaluru.

RESPONDENT : M/s Keysight Technologies India Pvt. Ltd., Bengaluru.

ORDER

Three Revision Applications, bearing Nos. 380/56/DBK/2018-RA, 380/57/DBK/2018-RA & 380/58/DBK/2018-RA all dated 29.06.2018 have been filed by the Pr. Commissioner of Customs, Airport & ACC, Bengaluru (hereinafter referred to as the Applicant) against the Orders-in-Appeal Nos. 107/2018 dated 07.03.2018, 135/2018 & 134/2018, both dated 19.03.2018, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals), vide the above mentioned Orders-in-Appeal, has allowed the appeals of M/s Keysight Technologies India Pvt. Ltd., Bengaluru (herein after referred to as the Respondent), against the Orders-in-Original Nos. 1054/2016, 1055/2016 both dated 30.09.2016 & No. 1060/2016 dated 05.10.2016, passed by the Assistant Commissioner of Customs, Air Cargo Complex, Bengaluru.

2. Brief facts of the case are that the Respondent had imported Analog & Vector Signal Generator, on payment of applicable duties, with option for demonstration and return purpose. The goods are stated to have been, subsequently, exported to Malaysia, vide Shipping Bill Nos. 4542 dated 11.12.2014, 4543 dated 11.12.2014 and 4865 dated 06.03.2015, under claim of drawback in terms of Section 74 of the Customs Act, 1962. The Original authority rejected the drawback claims, vide the above mentioned Orders-in-Original dated 30.09.2016, 30.09.2016 and 05.10.2016, on the grounds that the claims were filed beyond the permissible time limit of one year, including permissible extension period, under Rule 5 (1) of Re-Export of Imported goods (Drawback of Customs Duties) Rules, 1995. Aggrieved, the Applicant filed appeals before the Commissioner (Appeals), which were allowed.

3. The revision applications have been filed, mainly, on the grounds that the drawback claims were filed much beyond the permissible limit of one year from the date of Let Export Order; that Commissioner (Appeals) has no power to relax any provisions of the Rules, as the power to relax the provisions of the Rules, is vested in the Central Government, in terms of Rule 7A of the aforesaid Rules. .

4. Personal hearing, in virtual mode, was held on 17.02.2023. Ms. Rachna Sharma, Deputy Commissioner appeared for the Applicant department and reiterated the contents of the revision applications. Sh. Vimal Pruthi, Advocate, Sh. Nitish Hedge and Sh. K. Dwarkanath appeared for the Respondent. Sh. Vimal Pruthi, Advocate submitted that the filing of drawback claims was delayed as the NOC from Service Tax department regarding non availment of CENVAT credit on CVD component of duty paid was not received in time. He stated that as the filing was delayed due to reasons beyond their control, the claims could not have been rejected on the grounds of limitation. He also stated that he will file additional submissions by email. The Respondent, subsequently, filed copies of written reply dated 24.01.2019, by email.

5.1 Government has carefully examined the matter. It is observed that, in terms of Rule 5 of the Re-export of Imported goods (Drawback of Customs Duties) Rules, 1995, a claim for drawback shall be filed within a period of 03 months from the date on which an order permitting clearance and loading of goods for exportation under Section 51 , i.e. the Let Export Order (LEO), is made by proper officer of Customs.

Further the Assistant/Deputy Commissioner of Customs, as the case may be, may extend the aforesaid period of three months by a period of three months and the Commissioner of Customs or Principal Commissioner of Customs may further extend the period by a period of six months. Thus, a drawback claim, under Section 74 *ibid*, can be filed within a maximum period 01 year, including the extended period, if any. Government, further, observes that in respect of revision application No. 380/56/DBK/2018-RA and No. 380/57/DBK/2018-RA the LEO was made on 12.12.2014 whereas the claims were filed, before the proper officer, only on 23.05.2016, in both the cases. Further, in respect of revision application No. 380/58/DBK/2018-RA, the LEO was made on 07.03.2015 whereas the claim was filed, before the proper officer, only on 18.04.2016. Thus, in all the three cases, the drawback claims were filed much beyond the normal period of limitation of 03 months and also beyond the total condonable period of 09 months. Applications for extension of time period before the Commissioner of Customs to condone the delay have been filed on 22.04.2016 in respect of revision application No. 380/56/DBK/2018-RA and No. 380/57/DBK/2018-RA and on 29.10.2015 in respect of revision application No. 380/58/DBK/2018-RA. Thus, it is evident that the applications for condonation of delay also have been filed beyond the period that could have been extended by the appropriate authorities.

5.2 Commissioner (Appeals) in the impugned OIA has held that the delay in filing the drawback claims was only because of the non-availability of NOC from the Service Tax department which is only a technical infraction and should not come in the way to debar the Respondent from substantive benefits. Government observes

that the time period as provided under the Drawback Rules, 1995, *ibid*, for filing drawback claims is mandatory and it is obligatory on the part of the claimant to file the drawback claims within the stipulated time period or such extended period as may be permitted by the competent authority. Government, further, observes that NOC from Service Tax department is not a document prescribed to be filed alongwith a claim for drawback under Section 74 *ibid*. If during the processing of claim, the proper officer would have raised such a requirement, it is only at that stage that the burden of providing the NOC would have come onto the Respondent. In other words, there was no need for the Respondent to delay filing the claims, in order to fulfil an anticipated requirement.

5.3 The Applicant department has also contended that in terms of Rule 7A *ibid*, the cases where the claimant/exporter fails to comply with any of the provisions made in the said Rules, the powers to relax provisions thereof, lies with the Central Government. Government observes that Rule 7A empowers the Central Government to relax any of the provisions of the rules provided it is satisfied that the exporter or his authorized agent has failed to comply with any of the provisions of these rules, for the reasons which were beyond their control. It is further prescribed that the Central Government shall exercise these powers, after considering the representation, if any, made by the exporter, and for the reasons to be recorded in writing. Thus, in the present case, it was for the Respondent to take recourse to the provisions of Rule 7A *ibid*, in case, for reasons beyond their control, they were unable to comply with the limitations prescribed under Rule 5 *ibid* and it was thereafter entirely within the purview of the Central Government to exercise the

powers vested in it under the said Rule 7A. There is no doubt that as a statutory authority, the Commissioner (Appeals) can exercise only those powers which are vested in him. In the present case, the Commissioner (Appeals) has by extending relaxation on the grounds of reasons allegedly beyond the control of the Respondent, exercised the powers vested in Central government, which is not permissible in law. To put it differently, in terms of Rule 7A, the Central Government is the authority competent to assess whether the exporter had been unable to comply with any of the provisions of any rule, and thereafter, for the reasons to be recorded in writing, exempt the exporter from the provisions of such rule. Thus, by holding that the filing for the claim was delayed for reasons beyond the control of the exporter and allowing relief on this basis, the Commissioner (Appeals) has stepped into the shoes of the Central Government.

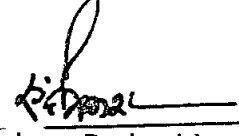
5:4 The ratio of the decision of the Hon'ble Supreme Court, in the case of Tullow India Operations Ltd. {2005(189)ELT 401 (SC)}, is not applicable in the present case, as the Rule 7A itself provides for addressing the eventuality of the delay caused for the reasons beyond the control of the claimant. Further, in the case of Tullow India the party could not claim exemption at the time of import as the Essentiality Certificate, which was mandatory to claim exemption, was not issued in time. In the present case, as already brought out, the delay is said to have been caused due to delay in issue of NOC by Service Tax department, which is not a prescribed document.

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6. In view of the above, the revision applications are allowed and the impugned Orders-in-Appeal are set aside.



(Sandeep Prakash)

Additional Secretary to the Government of India

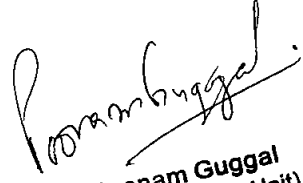
The Commissioner of Customs,
Airport & Air Cargo Complex,
Air India Sats, Air Freight Terminal,
Kempegowda,
Bengaluru-560300.

Order No. 65-67/23-Cus dated/7-2-2023

Copy to:-

1. M/s Keysight Technologies India Pvt. Ltd., The Millenia, Tower "D", 2nd Floor, No. 1 & 2, Murphy Road, Ulsoor, Bengaluru-560008.
2. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
3. P.S. To A.S (RA)
4. Guard File
5. Spare Copy
6. Notice Board.

ATTESTED



पूनम गुग्गल / Poonam Guggal
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New Delhi-110002

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ಇದರಲ್ಲಿ ಉಲ್ಲೇಖಿಸಿದ
ವಿಷಯಗಳನ್ನು (R.A.)
ಪರಿಶೀಲಿಸಿ ಮತ್ತು
ಪರಿಶೀಲಿಸಿ ಮತ್ತು
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