

SPEED POST



F.No. 373/206/DBK/2021-RA
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..10/10/24....

Order No. 210 / 24-Cus dated 10-10-2024 of the Government of India, passed by Smt. Shubhagata Kumar, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

SUBJECT : Revision Application, filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 189-190/2021 dated 25.02.2021, passed by Commissioner of Customs (Appeals), Bengaluru.

APPLICANT : M/s Aakanksha Distributors Pvt. Ltd., Bengaluru.

RESPONDENT : Pr. Commissioner of Customs, Airport, Bengaluru.

ORDER

A Revision Application No. 373/206/DBK/2021-RA dated 21.06.2021 has been filed by M/s. Aakanksha Distributors Pvt. Ltd., Bengaluru, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 189-190/2021 dated 25.02.2021, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 628/2019 dated 29.10.2019, passed by the Additional Commissioner of Customs, BACC, Bengaluru. Vide the aforesaid Order-in-Original demand and recovery of drawback amount of Rs. 50,48,749/- out of Rs. 1,20,02,815/- under Rule 16 of the Customs, Central Excise duties & Service Tax Drawback Rules, 1995 was confirmed and amount of Rs. 33,37,051/- already paid by the applicant towards the above demand was appropriated.

2. Briefly stated, the Central Intelligence Unit (CIU), Air Cargo Complex, Bengaluru started investigation on receipt of specific intelligence that the applicant is fraudulently claiming drawback and upon the scrutiny of three shipping bills it was noticed that the mobile phones were manufactured in China. As per Section 75(1) of the Customs Act, 1962 the drawback is allowed in respect of goods of any class or description manufactured, processed or on which any operation has been carried out in India. The mobile phones were found to be manufactured in China and therefore the applicant was found to be ineligible for drawback. After a thorough investigation, it was found that the applicant was not eligible for the amount of drawback claimed to the extent of Rs. 50,48,749/- out of a demand for recovery of Rs. 1,20,02,815/-. The applicant had earlier deposited an amount of Rs. 33,37,051/- which was appropriated and a recovery of balance amount of Rs. 17,11,698/- was confirmed. The matter was decided vide the aforesaid Order-in-Original dated 29.10.2019. Aggrieved, the applicant filed appeal before the Commissioner (Appeals) which has been rejected.

3. The revision application has been filed, mainly, on the grounds that issuance of SCN after a period nearly six months from the date of seizure was without legal basis; that there is no provision in the relevant column of the shipping bills to specify any foreign country and as the goods were being exported from Bengaluru, the name Karnataka was rightly selected; that no enquiry was made from the applicant's customers that the mobile handsets exported from 01.04.2012 onwards were not Indian made; that demand based on inference that the applicant had exported foreign made goods without undertaking any processing or operation is not tenable; and that the payment of Rs. 33,37,051/- during investigation was not voluntary.

4. Personal hearing was held on 18.12.2023. Sh. Chetan Kumar appeared on behalf of the Applicant and reiterated the grounds contained in the revision application and sought one week's time to make additional submissions. Since respondents could also not attend the PH, it was refixed for 08.01.2024. However, no one appeared for the Respondent or

the applicants nor was any request for any adjournment received. Hence, it is presumed that neither party has anything further to submit in the matter.

5. The Government has examined the matter. It is observed that the main issue involved in the present case is whether the amount of drawback the applicant has been found to be ineligible for on account of them being manufactured outside of India is correct or not. In this connection, it is seen that the applicant had been exporting mobile phones of various brands One Plus Three A, Samsung, Nokia, Apple, Blackberry, HTC Desire, Google Nexus and Macbook Laptops. The investigations revealed that there was no manufacturing facility for mobile phones like One Plus Three A, Apple, Blackberry, HTC Desire, Google Nexus and Macbook Laptops in India. These goods were actually imported into India by the Authorized Representatives of the respective brands and the applicant purchased these goods from the respective dealers in India and exported them under drawback which were found ineligible as these were not Indian origin goods. As seen from the records, the applicants themselves stated that the total ineligible drawback amounted to Rs. 32,22,946/- in respect of the goods exported which were not of Indian origin. However, the applicants also claimed that Nokia Company was existing in India and manufacturing mobile phones in Chennai; that Samsung Mobiles were being manufactured in Noida and that they were eligible for the drawback for the goods exported for Nokia & Samsung brands of mobile phones during the period. The material on record is silent about the quantity and value of eligible and non-eligible drawback i.e. the segregation between imported and India made goods to take a definitive view on the eligible and ineligible drawback.

6. The Applicant has contended that the issuance of SCN after a period of nearly six months from the date of seizure goes without legal basis. In this context, the Government observes that Rule 16 of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 do not prescribe any time limit for raising a demand for ineligible drawback Rule 16 of the Drawback Rules is re-produced below:

"Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of Section 142 of the Customs Act, 1962 (52 of 1962)." Thus this contention is not tenable.

7. Another contention of the Applicant is that there is no provision in the relevant column of the shipping bills to specify any country of origin outside India; that only the name of the state can be selected; and that since the goods were being exported from Bengaluru, the name, the state of Karnataka was rightly selected. The Government observes that under the legal provisions of governing drawback, drawback is allowed for

goods which have been manufactured, processed or on which any operation has been carried out in India. Therefore, the country of origin of export goods necessarily has to be India and goods which have originated from the country other than India are ineligible for drawback. The Government further observes in this context that it is on record that the Customs House agent informed the Applicants that their claims for drawback were ineligible and despite that, they got the shipping bills filed under claim for drawback. Therefore, the government is constrained to hold that the Applicants have willfully mis-declared the country of origin in respect of the goods for which they claimed drawback and which were found to be manufactured outside India.

8. The Applicants have stated that no enquiry was made regarding place of manufacturing in respect of the exported mobile handsets. In this context, the Government observes that the CIU had verified the consignment on the basis of specific information and found the goods to be manufactured outside India. It is also on record that enquiry was made in this regard and M/s React India Pvt. Ltd., who were authorized by M/s Samsung Electronics Co. Ltd. to represent Samsung in Customs matters in India, have replied vide their letter dated 27.02.2017 informing that several model numbers were Not Found and that these were the ones found not manufactured in India. It is also on record that no IMEI numbers were available for such mobile handsets. Therefore, this contention is also found to be devoid of merit.

9. The Government observes that as per the OIO, Mr. Dharmendra Bapna, Director/Partner, submitted a letter dated 20.10.2016, to the Deputy Commissioner of Customs, Bengaluru, admitting the erroneous claim of drawback and making a voluntary payment of Rs. 25,00,000/- towards their total liability to the Government, along with an undertaking to pay the balance along with interest on final quantification of the demand stating inter-alia that:-

"In this connection we submit that we have mistakenly claimed Duty Drawback for export of mobile phones and laptops of foreign origin under Section 75 of the Customs Act, 1962. Hence we are paying an amount of Rs. 25,00,000/- as an advance towards our total liability due to the Government by a DD No. 11901 dated 20.10.2016 drawn in favour of Commissioner of Customs, Bangalore through Axis Bank Ltd. We undertake to pay the balance of liability along with interest on final quantification."

It is also on record that a further payment of Rs. 8,37,051/- was made by M/s Aakanksha Distributors towards their duty liability. The Government further notes that in his statement recorded under Section 108 of the Customs Act, 1962 on 19.10.2016, Sh. Dharmendra Bapna has inter-alia stated that the apple products were all made in China while Blackberry products which were also of foreign origin were made in Mexico/Canada; that he had purchased these products from the distributors/showrooms/local market dealing in such products and ensured that these are all products of foreign origin by seeing the outer cover of the boxes of the phones; that he was ready to pay Rs. 25 Lakhs


by way of drafts towards the initial instalment of the drawback he had wrongly claimed. Later the applicant has contended that these statements were tendered under coercion and were not voluntary. However, there is no evidence of such coercion on record; rather the applicants have deposited Rs. 33,37,051/- towards their liability and also undertaken to pay any remaining balance upon final quantification. In view of the above, the Government holds that the statements and the payment are voluntary and the contentions of coercion etc. are an afterthought.

10. It is settled position of law that a voluntary confession made before an officer of Customs can form the sole basis of conviction. The Hon'ble Supreme Court has, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}, held that a confession statement made before the Customs Officer, though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. Further, in the case of K.I. Pavunny {1997 (90) ELT 241 (SC)}, the Hon'ble Supreme Court has held that the confessional statement of an accused if found voluntary, can form the sole basis for conviction.

11. The Government notes that from the amount quantified in the SCN, i.e., Rs. 1,20,02,815/-, the adjudicating authority, after examining the data and verification reports of the CIU as well as the data furnished by the Applicants themselves has taken the same into consideration and passed a detailed order holding that the amount payable towards ineligible drawback claim was Rs. 50,48,749/- of which the Applicants had already paid Rs. 33,37,051/- which was appropriated.

12. The Government thus holds that the balance amount of Rs. 17,11,698/- from the total amount payable is recoverable from the Applicants as per law, and accordingly, upholds the order of the appellate authority.

13. In view of the above, the Revision Application is rejected.


10/10/24
(Shubhagata Kumar)

Additional Secretary to the Government of India

M/s. Aakanksha Distributors Pvt. Ltd.
No. 2606, "The Ambience", 3rd Floor
27th Main Road, 16th Cross
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Bengaluru-560102.

Order No. 210 /24-Cus dated 10-10-2024

Copy to:-

1. Pr. Commissioner of Customs, Airport & Air Cargo Complex, Air India SATS Airfreight Terminal, Kempegowda International Airport, Devanahalli, Bengaluru-560300.
2. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Domlur, Bengaluru-560071.
3. Sh. Pradyumna G.H, Advocate, BVC & Co., 1st Floor, No. 371, 2nd Floor, 8th Main, Sadavhiv Nagar, Bengaluru-560080.
4. PPS to AS (RA)
5. Guard File
6. ✓ Spare Copy
7. Notice Board

ATTESTED

Shailendra
10/10/24
(शैलेन्द्र कुमार मीना)
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi