

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 85451 of 2025

(Arising out of Order-in-Original No. CC/HB/05/2024-25 Adj(X) ACC dated 28.10.2024 passed by the Commissioner of Customs (Export), Air Cargo Complex, Mumbai.)

M/s Arete Exim

**209, 2nd Floor, Aalap-B,
Opp. Shastri Medan, Limda Chowk,
Dr. Rajendra Prasad Road,
Near Hotel Sarovar Portico,
Rajkot – 360 001**

.....Appellant

VERSUS

**Commissioner of Customs (Export),
Air Cargo Complex, Mumbai
Air Cargo Complex, Sahar,
Andheri (E), Mumbai – 400 099**

.....Respondent

APPEARANCE:

Ms. Shamita Patel, Advocate for the Appellant
Shri J.K. Jain, Joint Commissioner, Authorised Representative for the Respondent

CORAM:

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

FINAL ORDER NO. 86833/2025

Date of Hearing: 08.10.2025

Date of Decision: 24.11.2025

PER: DR. SUVENDU KUMAR PATI

Legality of the order passed by the Commissioner of Customs (Exports), Air Cargo Complex, Mumbai, as noted above, confirming denial of draw back claim and its recovery under Rule 17 of the Customs and Central Excise Drawback Rules, 2017 read with Section 75(1) of the Customs Act for an amount of ₹1,57,32,255/- alongwith its interest at the applicable rate and penalties under Section 75A(2)

of the Customs Act and penalties of ₹5.60 Cr. as well as ₹6 Cr. under Section 114(3) and 114AA of the Customs Act, 1962 with appropriation of already deposited amount and enforcement of bonds etc. solely on the ground that it was export of already activated mobile phones, during the period from May, 2019 to December 2019, is assailed before this forum.

2. Fact of the case would go to reveal that Appellant is a proprietary concern on whose shipping bill No. 9267199 dated 27.12.2019, investigation was conducted by the Officers of SIIB(X) Air Cargo Complex who noticed that activated mobile phones of Samsung brand were being exported alongwith same non-activated Redmi brand mobile phones through that consignment, which as per the SIIB, was export of mobile phones having 'taken into use' after they are manufactured that made the export ineligible for grant of drawback in view of Clause (i) of the Proviso to Rule 3(1) of the Customs and Central Excise Duties Drawback Rules, 2017. Pending determination of the issue, the shipping bills were assessed provisionally against bond and revenue deposit and ultimately show-cause notice dated 26.03.2024 was issued on the basis of clarification issued by drawback division *vide* CBIC letter No. F.No. 609/4/2020-DBK/1063 dated 25.09.2023, proposing recovery of ineligible draw back, interest, penalties etc. as noted above. Matter was adjudicated and Appellant's unsuccessful attempt before the Commissioner has brought the dispute to the present forum.

3. During course of hearing of the appeal, learned Counsel for the Appellant Ms. Shamita Patel argued that issue in this appeal is no more *res integra* in view of judgment passed by Hon'ble High Court of Delhi in the case of *AIMS Retail Services Pvt. Ltd. and Others Vs. Union of India and Others*, reported in 2025 (2) TMI 596 - Delhi High Court, by which order the said clarificatory Circular dated 25.09.2020 had been quashed with an observation that unlocking/activating of the mobile phones so as to enable the same to be used in a particular geographical territory outside India is mere 'configuration' of the product to make it usable and does not constitute "taken into use" under Proviso to Rule 3 of the Drawback Rules and therefore, nothing

survived so as to make the order passed by the Commissioner enforceable. She further has brought it to the knowledge of this Bench that the said decision of the Hon'ble Delhi High Court has attained finality upon dismissal of the SLP (CIVIL) Appeal Dairy No. 30758/2025, on dated 18.07.2025, that was preferred by the Respondent herein before the Hon'ble Supreme Court as Appellant. She also argued on the issues of delay of four years in serving show-cause notice and imposition of penalties as well as redemption fine when goods were not available for confiscation nor even liable for confiscation.

4. In response to such submission learned Authorised Representative Mr. J.K. Jain argued in support of the reasoning and rationality of the order passed by learned Commissioner and while conceding to the fact that issue had attained finality at the Hon'ble Apex Court level, he justified the initiation of proceeding even after four years since neither Rule, 17 of the Drawback Rules nor Section 75 of the Customs Act have prescribed any limitation period.

5. We have perused the case record and thoroughly gone through the relied upon decision in the case of *AIMS Retail Services Pvt. Ltd. and Others, cited supra* as referred during course of argument. We have observed that in the said judgment both the issues concerning activation/unlocking of mobile phones in India prior to their export in India if amounts to "taken to use" and the binding effect of Circular that clarified the same in the affirmative were being dealt in negating the stand of the Department on both the issues. It would be prudent to reproduce para 79 of the order passed by Hon'ble Delhi High Court in the case of *AIMS Retail Services Pvt. Ltd. and Others cited supra*, that provides adequate answer to the entire issue.

"79. In the opinion of this Court, the unlocking/activating of the mobile phones as per the procedures adopted by the Petitioners herein is mere 'Configuration' of the product to make it usable and does not constitute "taken into use" under proviso to Rule 3 of the Duty Drawback Rules. The Clarifications go beyond Section 75 of the Act and the Duty Drawback Rules since the

interpretation sought to be given by CBIC is that unlocking/activation of mobile phones constitutes "taken into use". The said interpretation which is contained in the Clarifications is not sustainable. Accordingly, the Clarifications issued by the CBIC are quashed."

The above noted observation is further fortified by way of rejection of the SLP of the Respondent-Department preferred before the Hon'ble Supreme Court with a clear observation that no good reason was found to interfere with the common impugned order passed by the Hon'ble High Court. Therefore, we have got no hesitation to say that Appellant is eligible to get and retain its Drawback on the disputed export made by it between the period from May, 2019 to December, 2019 with consequential benefits.

5.1 It is also required to be placed on record now that though investigation was initiated in respect of shipping bills dated 27.12.2019 and clarificatory Circular was issued by the CBIC way back on 25.09.2020, there is no point in issuing a show-cause notice on dated 26.03.2024 after an unreasonable delay of more than four years without any proper justification, for which also the show-cause notice is liable to be quashed. Hence the order.

THE ORDER

6. The appeal is allowed and the order passed by the Commissioner of Customs (Export), Air Cargo Complex, Mumbai *vide* Order-in-Original No. CC/HB/05/2024-25 Adj(X) ACC dated 28.10.2024 is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 24.11.2025)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)