



सीमाशुल्क अग्रिम विनिर्णय प्राधिकरण
CUSTOMS AUTHORITY FOR ADVANCE RULINGS
नवीन सीमाशुल्क भवन, बेलार्ड इस्टेट, मुंबई - ४०० ००१
NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI - 400 001
ई-मेल/E-MAIL: cus-advrulings.mum@gov.in

The 16th of June, 2022
Ruling Nos. CAAR/Mum/ARC/18/2022
in
Application No. CAAR/CUS/APPL/31/2022 - O/o Commr-CAAR-MUMBAI

Name and address of the applicant: GDPK Returnable Solutions India Private Limited, 1402, CYBER ONE, Plot No. 4 & 6, Sector-30A, Vashi, Navi Mumbai, Maharashtra - 400 703

Commissioner concerned: The Principal Commissioner of Customs, NS-III, Jawahar Lal Nehru Custom House, Nhava Sheva, Dist.- Raigad, Maharashtra- 400707

The Commissioner of Customs, Chennai II (Import), Custom House, 60 Rajaji Salai, Chennai – 600001

Present for the applicant: Shri. Vimal Upadhyay;
Shri. Himanshu Tripathi;
Shri Abhinay Kapoor;

Present for the Department: None

Ruling

M/s. GDPK Returnable Solutions India Private Limited (hereinafter referred to as the applicant) is a company incorporated under the Companies Act, 1956, having its registered office at 1402, Cyber one, Plot No. 4 & 6, Sector-30A, Vashi, Navi Mumbai, Maharashtra - 400703. GDPK is a subsidiary of Goodpack Group, headquartered in Singapore. Their IEC code is 0513047565.

2. The applicant has filed an application seeking clarification on the eligibility of laden/unladen intermediate bulk containers (IBC) imported into India to avail the exemption under the Notification No. 104/94- Cus., dated 16.03.1994 read with Circular 73/2002-Cus., dated 07.11.2002.

3. The applicant made the following submissions:

3.1. They are engaged in the business of leasing out reusable metal containers known as **IBCs** to customers and their material suppliers (packers and shippers).

3.2. The packers use the IBCs as reusable packing containers to transport goods laden in these IBCs



to their consignees. Post destuffing of the goods by the consignee/ importer, the IBCs are re-exported.

3.3. Given the nature of the operating model, the laden IBCs are imported on a temporary basis and empty IBCs are re-exported after de-stuffing of the goods.

3.4. IBCs are metal containers, made of galvanized steel and are used as a reusable packing container for import/ export of goods. They are specially designed to protect laden goods against shocks and contaminants while being transported.

3.5. The laden IBCs can be used as break bulk cargo, or can be placed within a marine container. These IBCs are reusable. In its empty form, the walls of the IBCs can be collapsed, and such IBCs can then be stacked - count of 96 in a 20 feet marine container and count of 192 in a 40 feet marine container.

3.6. They own the patent for the IBC design. They only lease out empty IBCs and never sells IBCs.

3.7. In terms of Notification No. 104/ 94-Cus dated 16.03.1994, duty exemption benefit is granted to durable containers imported on a temporary basis. The said exemption benefit is subject to fulfilment of the conditions stipulated therein, which inter alia includes re- export of such durable containers within the prescribed period of six months.

3.8. Additionally, for the purpose of claiming the benefit provided by the said notification, the importers also submit re-export bond at the time of import of the laden/ unladen IBCs. Such re-export bonds are subsequently cancelled upon furnishing of documentary evidence of export of IBCs.

3.9. Three circulars viz. 69/2002-Cus., dated 25.10.2002, 73/2002-Cus., dated 7.11.2002 and 51/2020-Cus., dated 20.11.2020 have been issued by CBIC over the years in order to elucidate the treatment of durable containers for customs purpose in the context of the said notification.

3.10. The applicant has submitted that the procedure prescribed by Circular No. 73 of 2002 continues to be valid in the context of IBCs/ reusable packing containers, and that the said procedure is an established industry practice for last twenty years. This procedure is also followed by the applicant.

3.11. In the past, the requirement of having particular identification number/ unique identifiers on durable containers (plastic trays) was introduced on a discretionary basis vide circular No. 69 of 2002. However, this requirement was dispensed with in the Circular No. 73 after representations were made by the industry highlighting the operational difficulties in implementation. The difficulties expressed by the industry continues to be relevant even today, especially in the context of durable containers such as IBCs.

3.12. The applicant submits that the circular No. 51 of 2020 aims to, (a) reiterate the category of containers eligible to claim exemption in terms of the Notification No. 104/94-Cus., and (b) provide guidance on the procedure to be followed for each category of containers. For the former purpose, the circular relies on circular Nos. 69 and 73, both of 2002. It merely clarifies and adds on to the said existing circulars.

3.13. The applicant submits that Circular No. 51 can potentially be misinterpreted to mean that a requirement to verify a particular identification number/ unique identifiers at the time of re-export of empty/ laden durable containers has been re- introduced.

3.14. In light of the above, the applicant is seeking an advance ruling on the following:

- (a) The eligibility of laden/unladen IBCs imported into India to avail the exemption under the Notification No. 104/94- Cus., read with the relevant circulars;



(b) The requirement to disclose particular identification number of the IBCs in the import/ export documentation, as perceived to be the requirement under paragraphs 5(b) and 5(d) of the Circular No. 51/2020, is not applicable to reusable packing containers in the nature of IBCs;

(c) Cancellation of re-export bond given at the time of import can be done on the basis of dimension, shape, weight, colour, numerical count of IBCs in the export documentation.

4. A personal hearing was held on 24.05.2022. S/Shri Himanshu Tiwari, Partner, KPMG; Vimal Upadhyay, Country Manager, GDPK, and Abhinay Kapoor, KPMG attended the personal hearing. The representatives of the applicant explained their advance ruling application in detail. In addition, they have submitted the ICC recommendations as well as the procedures followed by customs authorities at Singapore and US.

5. I have gone through the application and the submissions made by the applicant. No comments were received from the jurisdictional commissioner.

5.1. The applicant's main concern is with respect to the language of the Circular No. 51/2020-Cus., dated 20.11.2020 wherein the word 'Unique Identifier' is used which they perceive would be interpreted as 'Unique Identification number' by field formations.

5.2. Therefore, they want an advance ruling to clarify the scope and application of the eligibility of laden/ unladen IBCs imported into India to avail the exemption under the Notification No. 104/94-Cus., dated 16.03.1994 read with various circulars issued on this subject.

5.3. I will, therefore, begin by discussing the notifications and circulars which have been issued with respect to the import of the containers of durable nature.

5.3.1. The Notification No.104/94-Cus., dated 16.03.1994 grants exemption to import of containers of durable nature, from the whole of the duty of customs and the whole of the integrated tax leviable. The exemption is subject to the condition that such containers are re-exported within 6 months from the date of importation and that the importer executes a bond and furnishes documentary evidence to the satisfaction of the Assistant Commissioner/ Deputy Commissioner to safeguard the duty in the event of non-compliance. Three circulars viz. 69/2002-Cus., dated 25.10.2002; 73/2002-Cus., dated 7.11.2002; and 51/2020-Cus., dated 20.11.2020 have been issued by the Board over the years in order to elucidate the treatment of durable containers for customs purposes in the context of the said notification.

5.3.2. The Circular no.69/2002-Cus., dated 25.10.2002 lays down the procedure for temporary import and re-export in terms of the said notification with respect to plastic durable containers. In order to facilitate the verification of the plastic trays at the time of export, the importer was, inter alia, required to declare the particular identification number engraved on the tray, while importing the same. Additionally, the importer was required to declare the colour, dimensions and weight of the trays at the time of import. This circular recognized the fact that it is difficult to establish the identity of small containers imported in large quantities, when compared to marine containers. Unlike small containers, marine containers inter alia have a distinctive number and name of the shipping line, written on them, which ensure easy identification. Therefore, the circular devised the above approach to broadly establish the identity of durable containers at the time of re-export in compliance with the conditions stipulated in the notification.

5.3.3. The industry faced challenges in complying with the requirement of engraving particular identification number on the durable containers. Recognizing the difficulty in implementing the procedure of engraving particular identification number on the containers, the CBEC issued Circular No. 73/2002-Cus., dated 7.11.2002. The said circular dispensed with the requirement of having identification number on each container. The importers were instead asked to declare other particulars



at the time of import, viz. dimension, shape, weight and colour of the container.

5.3.4. Since the issuance of the above circular, the applicant stated to have been following the procedure laid out there under for undertaking temporary import and re-export of IBCs.

5.3.5. Subsequently, vide Circular No. 51/2020-Cus., dated 20.11.2020, the CBIC issued clarification regarding availment of exemption on temporary import of durable containers. The circular was issued by the Board on the basis of a representation received from the trade regarding the eligibility of the exemption available under Notification No.104/94-Cus., dated 16.03.1994 for durable containers which do not conform to the standard marine container dimensions, but which are intended for temporary import and eventual re-export. There was also a perceived ambiguity regarding procedural and system readiness regarding the import and re-export of such durable containers, which are not explicitly covered by the guidelines laid down.

5.3.6. A combined reading of the subject notification & the circulars issued on this subject makes it clear that containers used for packaging or transportation of goods, and capable of being used multiple times would fall in the category of 'containers of durable nature'. Further, 'durable containers' covers within its ambit "any type of reusable packaging containers such as cases, boxes, cartons, trays, etc., made up of metals or plastics". Thus, the containers that satisfy following conditions are eligible for the said duty exemption:

- (a) that are durable,
- (b) capable of being re-used multiple times and capable of being identified at the time of re-export vis-a-vis the imported containers, and
- (c) satisfy all the other stipulated conditions in the notification.

5.3.7. The Board has mandated that for durable containers which do not conform to the standard marine container dimensions, but which are intended for temporary import and eventual re-export, the procedure to be followed would be as under: -

a) *When empty containers are imported into India-The empty containers shall be required to be declared as an item in the bill of entry filed under section 46 of the Customs Act, 1962. The containers would be eligible for exemption from all the applicable customs duties as per Notification No.104/94-Cus., dated 16.03.1994, as amended, subject to fulfilment of conditions therein. However, the bond for re-export and the security if applicable shall be required to be furnished at the time of import in the Customs System. Importers are advised to register the same as continuity bond for ease of compliance.*

b) *When empty containers are moved out of India by sea or air-The empty containers shall be required to be declared as an item in the shipping bill filed under Section 50 of the Customs Act, 1962. The unique identifier for the containers would require to be verified at the time of the export by Customs.*

c) *When containers are imported laden with import cargo -In addition to the declaration of items as per the invoice, such containers shall also be required to be declared as a separate item in the bill of entry filed under section 46 of the Customs Act, 1962. While applicable duties on the imported cargo shall be required to be duly discharged as per the applicable tariff rates under the Customs Tariff Act, 1975, the containers would be eligible for duty exemption as per Notification No.104/94-Cus., dated 16.03.1994, as amended, subject to fulfilment of conditions therein. After Customs clearance, the empty container can be moved, subject to the conditions of the bond and the security if applicable.*

d) *When containers are exported with export cargo -The durable container shall be required to be filed as separate item (either in the same invoice or in different invoice as per commercial agreement) in addition to the export laden cargo under Section 50 of the Customs Act, 1962, for the goods meant for export. The stuffing of the export cargo at the airport or the exporter's premises would not be*



relevant to Customs, as long as the Unique Identifier for the container is verifiable at any time of the export by Customs. The export cargo and the declaration in the shipping bill will be subjected to assessment and examination as per instructions in the Customs Automated System.

e) Conditions of bond-A continuity re-export bond and security, if applicable at the port of import shall be required to be furnished by the importer for the durable containers that are temporarily imported. The processes involved in imports of durable containers for re-export within the stipulated period including facility of partial crediting the bond after export are available in the Customs Automated System.

5.4. The applicant is apprehensive that the word 'Unique Identifier' used in the Circular No. 51/2020-Cus., dated 20.11.2020 would be interpreted as the as 'Unique Identification Number' and the same be may be insisted upon for the clearance of the IBC in their case which till now was not the case.

5.4.1. I have gone through the subject notification and all the relevant circulars issued on that subject. I find that the circular of 2020 in no way supersedes or rescinds the earlier two circulars, which means that the procedure laid down by the earlier circulars is still in place. The Circular No. 51/2020-Cus., clearly says that it is issuing clarification regarding availment of exemption on temporary import of durable containers by heavily drawing reference from the Circular Nos. 69/2002-Cus., and 73/2002-Cus.

5.4.2. Therefore, I am unable to conclude that the Circular No. 51/2020-Cus., has any intention to insist upon a unique identification number in case of durable containers which was dispensed with vide Circular No. 73/2002-Cus. The unique identifier in case of durable container would have the same meaning as mentioned in Circular no. 73/2002-Cus., which would be arrived at on the basis of particulars such as dimension, shape, weight, colour etc. The only purpose which I find the circular intends to satisfy is to ensure that what comes in declared as "reusable containers to be re-exported", goes out, which is the very basis of the exemption extended vide the Notification No. 104/94-Cus., dated 16.03.1994.

6. Thus I answer the question of the applicant as follows: -

- (a) the laden/ unladen IBCs imported into India are eligible to avail the exemption under the Notification No. 104/94-Cus., dated 16.03.1994;
- (b) There is no requirement to declare any unique identification number of the IBCs in the import/ export documentation.
- (c) Re-export bond given at the time of import can be cancelled on the basis of dimension, shape, weight, colour, numerical count etc. of IBCs in the export documentation.


(M. R. Mohanty)

Customs Authority for Advance Rulings,
Mumbai



This copy is certified to be a true copy of the ruling and is sent to: -

1. GDPK Returnable Solutions India Private Limited, 1402, CYBER ONE, Plot No. 4 & 6, Sector-30A, Vashi, Navi Mumbai, Maharashtra -400 703. Email: legal-notification@goodpack.com
2. The Principal Commissioner of Customs, NS-III, Jawahar Lal Nehru Custom House, Nhava Sheva, Dist.- Raigad, Maharashtra- 400707 .E-mail: commr-ns3@gov.in
3. The Commissioner of Customs, Chennai II (Import), Custom House, 60 Rajaji Salai, Chennai – 600001 Email: chennai-importoffice@gov.in, commr2-cuschn@gov.in
4. The Customs Authority for Advance Rulings, 5th Floor, NDMC Building, Yashwant Place, Satya Marg, Chanakyapuri, New Delhi - 110021. Email: cus-advrulings.del@gov.in
5. The Principal Chief Commissioner of Customs, Mumbai Customs Zone-I, Ballard Estate, Mumbai - 400001. Email: ccu-cusmum1@nic.in
6. The Chief Commissioner (AR), Customs Excise & Service Tax Appellate Tribunal (CESTAT), West Block-2, Wing-2, R.K. Puram, New Delhi - 110066. Email: cdrcestat123@gmail.com, ccar.cestat-delhi@gov.in
7. The Member (Customs), Central Boards of Indirect Taxes & Customs, North Block, New Delhi-110001. Email: mem.cus-cbec@nic.in
8. The Commissioner (Legal), CBIC Offices, Legal/CX.8A, Cell, 5th floor, Hudco Vishala Building, C-Wing, Bhikaji Cama Place, R. K. Puram, New Delhi – 110066. Email: anishgupta.irs@gov.in, commr.legal-cbec@nic.in
9. The Webmaster, Central Boards of Indirect Taxes & Customs. Email: webmaster.cbec@icegate.gov.in
10. Guard file.

(Handwritten signature and date)
16/6/2022

(P. Vinitha Sekhar)

Secretary/Additional Commissioner,
Customs Authority for Advance Rulings,
Mumbai

