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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 26th May, 2025

\+ **W.P.(C) 7288/2025 & CM APPL. 32813/2025**

M/S BORA EXIM PVT LTD .....Petitioner

Through: Mr. Dayaar Singla and Mr. Rohit Gupta, Advocates.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Aditya Singla, SSC, CBIC with Mr. Ritwik Saha and Mr. Umang Mishra, Advocates.

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\+ **W.P.(C) 7289/2025 & CM APPL. 32814/2025**

M/S BORA MOBILITY LLP .....Petitioner

Through: Mr. Dayaar Singla and Mr. Rohit Gupta, Advocates.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Aditya Singla, SSC, CBIC with Mr. Ritwik Saha and Mr. Umang Mishra, Advocates.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. **(Oral)**

1. This hearing has been done through hybrid mode.

2. These are two writ petitions. The first petition being ***W.P. (C)***

7288/2025 is filed on behalf of the Petitioner-M/s Bora Exim Pvt. Ltd. under Article 226 of the Constitution of India, *inter alia* assailing the Show Cause Notice dated 16th June, 2023 issued by the Office of the Commissioner of Customs, Air Cargo Exports, New Customs House, New Delhi *(hereinafter, the 'Commissioner of Customs')* as also the clarifications dated 25th September, 2020 and 14th December, 2021 *(hereinafter, the 'clarifications')* issued by the Department of Revenue.

3. The second petition being, ***W.P.(C) 7289/2025*** is filed on behalf the Petitioner-M/s Bora Mobility LLP under Article 226 of the Constitution of India *inter alia* assailing the Show Cause Notice dated 19th June, 2023 issued by the Commissioner of Customs as also the clarifications issued by the Department of Revenue.

4. The short case of the Petitioners is that they are entitled to duty drawbacks when exporting mobile phones, which have been unlocked and accordingly they had availed of the drawbacks.

5. The said Show Cause Notices were issued to the Petitioners under Section 124 of the Customs Act, 1962 calling upon the Petitioner to appear before the Office of the Commissioner of Customs and explain as to why the goods exported are not liable for confiscation and why the drawbacks availed ought not to be repaid. Penalty is also sought to be imposed in terms of the said show cause notices.

6. The question that arises in these cases, is whether unlocking of mobile phones would result in withdrawal of duty drawback benefits to the Petitioner. This issue is no longer *res integra* and has been decided in a batch of cases, with the lead petition being, ***M/s AIMS Retail Services Private Limited v. Union of India & Ors., W.P.(C) 9461/2023***. In the said judgment dated 13th

February, 2025, the Court has held as under:

> *"72. An analysis of all the decisions discussed above, would show that in each of the cases, the product-in-question has been utilized – either for demonstration, research, exhibition, etc., in a manner so as to diminish its value. The same had utilized the capabilities of the product and did not add any additional feature or value to the product. Thus, the said decisions are in sharp contrast to the facts of the present case wherein the unlocking/activation of a mobile phone makes the product more accessible and more useful considering the purpose for which it has been manufactured i.e., facilitation of communication and optimum utilization of all the features of a mobile phone.*
>
> *73. Further, in the present case, it is seen that apart from switching on, insertion of sim card and making a call for 5 minutes, no other feature of the mobile phone is utilised for the purpose of unlocking/activating the said mobile phone. In addition, it is noted that in cases of 'air-activation' the aforesaid steps are also eliminated and the entire process is conducted without even unboxing or unsealing of the mobile phones. A mobile phone is capable of multifarious uses and applications. None of the said features or capabilities of the phone are being utilised during the process of unlocking. The unlocking/activation of the mobile phone enables the same to be used in a particular geographical territory, in this case territories outside India, and nothing more. If the mobile phone is not unlocked/activated and it is used in a different territory than the country where it was unlocked/activated, the consumer would not find it possible to use the said phone properly in the jurisdiction. Calls made by the customer would then become chargeable as international calls. Moreover, none of the apps can be used based on the territory where the customer is located. Such issues would make the product totally ineffective, expensive and non-*

functional.

74. Further, it would be pragmatic to assume that for a consumer the process of unlocking/activation of mobile phones would result in value addition over a locked/non-activated mobile phone. Thereby, allowing the unrestricted use of the said mobile phones. The process of unlocking/activation of the mobile phones, by any method, would not result in depreciation in the value of the said phones.

75. A manufacturer, in order to test the mobile phone before finally packing the product may have checked the same by activating it in a particular network in the same country of manufacture. If the phone is used in the same country where it has been manufactured, then there would be no difficulty. Whenever the customer travels abroad on a different carrier or network, international charges are collected and if the mobile phone is locked to a particular region or network then the customer would have to find alternatives to operate the said mobile phone or purchase proper plans to use the phone in a foreign territory. However, if the product is to be exported to a foreign country and enabled for usage in the local network through service providers in the said country and the phone has been not been unlocked/activated in the country of its manufacturing, then the same may prove to be an expensive proposition for the consumer in the said foreign country. Thus, before exporting a product, unlocking/activating the phone to enable it to be used in the destination country would in the opinion of this Court be mere Configuration of the phone for the concerned territory and nothing more.

<u>*76. The prevalence of multiple networks, multiple service providers across the world has also to be viewed in the context of standardisation of mobile phone*</u>

technologies where a phone manufactured in one country can be used in another country seamlessly. Considering the thousands of uses that a mobile phone can be put to, mere unlocking cannot constitute use by the Petitioners. The development of standards in the field of telecommunication which enables usage of mobile phones across countries may be rendered ineffective if such configuration is held to the detriment of the OEM or the traders/exporters. With the growth of mobile phone manufacturing/ assembling in India more and more exports would take place and the mere fact that the said products are configured for use in foreign countries cannot deprive the Petitioners from duty drawbacks under the prevalent law discussed hereinabove. Drawbacks are benefits which are given to exporters and in the case of any ambiguity such benefits should go in favour of the exporters and not the other way round. The unlocking/activation of the mobile phone merely makes the mobile phone more usable in the destination country and the same would therefore not constitute "taken into use" under proviso to Rule 3 of Duty Drawback Rules.

77. In the present batch of petitions in some of the cases, the Petitioners have challenged the respective SCNs. In some cases Order-in-Original which have been passed in respective cases have been challenged.

78. The Petitioners had sought clarifications from the CBIC qua the eligibility of duty drawbacks on export of unlocked/activated mobile phones. In response, the CBIC had issued the two clarifications dated 25th September, 2020 and 14th December, 2021. These two clarifications in effect took away the benefit available to the Petitioners under Section 75 read with the Duty Drawback Rules.

79. In the opinion of this Court, the unlocking/activating

<u>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.</u>

80. The respective impugned SCNs and the Orders-in-Original passed by the Respondents, relying on the Clarifications, which take a contrary position to the findings of this Court, are also quashed.

81. The Court has, however, not examined each of the cases as to whether duty drawbacks are liable to be granted or not to the Petitioner therein. The individual cases shall be processed by the Customs Department for drawbacks in accordance with law.

82. It is made clear that if the drawbacks are processed and granted to the respective Petitioners for the relevant period as per law, within a period of three months, no interest would be liable to be paid under Section 75A of the Act. If, however, the same is not effected within a period of three months, upon the expiry of three months interest would be liable to be paid by the Customs Department on the eligible duty drawbacks to the respective Petitioner in accordance with law.

83. The non-grant of interest for the previous period is in view of the fact that there was ambiguity as to the legal position in respect of eligibility of unlocked/activate mobile phones for grant of duty drawbacks.

> *84. These petitions are allowed in above terms. All pending applications, if any, are also disposed of."*

7. Mr. Aditya Singla, ld. Counsel for the Revenue Department submits that the said judgment is being challenged by the Department by way of a Special Leave Petition.

8. This Court in ***M/s IConnect India v. Union of India and Others (2025:DHC:1939-DB)*** while deciding on similar facts, observed as under:

> *" 11. As per the above judgement, **this Court has held that duty drawback may be claimed in respect of unlocked mobile phones being exported, as the mere act of unlocking does not constitute the phones being "taken into use" within the meaning of the applicable provisions. Given that a mobile phone is capable of being utilized in several ways, the mere unlocking thereof cannot be deemed as the Petitioners having "taken it into use."***
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> *12. **Furthermore, this Court has observed that with the expansion of mobile phone manufacturing and assembly in India, the volume of exports is expected to increase. The mere fact that the said products are configured for use in foreign jurisdictions cannot operate as a ground to deprive the Petitioners of their rightful claim to duty drawback under the prevailing legal framework. The present case also pertains to the Respondents' rejection of the Petitioner's request for duty drawback on unlocked mobile phones being exported.***
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> *13. Considering the view taken by this Court in AIMS Retail Services Private Limited (supra), even in the present case, the impugned Order-in-Order dated 11th February 2025 is set aside."*

9. In both these decisions, the Court has held that duty drawback may be claimed in respect of unlocked mobile phones being exported, as the mere act

of unlocking does not constitute the phones being *"taken into use"* within the meaning of the applicable provisions. Given that a mobile phone is capable of being utilized in several ways, the mere unlocking thereof cannot be deemed as the Petitioners having *"taken it into use."*

10. Furthermore, this Court has observed that with the expansion of mobile phone manufacturing and assembly in India, the volume of exports is expected to increase. The mere fact that the said products are configured for use in foreign jurisdictions cannot operate as a ground to deprive the Petitioners of their rightful claim to duty drawback under the prevailing legal framework. The present case also pertains to the Respondents' rejection of the Petitioner's request for duty drawback on unlocked mobile phones being exported.

11. Considering the view taken by this Court in ***AIMS Retail Services Private Limited (supra)*** as also in the case, ***M/s IConnect India v. Union of India and Ors. (supra)***, the impugned Show Cause Notices dated 16th June, 2023 and 19th June, 2023 are set aside.

12. Accordingly, the Petitioners' case for drawbacks, shall be processed by the Customs Department in accordance with law.

13. It is made clear that if the drawbacks are processed and granted to the respective Petitioners for the relevant period as per law, within a period of three months, no interest would be liable to be paid under Section 75A of the Act. If, however, the same is not effected within a period of three months, upon the expiry of three months statutory interest would be liable to be paid by the Customs Department on the eligible duty drawbacks to the respective Petitioners in accordance with law.

14. The non-grant of interest for the previous period is in view of the fact

that there was ambiguity as to the legal position in respect of eligibility of unlocked/activate mobile phones for grant of duty drawbacks.

15. This order shall be subject to the decision, if any, in the Special Leave Petition *('SLP')* filed against the judgment in ***AIMS Retail Services Private Limited (supra)***.

16. Accordingly, both the writ petitions are disposed of. Pending application(s), if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 26, 2025/*MR/rks*