



**OFFICE OF THE COMMISSIONER OF CUSTOMS,
NEW CUSTOM HOUSE, NEW KANDLA-370 210 (GUJARAT)
Phone No: 02836-271468/469, Fax No. : 02836-271467.**

A	फाइल संख्या/ File No.	F. No.S/14-247/EXPORT/IOC/2018-19
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ ADC/UBR/12/2018-19
C	पारित कर्ता/ Passed by	Sh. U.B. Rakhe, Additional Commissioner (Export), Customs House, Kandla.
D	आदेश की दिनांक/Date of order	06.09.2018
E	जारी करने की दिनांक/Date of issue	06.09.2018
F	एस.सी.एन. सं.एवं दिनांक/ SCN No. & Date	
G	नोटीसी/ पार्टी/ निर्यातक Noticee/Party/Exporter	M/s. Indian Oil Corporation, Indian Oil Bhavan, G-9, Ali Yaver Jung Marg, Bandra (East), Mumbai-400051, Maharashtra.

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A (1) के अंतर्गत प्रपत्र सीए 3- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A (1) (a) of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“ सीमा शुल्क आयुक्त (अपील), कांडला

7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़

अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA

Having his office at 7th Floor, Mradul Tower, Behind Times of India,

Ashram Road, Ahmedabad - 380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए ।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by -

(i) उक्त अपील की एक प्रति और
A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं.-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ इयूटि/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए ।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 10% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Subject: - Amendment in shipping bills under Section 149 of Customs Act, 1962 to avail the benefit of MEIS.

Brief fact of the case

M/s Indian Oil Corporation, Indian Oil Bhavan, G-9, Ali Yaver Jung Marg, Bandra (East), Mumbai-400051, Maharashtra (hereinafter referred to as the Exporter) has filed the following shipping bills as detailed below:-

Sr. No.	Name of Vessel	Shipping Bill NO.	Date	Products	FOB Vaule (Rs.)
1	MT DL VIOLET	3390601	06.10.2015	Benzene	18,26,28,609
2	MT SC SHANGHAI	3969887	05.11.2015	Benzene	18,99,34,169
3	MT ORIENTAL JASMINE	4737231	16.12.2015	Benzene	19,85,18,125
4	MT SYPRESS	5081561	04.01.2016	Benzene	18,30,27,359
5	MT SEOYOUNG	5425948	22.01.2016	Benzene	19,02,42,123
6	MT LADY SINA	5807936	11.02.2016	Benzene	19,01,62,209
7	MT S C BRILLIANT	6256986	04.03.2016	Benzene	19,57,33,549
8	MT DL VIOLET	6916754	06.04.2016	Benzene	20,45,15,306
9	MT YM MIRANDA	7800662	23.05.2016	Benzene	23,12,47,009
10	MT BOMAR JUPITAR	8398876	21.06.2016	Benzene	21,59,53,187
11	MT SEA CRYSTAL	8832816	13.07.2016	Benzene	22,53,82,569
12	MT BHAIRAVI	9391529	11.08.2016	Benzene	22,79,90,005
13	MT DL VIOLET	2318028	19.11.2016	Benzene	25,99,96,327

The exporter vide letter dated 09.08.2018 has requested for amendment in the above said shipping bills under Section 149 of the Customs Act, 1962. The exporter submitted that their CHA has failed to Mark/tick "Y" in Reward" Column of the above said Shipping bills. As, the LEO against the above said Shipping Bills has already granted, the exporter requested to grant permission for manual amendment so as to read marking/ticking of "Y" in "Reward" column of above said Shipping bills.

Statutory provisions in this regard are as under:-

➤ **Section 149 of the Customs Act, 1962** allow for Amendment of Documents. It reads as,

"Save as otherwise provided in Section 30 and 41, the proper officer may, in his discretion, authorise any document, after it has been presented in customs house to be amended:

Provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorised to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in

existence of the time the goods were cleared, deposited or exported, as the case may be”.

Section 149 of the Customs Act, 1962 illustrates that after export of goods, shipping bill can be converted/amended only on the basis of documentary evidences, which was in existence at the time when the goods were exported. At the time of export, the exporter has mark/tick “N” in reward column in above said shipping bills. Therefore, there is no possibility of amendment in the shipping bills after issued Let Export Order (LEO).

Further, during the verification of the above mentioned shipping bills on EDI system, it was found that the exporter has mentioned “NO” in the column of reward.

The exporter has not mark/tick “Y” in the reward Column in the shipping bills at the time of export to avail the benefit of the MEIS which was mandatory for availing the benefit under MEIS. Further, the exporter has not declared on the body of shipping bill “We intend to claim reward under Merchandise Export From India Scheme (MEIS)” to show that they intend to avail the benefit under MEIS.

Further, the exporter may request for conversion of the shipping bills within three months from Let Export Order in view of Circular No. 36/2010 Customs dated 23.09.2010. In this case the subject shipping bills pertain to period from 06.10.2015 to 19.11.2016 and the exporter has made request for amendment on 09.08.2018 which is a delay of about 2-3 years. Hence, the Exporter has failed to comply with the conditions for both amendment and conversion into free trade zone and one scheme to another scheme. Therefore, the exporter is not eligible either for amendment or conversion.

To secure natural justice, the Additional Commissioner (Export), Customs House, Kandla fixed Personal hearing in the matter on 30.08.2018.

Personal Hearing

Shri Ravi N. Butaney, Manager Finance of M/s Indian Oil Corporation appeared to attend the personal hearing on 30.08.2018 before Hon'ble Additional Commissioner (Export), Custom House, Kandla wherein he reiterated the arguments made in their letter dated 09.08.2018 and he accordingly requested to permit the amendment in all the shipping bills permitting them to claim The exports so made under the MEIS Scheme.

Discussion and Findings

I have carefully gone through entire issue and submission made by the exporter. The basic point in the present case is whether amendment may be made in the Shipping bills after goods exported or otherwise.

As per para 5 of Circular No. 14/2015 Cus dated 20.04.2015 issued by the CBEC, New Delhi, the declaration on shipping bills for intent of reward on goods was made mandatory. The para 5 of Circular No. 14/2015 Cus dated 20.04.2015 is reproduced below:-

"5. the Policy HBP para 3.14 relating to declaration of intent for reward on goods requires the exporter to, for shipping bills filed from 1.6.2015 onwards, mandatorily declare intent for rewards on shipping bill. Till then, the present position of mandatory declaration for certain shipping bills would continue. The changed position shall enable Customs to take more informed decisions."

Further, I find that the above dead line for tick Mark "Y" was extended up to 30.09.2015 vide Public Notice No. 47/2015-20 dated 08.12.2015 by the DGFT. Vide this public notice dated 08.12.2015, only the shipping bills for export made between 01.06.2015 to 30.09.2015 where declaration of intent "Y" has not been marked and "N" has been ticked inadvertently in the 'reward item box' while filing the shipping bills in customs shall be transmitted by CBEC to DGFT.

In this case, all the shipping bills, wherein the amendment sought are filed after 30.09.2015. And, I further find that the importer has not declared their intention in on the body of the shipping bills.

Section 149 of the Customs Act, 1962 describe that after export of goods, shipping bill can be amended only on the basis of documentary evidences, which was in existence at the time when the goods were exported. At the time of export, the exporter has mark/tick "N" in reward column in above said shipping bills. They are not shown their intend to avail benefit under MEIS on the body of shipping bills. Therefore, in absence of any documents to show that at the time of export, the exporter is indented to avail benefit under MEIS, there is no possibility of amendment in the shipping bills after Let Export Order (LEO) under Section 149 Customs Act, 1962.

Further, in light of Circular No. 36/2010 Customs dated 23.09.2010 the exporter may make request for conversion in the shipping bills within three month from Let Export Order. The subject shipping bills pertain to period from 06.10.2015 to 19.11.2016 and the exporter has made request for amendment on 09.08.2018 which is delay about 2-3 year. Hence, the Exporter has failed to

comply with the conditions for conversion into free to scheme and one scheme to another scheme.

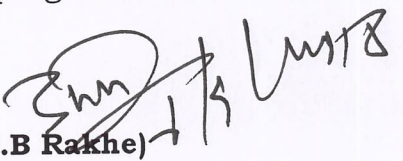
The Exporter has failed to comply with the conditions to avail the benefit of the MEIS. Therefore, the exporter is not eligible for any amendment/conversion. Hence, I find that the request of the exporter is liable for rejection in view of Board Circular No. 14/2015 dated 20.04.2015 read with DGFT Public Notice No. 47/2015-10 dated 08.12.2015 issued by the DGFT and as per the provisions of Section 149 of Customs Act, 1962,.

In view of above facts of the case and evidences on record the exporter's request for amendment in shipping bills cannot be granted.

Accordingly, I pass the following order.

ORDER

I hereby reject the request of the exporter for amendment under Section 149 of the Customs Act, 1962 for the above mentioned shipping bills..


(U.B Rakhe)

Additional Commissioner
Custom House, Kandla
Date: 06.09.2018

F. No. S/14-247/EXPORT/IOC/2018-19

To,

M/s. Indian Oil Corporation,
Indian Oil Bhavan, G-9, Ali Yaver Jung Marg,
Bandra (East), Mumbai-400051, Maharashtra.

Copy to :-

1. The Deputy/ Assistant Commissioner (RRA), Custom House, Kandla.
2. Guard file.