



सीमा शुल्क आयुक्त का कार्यालय,
नवीन सीमा शुल्क सदन, नया कंडला
OFFICE OF THE COMMISSIONER OF CUSTOMS,
NEW CUSTOM HOUSE, NEW KANDLA-370 210 (GUJARAT)
Phone No: 02836-271468/469, Fax No. : 02836-271467.

फा सं F.No.S/6-103/Ref/2018-19

आदेश की दिनांक / Date of Order: 27.02.2019

जारी करने की दिनांक / Date of Issue: 27.02.2019

पारित कर्ता / Passed by: -

मुकेश चड्डा / MUKESH CHADHA

सहायक आयुक्त / Assistant Commissioner,

सीमा शुल्क सदन, कांडला / Customs House, Kandla.

आदेश में मूल सं/ ORDER-IN- ORIGINAL NO: KDL/AC/MC/ 209 /Ref/2019

- जिसके लिये यह प्रतिलिपि जारी की जाती है उस व्यक्ति के उपयोग के लिए यह निः शुल्क दी जाती है।
This copy is granted free of charge for the use of person to whom it is issued.
- इस आदेश के विरुद्ध अपील सीमा शुल्क अधिनियम-1962 की धारा-128 के तहत उक्त अपील की प्रति के साथ, आयुक्त के कार्यालय 7 वीं मंजिल मृदुल टॉवर, टाइम्स ऑफ इंडिया बिल्डिंग के पास, आश्रम रोड, अहमदाबाद, गुजरात 380009 में इस आदेश के जारी होने की तिथि से साठ दिनों के भीतर दायर की जानी चाहिए।
An appeal against this order lies with the Commissioner (Appeals), having office at 7th floor, Mridul Tower, Near Times of India Building, Ashram Road, Ahmedabad, Gujarat - 380 009 in terms of section 128 of the Customs Act, 1962. It should be filed within sixty days from the date of communication of this order.
- यह अपील सीमा शुल्क नियमावली-1982 के नियम-3 के उपनियम-(2) में निर्दिष्ट व्यक्ति द्वारा हस्ताक्षरित निर्धारित प्रारूप में दायर किया जाना चाहिए। उक्त अपील को दो प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियां संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। सबन्धित सभी दस्तावेज चार प्रतियों में भेजे जाने चाहिए। उक्त अपील, अपील के उचित समय और दिनांक को कमिश्नर (अपील) कार्यालय, अहमदाबाद में व्यक्तिगत रूप से प्रस्तुत किया जाए।
An appeal should be filed in format prescribed. It shall be signed by the person specified in sub-rule (2) of rule 3 of the Customs Appeals Rules, 1982. It shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents should be forwarded in quadruplicate. The appeal shall be presented in person to the office of the Commissioner (Appeals), Ahmedabad, but the date of receipt in the office will be relevant date of appeal whether in time or not.
- अनुसूची-I में न्यायालय शुल्क अधिनियम, 1870 के मद सं. 6 के तहत इस आदेश की प्रतिलिपि साथ निर्धारित 5/- रुपए का स्टाम्प कोर्ट फीस के रूप में वहन करना चाहिए।
The copy of this order attached herein should bear a Court Fee Stamp of Rs. 5/- (Rupees five only) as prescribed under schedule-I, item 6 of the Court Fees Act, 1870.
- उक्त अपील पर 5/- (पाँच रुपये मात्र) का न्यायशुल्क टिकट लगा होना चाहिए तथा इसके साथ उक्त अपील की एक प्रति और इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर 5/- (पाँच रुपये मात्र) का न्यायशुल्क टिकट अवश्य लगा हो संलग्न की जाये।
The appeal should bear a court fee stamp of Rs.5.00 (Rupees five only) and it must be accompanied by A copy of appeal and this copy or any other copy of this order which must bear a court fee stamp of Rs. 5.00 (Rupees five only).
- यदि कोई व्यक्ति इस आदेश के विरुद्ध अपील करना चाहता है तो, उक्त अपील में मांगा गया शुल्क अथवा उस पर लगायी गयी शास्ति जमा करने और उक्त अपील के साथ ऐसे भुगतान का सबूत प्रस्तुत करने पर विचाराधीन रहेगी। ऐसे करने में असफल होने पर उक्त अपील सीमा शुल्क अधिनियम-1962 की धारा-128 के प्रावधानों के गैर अनुपालन करने के लिए अस्वीकृत किए जाने योग्य होगी।
Any person desirous of appealing against his decision or order shall pending the appeal, deposit the duty demanded or the penalty levied therein and produce proof of such payment along with the appeal failing which the appeal is liable to be rejected for non compliance of the provisions of Section 128 of the Customs Act, 1962.

Sub:-Refund claim of Rs. 23,57,304/- (Rupees Twenty Three Lacs Fifty Seven Thousand Three Hundred Four Only) filed by M/s. Growth Cart India Private Limited, office no. 811, Luxuria Hub, Nr. Dumas Resort, Surat-Dumas Road, Surat-395007

BRIEF FACTS OF THE CASE :

1. M/s. Growth Cart India Private Limited, (hereinafter referred to as the "Claimant") has filed a refund claim for Rs. 23,57,304/- under the provisions of section 27 of the Customs Act, 1962 vide their letter dated 10.08.2018 received on 31.08.2018. On scrutiny, discrepancies were noticed therefore deficiency memo was issued which has been complied and submitted required documents by them.

2. The Claimant has claimed the refund amount of double duty deposited at the time of import clearance of "Industrial Composite Mixture Plus (ICMP)" imported vide B.E. No. 7365440 dated 25.07.2018. The Claimant has filed the above said refund claim along with following documents:-

- (I) Refund application in prescribed format.
- (II) Notarized True copy of Bill of Entry No. 7365440 dtd. 25/7/18.
- (III) Original TR-6 Challan Nos. 2023634508 dated 03.08.2018 (Internet Transaction No. CKG6914667 AND Transection No: CKG7409443 DATED: 14/08/2018) evidencing the payment of duty twice against B.E. No. 7365440 dated 25.07.2018.
- (IV) Undertaking/declaration of the Claimant that the burden of duty for which refund of Rs.23,57,304/- being claimed by us in the matter of making twice payment with regard to bill of entry No. 7365440 dated 25.07.2018 for import of 210.400 MTs of Industrial Composite Mixture Plus at Kandla has not been passed on to any other firm/company or person. They have also certified that they have not availed double duty of the amount paid as custom duty of Rs.23,57,304/-
- (V) Certificate dated 17.08.2018 issued by M/s. VRS & CO., Chartered Accountants certifying the amount sought as refund has not been passed on to the buyer or any other person in any form. They have also

certified that M/s. Growth Cart India Private Limited has not availed double duty of the amount paid as custom duty of Rs. 23,57,304/-

(VI) Copy of Ledger and Statement issued by bank duly self-certified.

3. In the instant case the claimant had filed Bill of Entry No. 7365440 dated 25.07.2018 for the clearance of Industrial Composite Mixture Plus. The said bill of entry was assessed to duty on merits and the importer paid the duty accordingly. The said transaction was completed online vide internet transaction No. CKG6914667 on 03.08.2018. However as stated by the importer in their application that they have paid duty but when they opened the ICEGate again the duty was appeared on unpaid-screen-page therefore they paid the duty once again vide internet transaction No. CKG7409443 dated 08.08.2018.

4. Since the claimant had paid duty twice on the same import consignment, they have filed the refund claim for the excess payment of duty of Rs. 23,57,304/- paid thereon. The claimant contention of payment of duty twice on account of system fault appears to be correct. On scrutiny of the document it appear that the claimant has submitted e-challan with the same Number i.e. 2023634508 but paid on different date with different transaction Numbers. Further they have also submitted an Account statement from State Bank of India wherein it reflects both the transaction to have been transfer to the Customs duty. The Internet Transaction Number reflecting in the e-challans submitted by the claimant also reflects in the statement issued by the bank.

5. The said refund claim has been scrutinized in terms of section 27 of the Custom Act, 1962 and it is found that the claim has been received within eligible time limit of one year; that all necessary documents i.e. notarized copy of the bill of entry and notarized copy of ledger account have been furnished, Statement issued by the Bank, self-declaration appointing Chartered Account & non passing on of duty burden to any other and Chartered Account Certificate certifying fulfillment of condition of unjust enrichment have been furnished.

FINDINGS :-

6. I have carefully gone through the case record submitted by the claimant and find that the claimant has imported Industrial Composite Mixture Plus and the goods were assessed to duty on second appraisement basis. The claimant has paid Duties of Customs amounting to Rs.23,57,304/-. I find that the said bill of entry was assessed to duty on merit rates and it seems that the reason for double payment of duty given by the claimant seems to be genuine.

7. On account of non-updation of duty in the system, the claimant could not get the imported goods cleared. Therefore, I find that the importer has paid the duty on the import goods for a second time and subsequently got the goods cleared. I find that the claimant has submitted both the copies of the TR-6 challan evidencing the payment of the duty. It is seen from these challans that even though the bill of entry number, E-challan Number are same, the date of payments are different. Apart from this the internet transaction Number which reflects in the e-challans are also different. This

transaction numbers in turn reflects in the statement issued by State Bank of India.

8. Now, I proceed to ascertain as to whether the claimant has fulfilled all the conditions as envisaged in section 27 of the Customs Act thereby making them eligible for the refund. I find that as per section 27 in cases where the duty has been paid finally, the limitation of one year shall be computed from the date of final assessment in the instant case. As such the said claim has been filed well within the time period and is not time barred. all necessary documents i.e. notarized copy of the bill of entry and notarized copy of ledger account have been furnished, Statement issued by the Bank, self-declaration appointing Chartered Account & non passing on of duty burden to any other and Chartered Account Certificate certifying fulfillment of condition of unjust enrichment have been furnished.

9. The claim is not barred by unjust enrichment since the claimant has submitted a certificate dated 06.06.2016 from their Chartered Account M/s.VRS & CO. SURAT wherein it is certified that the amount sought as refund has not been passed on by the claimant to the buyer or any other person in any form and has been reflecting as duty receivable under the head Custom Duty. As such I find that the claim is not barred by unjust enrichment.

10. A letter written to the Sr. Account Officer, E-PAO office, Room No. 233. New Custom House, Near IGI Airport, New Delhi dated 28.9.18 to verify the payment particulars regarding Bill of Entry No. 7365440 dtd. 25.07.18. The E-PAO office has confirmed the double duty payment vide letter No. e-PAO/Cus/DP/2018-19 dated 03.01.2019.

11. In view of the foregoing paras, I find that the claimant has fulfilled all the conditions as laid down in section 27 of the Act and therefore the claimant is eligible for the refund of Rs. 23,57,304/-

12. The file is cleared from Pre-Audit vide Letter No. S/7-28/ Pre-Audit /2018-19 dated 25.02.2019

13. In view of the above discussion, I Pass the following Order.

ORDER

I sanction refund of Rs. 23,57,304/- (Rupees Twenty Three Lacs Fifty Seven Thousand Three Hundred Four Only) being excess duty paid and claimed by M/s Growth Cart India Private Limited under section 27 of the Customs Act, 1962.

M Chadha
27.02.19

(MUKESH CHADHA)
Assistant Commissioner,
Customs House,
Kandla.

रजिस्टर्डडॉक.

F.No. No. S/6- 103/Refund/2017-18

Dated: 27 / 02 / 2019

To.

M/s. Growth Cart India Private Limited,

Office No. 811, Luxuria Business Hub,

Nr. Dumas Resort, Surat-Dumas Road,

Surat-395007.

CC TO: 1) Asstt. Commissioner (RRA), Custom House Kandla.

2) Asstt. Commissioner (EDI Section) Custom House, Kandla.

