



OFFICE OF THE COMMISSIONER OF CUSTOMS,  
NEW CUSTOMS HOUSE, NEW KANDLA.  
KUTCH -370210, GUJARAT,  
PHONE : 02836-271468-469 FAX : 271467

फा.सं./ F. No. S/20-44/DBK/Ritzy/Re-export/2017-18

आदेश की दिनांक/ Date of Order: 13.02.2019

जारी करने की दिनांक/Date of Issue: 13.02.2019

पारित कर्ता/ Passed by : **Hemesh Chhabra,**

ASSISTANT COMMISSIONER (DRAWBACK)  
CUSTOM HOUSE, KANDLA.

आदेशमूलसं. -KDL/AC/HC/ 71 /DBK/2018

1. जिसके लिये यह प्रतिलिपि जारी की जाती है उस व्यक्ति के उपयोग के लिए यह निःशुल्क दी जाती है।  
This copy is granted free of charge for the use of person to whom it is issued.

2. इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम-1962 की धारा-128 के तहत उक्त अपील की प्रति के साथ, आयुक्तके कार्यालय 7 वीं मंजिल मृदुलटॉवर, टाइम्स ऑफ इंडिया बिल्डिंग के पास, आश्रमरोड, 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 7<sup>th</sup> 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.

3. यह अपील सीमाशुल्कनियमावली-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 जाएं (उनमेंसे कम से कम एक प्रति प्रमाणित होनी चाहिए)। संबन्धित 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.

4. 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.

5. 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).

6. 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 सीमाशुल्क 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 noncompliance of the provisions of Section 128 of the Customs Act, 1962.

Sub: Drawback claim of M/s. Liberty Chemicals Pvt. Ltd., B-34, Block-B, Radhey Shyam Park Extn., New Delhi-110051



**BRIEF FACTS OF THE CASE:**

M/s. Liberty Chemicals Pvt. Ltd., B-34, Block-B, Radhey Shyam Park Extn., New Delhi-110051 (here in after referred to as "the claimant") has filed application for drawback under section 74 of Custom Act, 1962 for re-export of 246.720 MT 2 Propyl Heptanol (2PH) with FOB value of Rs. 1,65,33,300/- exported vide Export Shipping Bill no. F-364 dated 06.06.2017 and drawback of Rs. 35,79,365/- (Rupees Thirty Five Lakhs Seventy Nine thousand Three Hundred and Sixty Five Only) vide their letter dated 21.07.2017 received on 18.08.2017. As per the description of export shipping Bill No. F- 364 dated 06.06.2017 the claimant has paid the duty amount of Rs. 36,52,413/- and claimed the drawback under section 74 of Customs Act, 1962 amount of Rs. 35,79,365/- i.e. 98% of the duty amount paid by the Exporter.

2. The drawback application is filed by the re-exporter M/s. Liberty Chemicals Pvt. Ltd under section 74 of the Customs Act, 1962. The said goods were imported by M/s. Meghaarika Impex Pvt. Ltd. vide Warehouse Bill of Entry No. 5830567 dated 30.06.2016 and sold to M/s. Liberty Chemicals Pvt. Ltd. The said goods were stored at Friends Salt Works and Allied Industries in their tank No. FSWAI-506 and later on re-exported by M/S Liberty Chemicals Pvt. Ltd. to the consignee M/S ICC Chemicals Corporation, New York vide Shipping Bill No.F-364 dated 06.06.2017 under prior permission from the Additional Commissioner, Custom House, Kandla vide file no. S/20-29/Bond/2017-18 date 05.05.2017 from Bonded Tank No. 506 of FSWAI, Kandla.

3. M/S Liberty Chemicals Pvt. Ltd. has submitted the details of the imported cargo of 2 Propyl Heptanol (PH) of quantity 246.720 MT which was purchased from importer M/S Meghaarika Impex Pvt. Ltd. and re-exported to their overseas buyer of M/S ICC Chemicals Corporation, USA. The party has submitted invoice & sum packing list for re-export of 246.720 MTS 2-PH from Kandla to USA at the rate of \$ 1052 PMT FOB, copy of W/H B/E No. 5830567 dated 30.06.2016 and copy of B/L. The import price of goods was \$ 815 PMT CIF and the re-export price is \$ 1052 FOB. M/S Friends Salt Works & Allied Industries has given a certificate that the imported 2-PH was stored in Tank No. 506 of their Terminal and the same has been exported per MT Oriental Marguerite on 14.06.2017 vide shipping Bill No. F-364 dated 06.06.2017 for 246.720 MTS of M/S Liberty Chemicals PVT. Ltd. against W/H B/E No. 5830567 dated 30.06.2016 and the same is mentioned in export shipping bill No. F-364 dated 06.06.2017. The duty paid details available in ex-bond Bills of entry and in export shipping bill no. F-364 dated 06.06.2017 are as under:-



Sr. No.	Ex-Bond Bills of Entry	Date	Quantity	Duty amount Rs.	Challan No. & date
1	6905612	29.09.16	100.00	14,80,388/-	2016149786 dated 21.12.16
2	7714910	05.12.16	146.720	21,72,025/-	2016784397 dated 21.12.16
			246.72	<b>36,52,413/-</b>	

4. The exporter M/S Liberty Chemicals Pvt. Ltd. has submitted the following import related documents along with their Draw back application mentioned as below:-

1. Copy of Warehouse Bill of Entries
2. Copy of ex-bond Bill of Entries
3. Copy of Discharge Permission
4. No delivery certificate from bonded warehouse.

5. The claimant M/S Liberty Chemicals Pvt. Ltd. has also submitted the following export related documents along with their Draw back application:-

1. Original triplicate copy of shipping Bill No. F-364 dated 06.06.2017
2. Self attested final Invoice No. LCPL/RE-Exp/02/17-18 dated 30.05.2017.
3. Copy of Bill of lading (Self attested)
4. Copy of Certificate of Origin (Self attested)
5. Copy of mate receipt (Self attested)
6. Copy of Quantity and Quality Certificate issued by the Surveyor at the export.
7. Copy of Pan/IEC/Bank Details of the exporter.
8. Copy of Self Certified Certificate of Foreign Inward Remittance issued by HDFC bank for an amount of \$ 322575.18 bearing Inward no. 1507171049900010 dated 18.07.2017 i.r.t. export invoice No. LCPL/RE-Exp/02/17-18 dated 30.05.2017 & LCPL/RE-Exp/02 A/17-18 dated 30.05.2017 submitted vide exporter's letter dated 20.12.2018.
9. Copy of the permission of Additional Commissioner, Kandla for re-export of the said goods vide their file No. S/20-29/Bond/2017-18 dated 05.05.2017 from Bonded Tank No.506 of FSWAI, Kandla.

6. The manual Shipping Bill No. 364 dated 06.06.17 filed by the exporter was assessed by the Superintendent Export Assessment subject to the verification of the identity of goods by the Assistant Commissioner(Dock Examination) and therefore has issued an examination order on reverse side of export shipping bill no. F-364 dated 07.06.2017 wherein he has stated that "Inspect the lot check the description verify quantity examine 100% cargo as per import documents and also verified stock under the A.C. (Dock Examination) supervision".

7. As per the above examination order, goods were examined and Preventive Officer (D.E.), Supdt.(D.E.) and Assistant Commissioner (D.E.) submitted their Examination Report on reverse side of the export shipping bill No. F-364 dated 09.06.2017 wherein they stated that "Inspected the lot checked description of imported goods as per import invoice/Bill of Laing/Discharge permission, Test Report and certified the cargo by the Superintendent of Bond/Terminal Manager



*and Surveyor which is confirmed that the goods are lying in same form in same custom bonded Tank of FSWAI-506. As per export invoice it is confirmed/verified the goods are same which was imported and examined 100% for export under supervision of P.O., Supdt & Asstt. Comm. Of Customs”.*

8. In the light of observation of the Assistant Commissioner (DE) it is evident that the goods for re-export were the same which were imported earlier and were stored inside Customs Bond area in storage tank No FSWAI-506 and thus the identity of the goods can be established by following the laid out guidelines under CBEC Circular No. 46/2011-Cus. dated. 20.10.2011. As per para 3.1 of CBEC Circular No. 46/2011-Cus. dtd. 20.10.2011, instructions related to “identification of goods” and “determination of use” in terms of section 74 of the Customs Act, 1962, is to be ascertained and identified to the satisfaction of the Assistant/Deputy Commissioner of Customs. This may require examination and verification of various parameters, including but not limited to physical properties, weight, marks and numbers, test reports, if any, documentary evidences vis-à-vis import documents etc., for identification of the goods.

9. Further, as per the report no. S.R. No. KDL/01014/17/AA dated 16.06.2017 of Independent surveyor i.e. M/s. J.B.Boda Insurance surveyors & Loss Accessories Pvt. Ltd., Gandhidham a total quantity of 306.638 Mts. was withdrawn from storage tank No. FSWAI-506 and the same was loaded in the vessel MT Oriental Marguerite.

10. All of the movements to the temporary storage locations were monitored by one independent surveyor deputed by the receivers. Even if, this is a quantity control placed by the receivers, being a qualified third party certification, it was essential for the importers to submit a copy of such survey reports to the department as a proof for location-wise storage quantity details. After giving “Out of Charge Order” at the time of release of bonds which were originally submitted while obtaining permission for storage, the department relied upon these survey reports to cross verify the quantity details as submitted by the importers. As such copies of such survey reports are valid evidences to establish the genuineness of movement sheets and quantity details of imported cargo.

11. The goods were examined at respective storage location i.e. at storage tank no. FSWAI- 506 of M/s Friends Salt works & Allied Industries, where the goods were allowed to be deposited under Customs supervision and were allowed for direct loading on the export vessels. The certificates issued by the warehouse owner regarding the stock held at the time of export are additional



evidences placed on record to co-relate the export goods with that of imported goods.

12. It's an evidence for movement of the stored cargo to the destined export vessel. The quantity of movement can be co-related with shipped quantity on each vessel. The shipped quantity is again evidenced by the mate receipts issued by Masters of the vessels and the Bills of Lading issued by the carriers. All these shipping documents are on record and as such these movement sheets can be used as a verification tool for time and place of movement of cargo towards the export vessels.

All other Export documents like, Mate Receipt, Copy of B/L, Shipping Bills etc are available with Claim file submitted by the claimant. Hence, on the basis of examination report by Assistant Commissioner(Dock Examination) and the corroborative documentary evidences the identity of goods can be established with that of the imported goods.

13. The claimant vide their letter dated 20.12.2018 in response to this office letter dated 11.05.2018 submitted the self certified copy of Certificate of Foreign Inward Remittance issued by HDFC bank for an amount of \$ 322575.18 bearing Inward no. 1507171049900010 dated 18.07.2017 i.r.t. export invoice No. LCPL/RE-Exp/02/17-18 dated 30.05.2017 & LCPL/RE-Exp/02 A/17-18 dated 30.05.2017.

#### Discussion & Findings

14. I have carefully gone through the facts of the case and find that it is a case of drawback of import duty paid on the imported goods, in terms of Section-74 of the Customs Act, 1962. I note that M/s Meghaaarika Impex Pvt. Ltd., New Delhi had imported 746.72 MT 2-Propyl Heptanol (2-PH) in bulk from M/s ICC Chemical Corporation New York and filed the Warehouse Bill of Entry no. 5830567 dated 30.05.2016. Later M/s. Liberty Chemicals Pvt. Ltd., B-34, Block-B, Radhey Shyam Park Extn., New Delhi-110051 purchased the said 246.72 MT goods on transfer of ownership basis from M/s Meghaaarika Impex Pvt. Ltd. and filed the following ex-bond Bills of entry:

Sr. No.	Bill of Entry	Date	Quantity	Duty amount Rs.	Challan No. & date
1	6905612	29.09.16	100.00	14,80,388/-	2016149786 dated 21.12.16
2	7714910	05.12.16	146.720	21,72,025/-	2016784397 dated 21.12.16
				<b>36,52,413/-</b>	

15. I find that out of the imported Quantity purchased, 246.720 Mts was re-exported, after obtaining permission from Additional Commissioner(Kandla) issued from File No. S/20-29/Bond/2017-18 dated 05.05.2017, to M/s ICC



Chemical Corporation, New York vide Shipping Bill No. 364 dated 06.06.2017 by claiming the benefit of duty Drawback under Section 74 of the Customs Act, 1962. On being assessed the said bill of entry by the proper officer, they paid the total import duty amounting to Rs. 36,52,413/-.

In this context, the Section 74 is reproduced as below:

**"Section 74 of the Customs Act 1962 - Drawback allowable on re-export of duty-paid goods. -**

(1) When any goods capable of being easily identified which have been imported into India and upon which any duty has been paid on importation, -

(i) are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51; or

(ii) are to be exported as baggage and the owner of such baggage, for the purpose of clearing it, makes a declaration of its contents to the proper officer under section 77 (which declaration shall be deemed to be an entry for export for the purposes of this section) and such officer makes an order permitting clearance of the goods for exportation; or

(iii) are entered for export by post under section 82 and the proper officer makes an order permitting clearance of the goods for exportation,

ninety-eight per cent of such duty shall, except as otherwise hereinafter provided, be re-paid as drawback, if -

(a) the goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported; and

(b) the goods are entered for export within two years from the date of payment of duty on the importation thereof :

Provided that in any particular case the aforesaid period of two years may, on sufficient cause being shown, be extended by the Board by such further period as it may deem fit.

(2) Notwithstanding anything contained in sub-section (1), the rate of drawback in the case of goods which have been used after the importation thereof shall be such as the Central Government, having regard to the duration of use, depreciation in value and other relevant circumstances, may, by notification in the Official Gazette, fix.

(3) The Central Government may make rules for the purpose of carrying out the provisions of this section and, in particular, such rules may -

(a) provide for the manner in which the identity of goods imported in different consignments which are ordinarily stored together in bulk, may be established;

(b) specify the goods which shall be deemed to be not capable of being easily identified; and

(c) provide for the manner and the time within which a claim for payment of drawback is to be filed.

(4) For the purposes of this section -

(a) goods shall be deemed to have been entered for export on the date with reference to which the rate of duty is calculated under section 16;

(b) in the case of goods assessed to duty provisionally under section 18, the date of payment of the provisional duty shall be deemed to be the date of payment of duty."

16. In view of the above, I find that the duty of Rs. 36,52,413/- was paid by the exporter on 21.12.2016 vide 2 challans as detailed above and goods were exported on 06.06.2017 and thereafter the claim was filed on 21.07.2017 received on 18.08.2017. Thus it appears that the re-export was made within



stipulated time period of two years in compliance to conditions (b) of clause 1 of Section 74.

17. Further, I find that the essential requirement of Section-74 is that the goods should be identified to the satisfaction of the Assistant Commissioner (Dock Examination) to be the same goods which were imported. In general, this satisfaction is reached by inspection of the goods/packages, comparing the examination report or other connected documents related to import formalities with examination of the goods as reflected in the shipping bill against which drawback is claimed. If there are corroborative documentary evidences to establish that the goods which were imported have been re-exported, the identity of the goods gets established and applicants are eligible for drawback as claimed by them. Thus, the identity of the goods were verified by the AC (DE) in his examination report dated 09.06.17 and has confirmed/ verified that the goods are same which was imported and therefore it appears that the conditions (b) of clause 1 of Section 74 is also complied by the exporter for the entitlement of 98% of duty drawback. Similarly, the drawback claim was filed on 21.07.2017 received on 18.08.2017 i.e. within stipulated period of 3 months as prescribed under Rule 5 of Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995. Further, I find that the claimant has submitted the Self Certified copy of Certificate of Foreign Inward Remittance issued by HDFC bank for an amount of \$ 322575.18 bearing Inward no. 1507171049900010 dated 18.07.2017 i.r.t. export invoice No. LCPL/RE-Exp/02/17-18 dated 30.05.2017 & LCPL/RE-Exp/02 A/17-18 dated 30.05.2017 submitted vide exporter's letter dated 20.12.2018 for the said Shipping Bill no. 364 dated 06.06.2017.

18. In view above, I find that total amount of import duty paid by the exporter during importation was Rs. 36,52,413/- on 246.720 Mts. The Quantity exported was 246.720 Mts. Thus the proportionate amount of duty on 246.720 Mts. works out to Rs. 36,52,413/- and the 98% of Rs. 36,52,413/- works out to Rs. 35,79,365/- and the same is admissible to them under Section-74 of the Customs Act, 1962. Further, the claim is cleared from pre-audit by the Assistant Commissioner (Audit) vide his report F.No. S/7-34/Pre-audit/2018-19 dated 06.02.18.

Thus, in view of the above, the drawback claimed filed u/s 74 of the Customs Act, 1962 by the exporter appears to be fulfilling the conditions of the provisions of the Customs Act, 1962 and the Drawback rules, 1995 and appears to be legitimate.

20. In view of my above findings, I pass the following order;



**:ORDER:**

I hereby allow and sanction the Duty Drawback claim amounting to Rs. 35,79,365/- (Rupees Thirty Five Lakhs Seventy Nine Thousand Three Hundred Sixty Five only) under Section-74 of the Customs Act, 1962 to M/s. Liberty Chemicals Pvt. Ltd., B-34, Block-B, Radhey Shyam Park Extn., New Delhi-110051.

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*J* 13/2/19

(Hemesh Chhabra)  
ASSISTANT COMMISSIONER (DBK),  
CUSTOM HOUSE, KANDLA

**By REGD. POST A.D**

F. No. S/20-44/DBK/Ritzy/Re-export/2017-18  
To,  
M/s. Liberty Chemicals Pvt. Ltd.,  
B-34, Block-B, Radhey Shyam Park Extn.,  
New Delhi-110051

Dated: 13.02.2019

**Copy to:**

1. The Assistant Commissioner (RRA), Customs House Kandla.
2. The Administrative Officer (Cash), Custom House, Kandla for issuance of Cheque for the above sanction drawback amount.
3. Guard File.

*Received*  
*[Signature]* 15/2  
CASHIER  
CUSTOM HOUSE  
KANDLA

PAY RS. 35,79,365/-  
TO THE ABOVE PARTY  
VIDE CHEQUE NO. 542369  
DT 13/2/19

*[Signature]*  
19/02

*kept original*  
*copy -*  
*[Signature]*  
*[Signature]*  
13/2