



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)
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फा.सं./ F. No. S/6- 120 /Ref/2018-19

आदेश की दिनांक / Date of Order: 28/02/2019

जारी करने की दिनांक/ Date of Issue: 28/02/2019

पारित कर्ता/ Passed by: - श्री मुकेश चढा / Shri Mukesh Chadha
सहायक आयुक्त/ Assistant Commissioner, सीमा शुल्क सदन, कंडला/ Customs House, Kandla.

आदेश में मूल सं/ ORDER-IN- ORIGINAL NO: KDL/AC/MC/ 218 /Ref/2018-19

1. 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.
2. 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.
3. 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 जाएं (उनमें से 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-1 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 सीमा शुल्क अधिनियम-1962 की धारा-128 के प्रावधानों के तहत 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 application dated 20/09/2018 (filed on 20/09/2018) for principle amount Rs. 2,79,905/- (Rupees Two Lakh Seventy Nine Thousand Nine hundred Five Only.) and interest thereon Rs. 42,331 (Rupees Forty Two Thousand Three Hundred Thirty One Only.) and filed by M/s. Raghvani Textiles Pvt. Ltd., Gandhidham.

1. M/s. Raghvani Textiles Pvt. Ltd., Gandhidham filed a refund application of Rs 2,79,905/- arising out of Order No. A/13700-13701/2017 dated 13-10-2017 passed by the Hon'ble CESTAT, Ahmedabad (received by this office on 20.09.2018). Along with claimant has claimed an amount Rs. 42,331 as interest on principle amount as mentioned above.
2. They have submitted the following documents in support of their refund application:
 - a) Refund application in prescribed form Part-A (In Duplicate).
 - b) Bill Of Entry No. 0008164 / 23-11-2012 & 0000465 / 22-01-2013
 - c) Tr-6 Challan No. 01 / O-I-O/05/2015-16 Dated 15-03-2016 (In Original)
 - d) Payment Voucher of Differential Duty, Fine & Penalty & Interest.
 - e) Order in Original No. 05/2015-16 Dated 17/02/2016
 - f) Order in Appeal No. KDL-CUSTOM-APP-029-16-17 Dated 02-12-2016.
 - g) Order No. A/13700-13701/2017 Dated 13/10/2017
 - h) C.A. Certificate
 - i) Appointment of C.A.
 - j) Declaration of Claim amount not passed on to any other person.
 - k) Declaration of no other Claim is filed or pending in respect of the present application.
3. Earlier applicant has filed Bill of Entry Number 0008164 Date: 23/11/2012 and 0000465 Date: 22/01/2013 on behalf of DTA buyer for clearance of Cotton Rags (Mutilated). On 12/02/2013 the Deputy Commissioner of Customs, Kandla Special Economic Zone, detained one of the consignments cleared by M/s. Raghvani Textiles Pvt. Ltd. Kandla Special Economic Zone. After issue of the Show Cause Notice and following the procedure the Deputy Commissioner of Customs, Kandla Special Economic Zone vide his Order-in-Original No. 05/2015-16 Dated 17/02/2016 issued amongst others imposed redemption fine on goods, differential duty, Interest on differential duty, penalty and redemption fine on truck in total of Rs. 2,79,905/- on M/s. Raghvani Textiles Pvt. Ltd., Kandla Special Economic Zone, Gandhidham. Accordingly M/s. Raghvani Textiles Pvt. Ltd. deposited the said amount vide Challan No. 01 / O-I-O/05/2015-16 dated 15/03/2016.
4. M/s. Raghvani Textiles Pvt. Ltd. filed an appeal before Commissioner of Customs (Appeals), Ahmedabad, against the said order, and vide Order-in-Appeal No. KDL-CUSTOM-000-APP-029-16-17 Dated 02/12/2016 appeal was rejected.
5. Further, M/s. Raghvani Textiles Pvt. Ltd. filed an appeal before Appellate Tribunal, West Zone Bench at Ahmedabad and the case was decided vide Order No.

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A/13700-13701/2017 dated 13/10/2017 finding the impugned orders are unsustainable and liable to be set-aside and appeals are allowed.

6. Since the present matter is related to the I refund claim arising out of Tribunal Order, therefore the claim has to be disposed of within prescribed time frame. The Appellate Authority had issued the order on 13-10-2017 and in terms of Section 27 of Customs Act, 1962, the claim had to be disposed of within 90 days from the date of receipt of the claim.

Findings:

7. I have carefully gone through the documents submitted by the claimant along with their claim. I find that the claimant has filed the refund claim on 20.09.2018 in pursuance of Tribunal Final Order Number A/13700-13701 /2017 dated 13-10-2017 wherein the Hon'ble Tribunal has set aside the Order-in-Original No. 05/2015-16 Dated 17/02/2016 issued by Deputy Commissioner of Customs, Kandla Special Economic Zone, Gandhidham and Order-in-Appeal No. KDL-CUSTM-000-APP-029-16-17 Dated 02/12/2016 issued by Commissioner of Customs (Appeals), Ahmedabad. Thus, the refund claim is filed within one year from the date of order of the Appellate authority, as stipulated under Sec 27(1) (b) of the Customs Act, 1962.

8. I find that, vide Order-in-Original No. 05/2015-16 Dated 17/02/2016, Deputy Commissioner of Customs, Kandla Special Economic Zone, had imposed redemption fine on goods, differential duty, Interest on differential duty, penalty and redemption fine on truck in total of Rs. 2,79,905/- on M/s. Raghvani Textiles Pvt. Ltd., Kandla Special Economic Zone, Gandhidham.

Details of the same are mentioned in below table:-

Sr.	Particulars	Amount
1	Redemption Fine on Goods	Rs. 86,000.00
2	Differential Duty	Rs. 1,01,463.00
3	Interest on Differential Duty	Rs. 57,442.00
4	Penalty on Company	Rs. 25,000.00
5	Redemption Fine on Truck	Rs. 10,000.00
Total :		Rs. 2,79,905.00

9. The claimant paid the redemption fine on goods, differential duty, Interest on differential duty, penalty and redemption fine on truck accordingly as demanded and cleared the goods after payment of the same. I find that the imposed amount paid by the claimant before clearance of goods vide TR-6 Challan No. 01 / O-I-O/05/2015-16 dated 15/03/2016 as stated above. Triplicate copy of the Challan in Original is submitted along with claim which is also verified from State Bank of India and it is found in order.

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Besides, DC, R.R.A. vide their letter dated 19.11.2018 confirmed that the CESTAT order no. A/13700-13701/2017 dated 13/10/2017 was accepted on monetary limit as per National Litigation Policy and would not have any precedent value.

10. With regard to the applicability of unjust enrichment in this case, I find that the claimant has produced a certificate issued by Chartered Accountant M/s. Harish Khona & Co. The Chartered Accountant has certified that the claimant has not recovered the amount of Rs. 2,79,905/-, claimed as refund, from anyone nor passed on the burden of the said amount to anyone. Hence, the principal of unjust enrichment is not applicable in the case.


11. Thus, from the above discussions, I find that the claimant has fulfilled all the conditions of Sec 27 of the Customs Act, 1962. Thus, I come to the conclusion that they are eligible for refund of principle amount Rs. 2,79,905/-.

12. Further, I find the claimant has claimed an amount of Rs. 42,331/- (Forty Two Thousand Three Hundred Thirty One Only.) as interest from this office, which is not acceptable and i advice them not to claim for interest from the department as there was no delay in sanction of refund by the department.

Accordingly, I pass the following Order:-

ORDER

I sanction refund of **Rs. 2,79,905/-** (Rupees Two Lakh Seventy Nine Thousand Nine Hundred Five Only.) to M/s Raghvani Textiles Pvt. Ltd. under Sec 27 of the Act, 1962. But, the claim of Interest amount on principle amount Rs. 42,331/- (Forty Two Thousand Three Hundred Thirty One Only.) is rejected.


28.02.19

(Mukesh Chadha)

Assistant Commissioner (Refund)
Custom House, Kandla

Date: 28.02.19

By Regd. Post. A.D./Speed Post/ By Hand

F. No S/6-101/Refund/2018-19

To,
M/s Raghvani Textiles Pvt. Ltd.



Copy to:

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

3. The Deputy Commissioner (GDD), C.H., Kandla.