



OFFICE OF THE COMMISSIONER OF CUSTOMS,  
NEW CUSTOMS HOUSE, NEW KANDLA.  
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पा.सं./ F. No. S/20-43/DBK/Ritzy/Re-export/2017-198

आदेश की दिनांक/ Date of Order: 04.02.2019

जारी करने की दिनांक/Date of Issue: 04.02.2019

पारित कर्ता/ Passed by :

**Hemesh Chhabra,**

ASSISTANT COMMISSIONER (DRAWBACK)  
CUSTOM HOUSE, KANDLA.

आदेशमेंमूलसं. -KDL/AC/HC/70/DBK/2018

1. जिसके लिये यह प्रतिलिपि जारी की जाती है उस व्यक्ति के उपयोग के लिए यह नि: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 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 केनियम-3 केउपनियम-(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 (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 fiveonly) 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 सीमाशुल्कअधिनियम-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. Ritzy Chemicals Pvt. Ltd. 703, 7th Floor DLF Tower-B District Centre, Jasola, New Delhi-110025.

**BRIEF FACTS OF THE CASE:**

M/s. Ritzy Chemicals Pvt. Ltd. 703, 7<sup>th</sup> Floor DLF Tower-B District Centre, Jasola, New Delhi-110025 (herein after referred to as "the claimant") has filed a application for refund of drawback under section 74 of Custom Act, 1962 for re-export of the goods of 2 Propyl Heptanol (2-PH) of quantity 482.285 MT having FOB Value of Rs. 2,95,06,678/- exported vide Export Shipping Bill no. F-258 dated 19.05.2017 and drawback refund of Rs. 64,76,637/- (Rupees Sixty Four Lakhs Seventy Six thousand Six hundred and Thirty Seven Only) vide their letter dated 25.07.2017. As per the description of export shipping Bill No. F- 258 dated 19.05.2017, the claimant has paid the duty amount of Rs. 66,08,813/- and claimed the drawback under section 74 of Customs Act, 1962 for an amount of Rs. 64,76,637/- i.e. 98% of the duty amount paid by the Exporter.

2. The drawback application is filed by the re-exporter M/s. Ritzy Chemicals Pvt. Ltd under section of 74 of the Customs Act, 1962. As per the documents on record it appears that the said good were imported by M/s. Meghaarika Impex Pvt. Ltd. vide Warehouse Bill of Entry No. 6422444 dated 23.08.2016 and sold to M/S Ritzy Chemicals Pvt. Ltd. Daman. 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. Ritzy Chemicals Pvt. Ltd. Daman to the Consignee M/s. ICC Chemicals Corporation, New York vide Shipping Bill No.F-258 dated 19.05.2017 and prior permission given by 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. Ritzy Chemicals Pvt. Ltd. has submitted the details of the imported cargo i.e. 2 Propyl Heptanol (PH) of quantity 482.285 MT which was purchased from the importer M/s. Meghaarika Impex Pvt. Ltd. and re-exported to their overseas buyer M/s. ICC Chemicals Corporation, USA. The claimant has submitted self certified copies of invoice / packing list for re-export of 482.285 MTS 2-PH from Kandla to USA at the rate of \$ 965 PMT FOB, Warehouse B/E No. 6462444 dated 23.08.2016, B/L Qty 484.975 MTS and Export qty. of 482.285 MTS Import price was \$ 757 PMT CIF and export price is \$ 965 FOB. M/S Friends Salt Works & Allied Industries has given a certificate and certify that the imported 2-PH stored in their Tank No. 506 in their Terminal and the same has been exported per MT Golden Denise on dated 21.05.2017 vide shipping Bill No. F-258 dated 19.05.2017 for 482.285 MTS of M/S Ritzy Chemicals PVT. Ltd against W/H B/E No. F6462444 dated 23.8.2017. The

duty payment details available in ex-bond Bill of entries as mentioned in export shipping bill no. 258 dated 19.05.2017 are as under:-

Sr. No.	Ex-Bond Bills of Entry	Date	Quantity	Duty amount Rs.	Challan No. & date
1	7931693	22.12.16	100.00	13,68,973/-	2016953826 dated 05.01.17
2	7931694	22.12.16	100.00	13,68,973/-	2016953825 dated 05.01.17
3	7931696	22.12.16	182.760	25,01,935/-	2016953823 dated 08.01.17
4	7935220	23.12.16	99.597	13,68,932/-	2016956044 dated 05.01.17
				<b>66,08,813/-</b>	

4. The exporter i.e. M/S Ritzy 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. Test Report of imported Material.
4. Discharge Certificate/Permission
5. No delivery certificate from bonded warehouse.
6. Copy of T R 6 duty paid challans

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

1. Original triplicate copy of shipping Bill No. F-258 dated 19.05.2017
2. Bank attested final Invoice.
3. Self attested original copy of provisional invoice.
4. Original copy of Bill of lading (Self attested)
5. Copy of Certificate of Origin (Self attested)
6. Copy of mate receipt (Self attested)
7. Copy of Out Turn Report before and after export (Self attested)
8. Copy of Quantity and Quality Certificate issued by the Surveyor at the export.
9. Copy of Pan/IEC of the exporter.
10. Copy of Test Report.
11. Bank Realization Certificate No. UBIN0549789001065773 Dated 24.07.2017 amounting USD 465405.10 (Self attested) was submitted vide exporter's letter dated 24.03.2018.
12. 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. 258 dated 19.05.17 filed by the exporter was assessed by the Superintendent (Export Assessment), CH, Kandla subject to the verification of the identity of goods by the Assistant Commissioner(DE) and therefore he has issued an examination order on reverse side of export shipping bill no. F-298 dated 19.05.2017 wherein it has been 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 the Examination Report of Preventive Officer (D.E.), Supdt.(D.E.) and Assistant Commissioner (D.E.) were submitted vide Examination Report No. DE/01/19.05.2017 dated 19.05.2017 on reverse side of the export shipping bill No. F-298 dated 19.05.2017 wherein they have stated that "Inspected the lot checked description of imported goods as per import invoice/Bill of Lading/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 (D.E)".

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 area at 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. dt. 20.10.2011, "identification of goods" and "determination of use" in terms of section 74 of the Customs Act, 1962, are to be ascertained 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/00680/17/AA dated 22.05.2017 of Independent surveyor i.e. M/s. J.B. Boda Insurance surveyors & Loss Accessories Pvt. Ltd., Gandhidham a total quantity of 482.285 was withdrawn from storage tank No. FSWAI-506.

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 by the Dock Examination 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 Custom 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 is 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, vessel-wise Mate Receipt, Copies of B/L, Shipping Bill etc. are available with Claim file submitted by claimant. Hence, on the basis of examination report by Assistant Commissioner(DE) 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 reply to this office letter dated 11.05.2018 stated that he do not want personal hearing in the matter and requested to decide the claim on merits.

**Discussion & Findings**

14. I find that, the exporter vide letter dated 20.12.2018 requested that he do not want personal hearing in the matter and requested to sanction the drawback claim on merits. I have carefully gone through the facts of the case and find that it is a case of refund of import duty paid on the imported goods, in terms of Section-74 of the Customs Act, 1962. I find that M/s Meghaaarika Impex Pvt. Ltd., New Delhi had imported 482.76 MT 2-Propyl Heptanol (2-PH) in bulk from M/s ICC Chemical Corporation New York and filed the Warehouse Bill of Entry no. 6462444 dated 23.08.2016. Later M/s Ritzy Chemicals Pvt. Ltd. purchased the said 482.285 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	7931693	22.12.16	100.00	13,68,973/-	2016953826 dated 05.01.17
2	7931694	22.12.16	100.00	13,68,973/-	2016953825 dated 05.01.17

3	7931696	22.12.16	182.760	25,01,935/-	2016953823 dated 03.01.17
4	7935220	23.12.16	99.597	13,68,932/-	2016956044 dated 03.01.17
			<b>482.357</b>	<b>66,08,813/-</b>	

15. I find that the entire imported Quantity purchased i.e. 482.357 Mts. <sup>whereas</sup> 482.285 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. 258 dated 19.05.2017 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. 66,08,813/-.

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. **66,08,813/-** was paid by the exporter on 05.01.17 and 08.01.2017 vide 4 challans as detailed above and goods were exported on 19.05.2017 and thereafter the claim was filed on 25.07.2017. 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, I find that the identity of the goods were verified by the AC (DE) in his examination report dated 19.05.17 and has confirmed/verified that the goods are the same which were 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 25.07.2017 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 copy of bank realization certificate no. UBIN0549789001065773 dated 24.07.2017 for the said Shipping Bill no. 258 dated 19.05.2017.

18. In view above, I find that total attributable amount of import duty paid by the exporter during importation was Rs. 66,08,813/- on 482.357 Mts. The Quantity exported was 482.285 Mts. Thus the proportionate amount of duty on 482.285 Mts. worked out as Rs. 6607826.5/- and the 98% of Rs. 6607826.5/- worked out to **Rs. 64,75,670/-** instead of Rs. 64,76,637/- as claimed by the claimant and the same is admissible to them under Section-74 of the Customs Act, 1962. Since the claimant vide their letter dated 20.12.2018 has forgo the opportunity of personal hearing in the matter and requested to decide the issue on merits, I proceed further in respect to the admissible amount without giving any further hearing in the matter.

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.

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

**:ORDER:**

I hereby allow and sanction the Duty Drawback @ 98% of duty amounting to Rs. 64,75,670/- (Rupees Sixty four Lakhs Seventy Five Thousand Six Hundred Seventy Only) and reject the claim of Rs. 967/- as being excess claimed out of the total drawback claim of Rs. 64,76,637/-, under Section-74 of the Customs Act, 1962 to M/s. Ritzy Chemicals Pvt. Ltd. 703, 7th Floor DLF Tower-B District Centre, Jasola, New Delhi-110025.

*[Handwritten Signature]*  
4/2/19

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

**By REGD. POST A.D**

F. No. S/20-43/DBK/Ritzy/Re-export/2017-18

Dated: 04.02.2019

To,

M/s. Ritzy Chemicals Pvt. Ltd,  
703, 7th Floor, DLF Tower-B, District Centre, Jasola  
New Delhi- 110025

**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.

*[Handwritten Signature]*  
11.02.19

PAY RS 64,75,670/-  
TO THE ABOVE PARTY  
VIDE CHEQUE NO. 54,2370  
DT 15.2.19

*[Handwritten Signature]*  
19/2

*[Handwritten Signature]*  
Pun Ghosh

Received  
*[Handwritten Signature]*  
CASHIER  
CUSTOM HOUSE  
KANDLA