



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/6-366/Ref/2010

आदेश की दिनांक / Date of Order: 28.02.2019

जारी करने की दिनांक / Date of Issue: 01.03.2019

पारित कर्ता/ Passed by: - श्री मुकेश चट्टा/Shree Mukesh Chadha

सहायक आयुक्त/Assistant Commissioner,

सीमा शुल्क सदन, कंडला/ Customs House, Kandla.

आदेश में मूल सं/ ORDER-IN- ORIGINAL NO: KDL/AC/MC/ 212/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, Mridual 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 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 dated 20.05.2010 for Rs. 5,00,275/- (Rupees Five Lakh Two Hundred Seventy Five Only) filed by M/s. Shri Balaji Timber Traders, Survey No.489/3, Mithirohar, Gandhidham – 370201.

Brief facts of the case:

(1) M/s. Shri Balaji Timber Traders, Survey No.489/3, Mithirohar, Gandhidham – 370201 (hereinafter referred to as “the claimant”) have filed a refund claim of Rs.5,00,275/- (Rupees Five Lakh Two Hundred Seventy Five Only) vide letter dated 18.05.2010 received on 20.05.2010. The claimant 20.05.2010 has claimed the refund of 4% SAD paid by them at the time of importation. The refund claim is filed on the basis of the exemption as granted vide Notification No.102/2007-Cus. dated 14.09.2007. The claimant have been issued deficiency memo 26.09.2018 and in the response of same, the claimant have submitted their reply along with all required documents vide their letter dated 02/10/2018 (received in this office on 08/10/2018) Accordingly the claim have been taken for processing. The refund claim is filed under Section 27 of the Customs Act,1962.

(2) The claimant has filed a refund claim along with following documents.

II) Triplicate copy of in original TR-6 Challans evidencing the payment of all custom duty and Duplicate copy (in Original) of B/Es showing the import of Qty. 1106.812 CBM (869.402 CMT) by the claimant as detailed below.

Sr No	B/E No. & Date	TR-6 No. & Date	Imp. Qty (in CBM)	Imp. Qty (in CMT)	Total 4% SAD Paid	Total Duty Paid (Rs.)
1	297530/03.07.09	20197477/06.07.09	113.607	89.238	29766.10	66213.00
2	299219/16.07.09	20198704/23.07.09	141.665	111.278	66281.00	147438.00
3	304621/24.08.09	20202495/27.08.09	345.478	271.374	182255.50	405417.00
4	304620/24.08.09	20202494/27.08.09	251.517	197.567	132686.90	295154.00
5	306383/02.09.09	20206514/01.10.09 20203532/03.09.09	254.545	199.945	89287.70	198615.00
Total			1106.812	869.402	500277.20	1112837.00

III) Copies of Sale invoice as evidence of sale of the imported goods to the buyers with an endorsement that “No credit of the SAD duty levied under sub-section 5 of section 3 of the Customs shall be admissible” as required under Para 2(b) of the exemption Notification No.102/2007. Other details like B/E No, VAT payable is reflected in the sale Invoices.

IV) Worksheet showing the details of import made under above B/E and sales affected there under.

V) Copies of VAT /CST challan evidencing total VAT payment for the month of August 2009, September 2009 & October 2009 and CST payment form the month of September 2009 & October 2009, as shown in below mentioned table –

Sr No	Vat paid in cash	VAT paid through adj. of ITC	Total VAT paid (Rs.)	CST paid in cash	CST paid through adj. of ITC	Total CST paid (Rs)	Period
1	1510909.00	864.00	1511773.00	N/A	N/A	N/A	Aug., 2009
2	1125188.00	0.00	1125188.00	172297.00	0.00	172297.00	Sep., 2009
3	571090.00	0.00	571090.00	122944.00	0.00	122944.00	Oct., 2009

VI) Undertaking from the claimant that the 4% SAD has not been passed on by them to buyer/any other person.

VII) Declaration regarding the appointment of Chartered Accountant M/s. I. H. Desai & Associates, for the financial year 2009-2010.

VIII) Copy of Ledger Account of 4% SAD refundable, VAT/CST and certificate issued by the Chartered Accountant showing the amount of SAD receivable under the Head SAD refund receivable.

IX) Declaration regarding filing of single claim in a month of May 2010.

X) C.A. Certificate certifying co-relation between VAT/CST payment and sale invoice and burden of 4% SAD has not passed on to buyer or any other person.

(3) As per Notification No.102/2007-Cus. Dated 14.09.2007, the exemption contained in this notification shall be given effect, if the conditions, as stipulated in the said notification are fulfilled. The conditions are that the importer of the said goods shall pay all duties, including the said additional duty of customs leviable thereon. as applicable, at the time of importation of the goods; the importer, while issuing the invoice for sale of the goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under Sub-section (5) of Section 3 of the Customs Tariff Act, 1975 shall be admissible; the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional

customs officer; the importer shall pay on sale of the said goods appropriate sales tax or value added tax, as the case may be. Further, as per Para 2(e), the importer at the time of claiming of the refund shall, inter alia, provide copies of the documents evidencing the payment of the said additional duty; the invoice of sale of the imported goods in respect of which refund of the said additional duty is claimed and documents evidencing the payment of appropriate sales tax or value added tax as the case may be, by the importer, on sale of such imported goods.

(4) The claimant has subsequently sold imported Qty. 863.206 CBM of Malaysian Round Logs to the as detailed below.

(1) B/E No.297530 dt.03.07.2009, Import Qty.113.607 CBM(89.238 CMT) .

Sr No	Sale Invoice No. & date		Sold Qty (in CMT)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	T-130	11.09.09	89.237	80178.00	16036.00	0.00
	Total Sales Qty		89.237			
	Short Sales Qty		0.001			
	Import Qty		89.238	80178.00	16036.00	0.00

(2) B/E No.299219 DT.16.07.2009, Import Qty.141.665 CBM(111.278 CMT)

Sr No	Sale Invoice No. & date		Sold Qty (in CMT)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	T-121	27.08.09	7.735	11633.00	2327.00	0.00
2	R-149	02.09.09	20.003	19024.00	3805.00	0.00
3	T-128	08.09.09	18.809	17248.00	3450.00	0.00
4	R-156	08.09.09	20.008	18016.00	3603.00	0.00
5	R-163	10.09.09	17.471	17060.00	3412.00	0.00
6	R-176	19.09.09	7.927	10276.00	2055.00	0.00
7	T-131	21.09.09	2.476	4519.00	904.00	0.00
8	R-188	25.09.09	16.813	14200.00	2840.00	0.00
	Total Sales Qty		111.242			
	Short Sales Qty		0.036			
	Import Qty		111.278	111976.00	22396.00	0.00

(3) B/E No.304621 dt.24.08.2009, Import Qty.345.478 CBM (271.374CMT)

Sr No	Sale Invoice No. & date		Sold Qty (in CMT)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	T-134	22.09.09	271.370	535956.00	107191.00	0.00
	Total Sales Qty		271.370			
	Short Sales Qty		0.004			
	Import Qty		271.374	535956.00	107191.00	0.00

(4) B/E No.304620 dt.24.08.2009, Import Qty.251.517 CBM (197.567 CMT)

Sr No	Sale Invoice No. & date		Sold Qty (in CMT)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	R-158	08.09.09	16.003	18801.00	3760.00	0.00
2	R-159	08.09.09	16.317	0.00	0.00	4015.00
3	T-132	21.09.09	12.737	33915.00	6783.00	0.00
4	R-189	25.09.09	18.814	19378.00	3836.00	0.00
5	R-190	26.09.09	20.104	20188.00	4038.00	0.00
6	T-135	02.10.09	15.376	13921.00	2784.00	0.00
7	R-201	03.10.09	17.204	18301.00	3660.00	0.00
8	T-137	05.10.09	16.023	14671.00	2934.00	0.00
9	R-208	09.10.09	27.109	27448.00	5490.00	0.00
10	R-210	10.10.09	22.597	21268.00	4254.00	0.00
11	R-222	27.10.09	14.583	0.00	0.00	2614.00
	Total Sales Qty		196.867			
	Short Sales Qty		0.700			
	Import Qty		197.567	187891.00	37539.00	6629.00

(5) B/E No.306383 dt.02.09.2009, Import Qty.254.545 CBM (199.945CMT)

Sr No	Sale Invoice No. & date		Sold Qty (in CMT)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	T-139	06.10.09	9.019	13697.00	2739.00	0.00
2	T-141	08.10.09	6.434	6772.00	1354.00	0.00
3	T-142	08.10.09	86.170	170735.00	34147.00	0.00
4	T-144	14.10.09	13.061	15088.00	3018.00	0.00
5	T-145	14.10.09	7.107	9003.00	1801.00	0.00

6	T-147	28.10.09	33.480	52250.00	10450.00	0.00
7	R-226	30.10.09	26.114	26277.00	5255.00	0.00
8	T-149	31.10.09	13.105	13125.00	2625.00	0.00
Total Sales Qty			194.490			
Short Sales Qty			5.455			
Import Qty			199.945	306947.00	61389.00	0.00

(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 and all necessary documents as stated above have been furnished.

Findings:

(6) I have carefully gone through the case record submitted by the claimant and find that the claimant has imported Qty.1106.812 CBM (869.402 CMT) of Malaysian Round Logs and paid duties of customs amounting to Rs. 11,12,837/- inclusive of 4% SAD amounting to Rs.5,00,277.20 under B/Es detailed as in para,s' 2 (ii).

(7) As regards to limitation of filing refund claim within one year from the date of payment of duty or from date of filing, I find, in the present case, this refund claim was filed in this office on 20.05.2010, which is within stipulated period of one year from the date of duty payment of Bill of entry I find the claim is not hit by time bar. The claim was scrutinized as per provisions of Section 27 of Customs Act, 1962 and was found in order.

(8) The claim is not barred by unjust enrichment since the claimant has submitted a certificate No Nil dated 17.05.2010 of M/s I.H. Desai & Associates., Chartered Accountant, wherein it is certified that the amount sought as refund has not been passed on by the claimant to any other party, directly or indirectly. As such I find that the claim is not barred by unjust enrichment.

(9) The claimant have been issued deficiency memo 26.09.2018 and in the response of same, the claimant have submitted their reply along with all required documents vide their letter dated 02/10/2018 (received in this office on 08/10/2018) Accordingly the claim have been taken for processing. The refund claim is filed under Section 27 of the Customs Act, 1962.

(10) The sale invoice is endorsed with the remark "No credit of the Additional duty levied under Sub-section (5) of Section 3 of the Customs Tariff Act, 1975 shall be admissible".

(11) I find that the claimant has sold 863.206 CMT out of total imported quantity of 869.402 CMT and hereby they have short sold 6.196 CMT of the imported goods, as shown in table.

Sr. No.	B/E No. & Date	Imp. Qty. in (CMT.)	Sold Qty. in (CMT.)	Short Sold Qty (CMT)	Total 4% Sad Paid	4% SAD on Short Sold	Net Eligible Refund Claim
1	297530/03.07.09	89.238	89.237	0.001	29766.10	0.33	29765.77
2	299219/16.07.09	111.278	111.242	0.036	66281.00	21.44	66259.56
3	304621/24.08.09	271.374	271.370	0.004	182255.50	2.69	182252.81
4	304620/24.08.09	197.567	196.867	0.700	132686.90	470.12	132216.78
5	306383/02.09.09	199.945	194.490	5.455	89287.70	2435.99	86851.71
Total		869.402	863.206	6.196	500277.20	2930.57	497346.63

I find that the claimant has sold quantity of imported goods i.e. 863.206 CMT. out of total imported quantity 869.402 CMT, As per Para-2(d) of Notification No. 102/2007-Cus. Dated 14.09.2007 the importer shall pay on sale of the said goods, appropriate Sales Tax or Value Added Tax, as the case may be and as per Para 4.1 of Circular No. 06/2008-Cus. Dated 28.04.2008, unsold stock would not be eligible for refund. In other words, refund can be granted only for the quantity of imported goods sold on payment of applicable VAT/CST. Accordingly, the claimant is eligible for refund for the quantity sold only, which comes to Rs. 4,97,346/- as per Table above and the claimant has filed refund claim for same amount. The claimant has also given an undertaking that they shall not claim the refund on short sold quantity i.e. 6.196 CMT in future also.

(12) Board has issued Circular No.06/2008. dated 28.04.08, 16/2008 and 18/2010, wherein certain procedures are to be adopted for refund of 4 % SAD. The procedures are outlined as under.

- (i) The refund claim has to be filed within one year.
(ii) A single claim against a particular B/E has to be filed.
(iii) C.A. Certificate certifying co-relation between VAT/CST payment and sale invoice and burden of 4% SAD has not passed on to buyer or any other person.
(iv) Self certification by the importer with respect to the unjust enrichment.
(v) Copies of VAT/CST challan/returns.

(13) I find that the refund claim is filed within the prescribed time limit and a single claim has been filed against a particular Bill of Entry. The Chartered Accountant, M/s. I. H. desai & Associates, Gandhidham vide their certificate dated 17.05.2010 has certified that M/s Shri Balaji Timber Trader., has made the VAT/CST payment which co-relates with the sale invoices. They have further certified that the burden of 4% SAD has not been passed on to buyer or any other person. The importer has given an undertaking that they have not passed on the burden of 4% SAD to buyer or any other person. The claimant has also submitted VAT/CST challans & returns in co-relation to the Chartered Accountant certificate for the said claim. Hence, I am satisfied that there is no unjust enrichment in the present case.

(14) The documents showing the payment of VAT/CST related to the refund claim have been forwarded to the proper authorities for verification of its genuineness. However, the refund claim is sanctioned subject to the verification of genuineness of VAT/CST documents submitted with this refund claim. Action under section 28 of the Customs Act, 1962 will be initiated against the claimant, if any, discrepancy is noticed/reported in respect to the genuineness of VAT/CST challan during its verification by the concerned authority.

(15) In view of the foregoing para, I find that the claimant has fulfilled all the conditions as laid down in the notification No. 102/2007 Cus, dated 14.09.07 read with Board Circular No. 06/2008,16/2008 and 18/2010 and therefore the claimant is eligible for the refund of Rs. 4,97,346/- Only.

(16) In view of the above discussion, I pass the following order.

ORDER

I sanction refund of Rs. 4,97,346/- (Rupees Four Lakhs Ninety Seven Thousand Three Hundred Forty Six Only) filed by M/s. Shri Balaji Timber Traders, Survey No.489/3, Mithirohar, Gandhidham – 370201, in terms of notification no. 102/2007-cus-dated 14.09.2007 as amended.

Mukesh Chadha
28.02.19

(Mukesh Chadha)
Assistant Commissioner (Refund)
Customs House, Kandla

Date .02.2019

By Reg. Post
F.No. S/6-366/Ref/2010

To,
M/s. Shri Balaji Timber Traders,
Survey No.489/3, Mithirohar,
Gandhidham – 370201

Copy to: 1) Deputy Commissioner (RRA), Customs House, Kandla.
2) Guard file.

3) Respective Refund Sanctioned File.

4) The Deputy Commissioner (EOI), CH Kandla.

