



सीमा शुल्क आयुक्त का कार्यालय,
नवीन सीमा शुल्क भवन, नया कांडला - 370 210 (गुजरात)
OFFICE OF THE COMMISSIONER OF CUSTOMS,
NEW CUSTOM HOUSE, NEW KANDLA - 370 210 (GUJARAT)

PHONE NO. : 02836-271468/9

FAX NO. : 02836-271467

A	फाइल संख्या/ File No.	S/10-203/ADJ/ADC/NILKANTH/2016-17
B	मूल आदेश सं./ Order-in-Original No.	KDL/ADC/UBR/19/2017-18
C	पारित कर्ता/ Passed by	SHRI U. B. RAKHE, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/ Date of order	24/01/2018
E	जारी करने की दिनांक/ Date of issue	24/01/2018
F	एल.सी.डी.एन. सं. एवं दिनांक/ LCDN No. & Date	S/11-01/Gr.IV/2013-14 dated 20.12.2013
G	नोटिसी/ पार्टी Noticee/ Party	M/s. Nilkanth Concast Pvt. Ltd., S. No. 221, Vadala, Taluka: Mundra, Dist.: Kutch - 370410

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A (1) के अंतर्गत प्रपत्र सीए 3- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A (1) (a) of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:
“सीमा शुल्क आयुक्त)अपील(, कांडला
7वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड
अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
7th Floor, Mridul Tower, Behind Times of India, Ashram Road
Ahmedabad - 380 009”
3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.
4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 2/- under Court Fee Act it must accompanied by -
(i) उक्त अपील की एक प्रति और
A copy of the appeal, and
(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं.-6 में निर्धारित 2/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 2/- (Rupees Two only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.
5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.
6. अपील प्रस्तुत करते समय, सीमा शुल्क)अपील (नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.
7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का %10 भुगतान करना होगा।
An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

1. BRIEF FACTS OF THE CASE

1.1 M/s. Nilkanth Concast Pvt. Ltd., S. No. 221, Vadala, Taluka: Mundra, Dist.: Kutch - 370410 (Gujarat) (*hereinafter referred to as 'the Noticee'*) presented a Bill of Entry No. 322422 dated 21.12.2009 through their CHA for clearance of Iron Plate and Structure, declaring description of the imported goods as "*Plate and Structure Scrap (Heavy Melting Scrap)*" and claiming benefit of exemption of NIL rate of Basic Customs Duty under Sr. No. 200 of Notification No. 21/2002-Cus. dated 01.03.2002 by classifying the same under CTH 7204.

1.2 According to Sr. No. 200 of above Notification, only melting scrap of iron falling under chapter heading 7204 were exempted to "NIL" rate of duty. Vide S. No. 190C of the same Notification, BCD on all other items covered under chapter heading 7203, 7205 and 7206 to 7215 were exempted to the extent of 5% only.

1.3 The item 'Plate and Structure' is not covered under the chapter heading 7204. Hence, the noticee was not entitled to get benefit of exemption of "NIL" rate of BCD and has therefore, to discharge the duties on merits.

1.4 The concerned Assistant Commissioner, vide Less Charge Demand Notice No. S/11-01/Gr.IV/2013-14 dated 20.12.2013, therefore directed the noticee to pay duty amounting to Rs. 10,05,157/- along with applicable interest in terms of Section 28(4) of the Customs Act, 1962. It was also proposed to impose penalties on them.

2. PERSONAL HEARING & DEFENCE REPLY:

2.1 Personal hearing in the matter was fixed on 10.02.2017, 28.06.2017, 12.07.2017 and 28.07.2017. Shri Suresh Sarbaliya, Vice President and Shri Jitendra Wadhvani, Commercial Manager of the noticee appeared for personal hearing on behalf of the noticee on 28.07.2017 and submitted their defence reply vide their letter dated 27.07.2017. They requested for verification of the documents from their company as the issue is very old. They further requested for another date of personal hearing. Accordingly the next date of PH was fixed on 04.08.2017.

2.2 The above said persons appeared for personal hearing on 08.08.2017 in lieu of 04.08.2017 and requested for more time to obtain the documentary evidences indicating that the imported and cleared "*Plate and Structural Scrap (Heavy Melting Scrap)*" have been used in their manufacturing process.

Accordingly, one more opportunity was granted to them by fixing next date of PH as 22.08.2017.

2.3 The above said persons appeared for personal hearing on 22.08.2017 and submitted that in spite of their best efforts they could not locate the documents relating to the imports of goods covered by the B. E. No. 322422 dated 21.12.2009 as the matter is very old i.e. eight years old. They however submitted that in this case the goods as imported were Plate and Structure Scrap which was declared as Heavy Melting Scrap in the Bill of Entry No. 322422 dated 21.12.2009 and the same was taken to their factory for melting and manufacturing of TMT Bars which is their end products. They accordingly prayed to drop the proceedings as initiated in the SCN.

2.4 The Noticee has submitted their defence reply vide letter dated 27.07.2017 wherein they have submitted that they have not taken benefit of 5% exemption of BCD under Bill of Entry No. 322422 dated 21.12.2009 by declaring the imported material only as Heavy Melting Scrap. They have further submitted that as per the copy of the said Bill of Entry attached, they have declared cargo as P & S Scrap (Heavy Melting Scrap) and requested to withdraw the SCN.

3. DISCUSSION AND FINDINGS:

3.1 I have carefully gone through the Less Charge Demand, material available on record, written submissions made by the Noticee as well as submission made during personal hearing.

3.2 The issue in the present case is to decide whether the benefit of exemption of NIL rate of Basic Customs Duty under Sr. No. 200 of Notification No. 21/2002-Cus. dated 01.03.2002 is available in respect of goods imported by the Noticee or otherwise.

3.3 The Noticee had imported goods viz. Plate and Structural Scrap (Heavy Melting Scrap) falling under Customs Tariff Heading No. 7204 of the Customs Tariff Act, 1975 and sought clearance under the subject Bill of Entry, claiming the benefit of exemption contained in Sr. No. 200 of Notification No. 21/2002-Cus. dated 01.03.2002 from the payment of Basic Customs Duty.

3.4 Present Less Charge Demand Notice was issued for disallowing exemption under Sr. No. 200 of Notification No. 21/2002-Cus. dated

01.03.2002 for sole reason that the said exemption is not available to Plate & Structure.

3.5 It is worth mentioning here that the classification of goods is determined in accordance with the General Rules of Interpretation (GRI for short) which have to be applied in sequential order from GRI 1 to GRI 6. Further, GRI 1 envisages that for legal purpose, classification shall be determined according to the terms of the heading and any relative section or chapter notes and, provided such heading or notes do not otherwise require, according to the following provisions i.e., from GRI 2 to GRI 6.

3.6 The relevant section note governing classification of 'waste and scrap' is Note 8 (a) of Section XV, wherein the meaning of 'waste and scrap' has been assigned as under:-

"8(a) Waste and scrap:- Metal waste and scrap from the manufacture or mechanical working of metals, and metal goods definitely not usable as such because of breakage, cutting-up, wear or other reasons".

3.7 Further, explanatory notes to chapter heading 7204 also indicate that the heading covers waste and scrap of iron or steel, as defined in Note 8 (a) to Section XV:

Such waste and scrap of iron or steel is of a miscellaneous nature and generally takes the form of:-

- (1) Waste and scrap from the manufacture or mechanical working of iron or steel (e.g., crop ends, filings and turnings).
- (2) Articles of iron or steel, definitively not usable as such because of breakage, cutting-up, wear or other reasons; iron or steel waste and scrap is usually prepared by means of the following processes, in order to adapt it to the dimensions and qualities required by the users:
 - (a) Shearing of flame-cutting of heavy and long pieces.
 - (b) Compression into bales, particularly in the case of light scrap, using for example a hydraulic press.
 - (c) Fragmentation (shredding) of motor vehicle bodies and other light scrap, followed by separation (which may be magnetic) with a view to obtaining a high density product that is fairly clean.
 - (d) Crushing and agglomeration into briquettes of iron and steel filings and turnings.
 - (e) Breaking up of old iron articles.

Waste and scrap is generally used for the recovery of metal by re-melting or for the manufacture of chemicals.

3.8 As discussed aforesaid, the classification of goods under heading 7204 is determined as per section note 8 (a) of Section XV of the Customs Tariff Act, 1975 read with the explanatory notes to heading 7204. Merely having the word 'plates and structure' in the declared description of the goods does not disqualify the goods from being classified under heading 7204. Further, the imported goods were accompanied with Pre-Shipment Inspection Certificate (PSIC) issued by Independent Surveyor M/s. Inspectorate international Limited, approved by the DGFT. The said PSIC also certifies that the imported goods are metallic scrap. All the documentary evidences available at the time of clearance of the said goods such as invoice, BL, HSS agreement etc. also indicate that the goods are heavy melting scrap.

3.9 In addition to the above, the examination report in respect of the impugned goods reveals that the impugned goods are nothing but are P & S scrap (heavy melting scrap) of magnetic grade. The examination report is reproduced as under:-

“Inspected the lot, examined 25% of cargo along with Supdt (DE) under supervision of AC (DE) in presence of CHA rep. Shri Atul Pandya and found as P and S scrap (heavy melting scrap) having magnetic grade. No serviceable items/ explosives/ war material/ live ammunition found mixed with the lot. Followed Cir No. 56/04 as amended. Weight is to be ascertained at the time of delivery of goods”.

3.10 In respect of the imported goods, the physical examination of the goods is the only way to verify the veracity of the facts declared by the importer in the B/E viz. description, classification, value etc. In the present case, the examination was conducted by the docks officers under the supervision of AC (Docks) and the examination report describes the goods as “P and S scrap (heavy melting scrap) having magnetic grade” and that there is no serviceable item in the material. Therefore, I find that the impugned goods cleared vide B/E No. 322422 dated 21.12.2009 are eligible to be classified under CTH 7204, more specifically under tariff item 72044900, but the entitlement for the benefit of Nil BCD to the Noticee under Sr. No. 200 of Notification No. 21/2002-Cus dated 01.03.2002 will be subject to the fulfilment of the Condition No. 20 specified in the Annexure to the notification. The relevant portion of the said notification reads as under:

Notification No. 21 / 2002-Customs

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supercession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.17/2001-Customs, dated the 1st March, 2001[G.S.R. 116(E) dated the 1st March, 2001], the Central Government, being satisfied that it is necessary in

the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading or sub-heading of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

(a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table;

(b) from so much of the additional duty leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act, as is in excess of the rate specified in the corresponding entry in column (5) of the said Table,

subject to any of the conditions, specified in the Annexure to this notification, the condition No. of which is mentioned in the corresponding entry in column (6) of the said Table:

Provided that nothing contained in this notification shall apply to -

a) the goods specified against serial Nos. 239, 240, 241 and 242 of the said Table on or after the 1st day of April, 2003 ;

b) the goods specified against serial Nos. 250, 251 , 252 and 415 of the said Table on or after the 1st day of March, 2005 .

Explanation.- For the purposes of this notification, the rate specified in column (4) or column (5) is ad valorem rate, unless otherwise specified.

Table

S. No.	Chapter or Heading or sub-heading	Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
200.	72.04	Melting scrap of iron or steel (other than stainless steel or heat resisting steel), for use in, or supply to, a unit for the purpose of melting	5%	-	20

3.11 Further, Condition No. 20 of Notification No. 21/2002-Cus dated 01.03.2002 reads as under:

"If,-

(a) the importer furnishes an undertaking to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, that such imported goods will be used for the purpose specified and in the event of his failure to comply with this condition, he shall be liable to pay, in respect of such quantity of the said goods as is not proved to have been so used, an amount equal to the difference between the duty leviable on such quantity but for the exemption under this notification and that already paid at the time of importation; and

(b) the importer produces to the said Deputy Commissioner or Assistant Commissioner, as the case may be, within six months or such extended period, as that Deputy Commissioner or Assistant Commissioner may allow, a certificate issued by the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, in whose jurisdiction the said goods have been used in such unit, that the said goods have been so used."

3.12 From the aforesaid para, it is clear that to get benefit of exemption from Basic Customs Duty under Sr. No. 200 of Notification No. 21/2002-Cus dated 01.03.2002, the Noticee had to produce to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, within six months or such extended period, as that Deputy Commissioner or Assistant Commissioner may allow, a certificate issued by the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, in whose jurisdiction the said goods have been used in such unit, that the said goods have been so used.

3.13 During personal hearing, the Noticee was given ample opportunities to produce evidence to establish that the goods imported vide B/E No. 322422 dated 21.12.2009 were used solely in their manufacturing process. But, the Noticee failed to produce the same and hence the goods imported vide subject Bill of Entry is not proved to have been so used. As the Noticee has not fulfilled the condition laid down in the Notification, I find that they are not eligible for the benefit of exemption from BCD under Sr. No. 200 of Notification No. 21/2002-Cus dated 01.03.2002 and liable to pay differential Customs Duty amounting to Rs.10,05,157/- leviable under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

3.14 As regard proposal in Less Charge Demand Notice for imposition of penalty on the Noticee under section 114A of the Customs Act, 1962, I find that as discussed supra in detail, in the instant case the Noticee did not comply with the condition laid down in the Notification for availing the benefit of exemption from BCD under Sr. No. 200 of the said Notification and failed to pay Customs Duty thereupon, which I hold recoverable under Section 28(4) of the Customs Act, 1962. Consequently such omissions and commissions on the part of the Noticee that calls for recovery of duty under Section 28(4) of the Customs Act, 1962, also renders them liable to penalty under section 114A of the Customs Act, 1962. Accordingly, I hold that penalty under section 114A of the Customs Act, 1962 is attracted on the Noticee i.e. M/s. Nilkanth

Concast Pvt. Ltd., S. No. 221, Vadala, Taluka: Mundra, Dist.: Kutch - 370410.

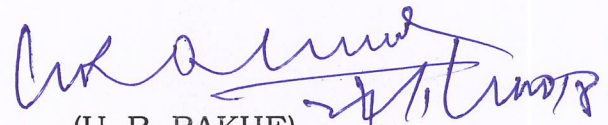
4. In view of the foregoing discussions and findings, I, accordingly, pass the following order:

ORDER

a. I deny the benefit of duty exemption as claimed under Sr. No. 200 of Notification No. 21/2002-Cus dated 01.03.2002 by M/s. Nilkanth Concast Pvt. Ltd., S. No. 221, Vadala, Taluka: Mundra, Dist.: Kutch - 370410 and order to confirm the demand and recover the differential Customs Duty amounting to Rs.10,05,157/- (Rupees Ten Lakh Five Thousand One Hundred Fifty Seven Only) under Section 28(4) of the Customs Act, 1962.

b. I confirm the demand of interest and order for recovery of the interest from M/s. Nilkanth Concast Pvt. Ltd. at the appropriate rate under section 28AA of the Customs Act, 1962 on the duty demand at (a) above.

c. I impose penalty equivalent to the duty and interest on M/s. Nilkanth Concast Pvt. Ltd. under Section 114A of the Customs Act, 1962. However, the benefit of reduced penalty as provided under the first and the second proviso to Section 114A ibid shall be available subject to the condition that the amount of duty, interest and penalty so determined is paid within the period of thirty days referred to in that proviso of Section 114A.



(U. B. RAKHE)

ADDITIONAL COMMISSIONER

BY RPAD/ Hand Delivery

To

M/s. Nilkanth Concast Pvt. Ltd.,
S. No. 221, Vadala, Taluka: Mundra,
Dist.: Kutch - 370410

Copy to

- i) The Deputy/Assistant Commissioner of Customs (RRA), CH, Kandla.
- ii) The Deputy/Assistant Commissioner of Customs (Recovery), CH, Kandla.
- iii) The Deputy/Assistant Commissioner of Customs (Gr. IV), CH, Kandla.
- ✓ iv) Guard File.