



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

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A	फाइल संख्या/ File No.	S/10-170/ADJ/ADC/RMPL/2016-17
B	मूल आदेश सं./ Order-in-Original No.	KDL/ADC/UBR/06/2017-18
C	पारित कर्ता/ Passed by	SHRI U. B. RAKHE, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	28/07/2017
E	जारी करने की दिनांक/Date of issue	28/07/2017
F	एल.सी.डी.एन. सं. एवं दिनांक/LCDN No. & Date	S/20-17/ISCL/Gr.VII/2007 dated 30.05.2007
G	नोटिसी/पार्टी Noticee/Party	M/s. Rajhans Metals Pvt. Ltd., Plot No. 21/3, GIDC, Shanker Tekri, Udyog Nagar, Jamnagar-361004 (Gujarat)

- यह अपील आदेश संबन्धित को नि शुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- 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
वीं मंजिल 7, 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"
- 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.
- 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 -
 - उक्त अपील की एक प्रति और
A copy of the appeal, and
 - 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.
- 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.
- अपील प्रस्तुत करते समय, सीमा शुल्क नियम (अपील), और सीमा शुल्क 1982 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.
- 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. Rajhans Metals Pvt. Ltd., Plot No. 21/3, GIDC, Shanker Tekri, Udyog Nagar, Jamnagar-361004 (Gujarat) (*hereinafter referred to as 'the Noticee'*) imported goods viz. Mixed Brass Scrap/ Brass Scrap Honey classifying under CTH No. 74040022 chargeable to customs duty and sought clearance by filing Bill of Entry No. 173212 and 173213 both dated 20.12.2006, 180976 dated 26.02.2007, 181670, 181671 and 181675 all dated 05.03.2007 & 182933 dated 13.03.2007 claiming the benefit of Notification No. 41/2005-Cus. dated 09.05.2005 from the payment of Basic Customs duty against license issued under Vishesh Krishi Upaj Yojna (VKUY) by the DGFT.

1.2. Notification No. 41/2005 dated 09.05.2005 allows exemption subject to certain conditions prescribed therein. In respect of the subject Bill of Entry, the VKUY duty scrip with release advise was produced for debit of the duty claiming the exemption under the DFCE scheme under Notification No. 40/2005 dated 09.05.2005 for clearance of the goods.

1.3. The import of goods other than goods falling under Chapter 1 to 24 is not allowable under VKUY scrip, as per para 3.7 that as per the provisions of para 3.8.3 and 3.8.3.1 of FTP 2004-09 read with Appendix 37B of the HBP Vol-I and policy Notification No. 15(RE)-2004/2004-09 dated 04.01.2005 and Policy Circular No. 40(RE-2005)/2004-09 dated 08.12.2005 that the scheme allows only the import of goods falling under Chapter 1 to 24 of the Customs Tarff Act and the same cannot be extended to other chapters (like chapter 25, 27, 29, 38, 74 and 76 etc.) and that the same is irregular and amounts to incorrect availment of exemption under the scheme. The importer is therefore, not entitled to the benefit of the notification and has therefore, to discharge the duties on merits.

1.4. The Noticee, vide Less Charge Demand Notice No. S/20-17/ISCL/Gr-VII/2007 dated 30.05.2007 was called upon to pay all the duties chargeable/ leviable amounting to Rs.29,60,550/- under Section 28 of the Customs Act, 1962 alongwith interest as applicable under Section 28AB of the Customs Act,1962.

2. PERSONAL HEARING & DEFENCE REPLY:

2.1. Personal hearing in the matter was granted to the Noticee on dated 15/12/2016, 11/01/2017, 22/02/2017, 27/06/2017, 11/07/2017 & 28/07/2017. Shri Himanshu Mehta, Authorised Signatory of the Noticee remained present during personal hearing dated 28/07/2017 and submitted a written submission dated 27.07.2017 and reiterated their detailed arguments in support of their defence as made in their defence reply vide letter dated 08.12.2016, 26.12.2016 and 22.06.2017 and requested to drop the proceedings as initiated in the demand SCN.

2.2. The Noticee has submitted their defence reply vide letter dated 08.12.2016, 26.12.2016, 22.06.2017 & 27.07.2017 wherein they submitted as under:

2.2.1. That Directorate General of Foreign Trade had issued Policy Circular No. 5 (RE-2008) /2004-2009 dated 28.04.2008 "Para No. 3 (e) clarified that VKGUY Duty Credit Scrips issued for exports made during 2008-09 can be used for imports. As governed by Para 3.12.4 of FTP (RE2008), of all freely importable items covered under chapter's 1 to 98 of the ITC HS book, except for a new items as listed in Appendix 37B of the Handbook of Procedures Vol. I Similarly for VKGUY Duty Credit Scrips can be used for imports of all freely importable items covered under chapters 1 to 98 of the ITC HS Book, exempt for a few items as listed in Appendix 37B of the Handbook of Procedures Vol.1".

2.2.2. Thus, for exports made during 2006-2009 VKGUY duty credit scrips can be used for payment of duties of customs on import of any items covered under chapters 1 to 98 of ITC HS Book those are freely importable therein, exempt for a few items as listed in Appendix 37B of the Bankbook of Procedures Vol.1.

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 submissions made during personal hearing.

3.2. The issue in the present case is to decide whether the benefit of exemption in terms of Notification No. 41/2005-Cus. dated 09.05.2005 from the payment of Basic Customs duty against license issued under Vishesh Krushi Upaj Yojna (VKUY) by the DGFT is available in respect of goods imported by the Noticee or otherwise.

3.3. The Noticee had imported goods viz. Mixed Brass Scrap/ Brass Scrap Honey (falling under Chapter No. 74040022, other than Chapter 1 to 24, of the Customs Tariff Act, 1975) and sought clearance under the subject Bill of Entry, claiming therein benefit of exemption contained in Notification No. 41/2005-Cus. dated 09.05.2005 from the payment of Basic Customs duty against license issued under Vishesh Krushi Upaj Yojna (VKUY) by the DGFT.

3.4. Present Less Charge Demand Notice was issued for disallowing exemption of Notification No. 41/2005-Cus. dated 09.05.2005 for sole reason that the said exemption is not available to the imported goods falling under any chapter other than chapter 1 to 24 of the Customs Tariff Act, 1975.

3.5. It is worth mentioning here that the goods i.e. Mixed Brass Scrap/ Brass Scrap Honey imported by the Noticee were not falling under Chapter 1 to 24 of the Customs Tariff Act, 1975. Also these goods were freely importable under the Import Policy, in force at the relevant time.

3.6. It is useful to understand the exemption, granted vide Notification No. 41/2005-Cus. dated 09.05.2005.

3.6.1. The Notification exempts inputs or goods including capital goods, which are freely importable, when imported into India against a duty credit certificate issued under Vishesh Krishi Upaj Yojana in accordance with paragraph 3.8 of the Foreign

Trade Policy, subject to the condition (amongst other) that that import of items listed in paragraph 3.8.3.1 of the Policy shall not be allowed. Here it is required to refer the paragraph 3.8.3.1 of the Policy, as under:

**“3.8 VISHES KRISHI AND GRAM UDHYOG YOJNA
(SPECIAL AGRICULTURE AND VILLAGE INDUSTRY SCHEME)**

3.8.3 *The duty Credit may be used for import of inputs or goods which are freely importable under ITC(HS) Classification of Export and Import Items.*

.....

3.8.3.1 *Item listed in Appendix-37B of Handbook of Procedure (Vol-I) shall not be allowed to be imported under the Scheme.”*

3.6.2. The Notification 41/2005-Cus. dated 09.05.2005, was further amended vide Notification No. 72/2007-Cus dated 21.05.2007, whereby said condition was substituted as that the items allowed for import shall be in accordance with paragraph 3.12.4 of the Foreign Trade Policy. Here it is relevant to refer the paragraph 3.12.4 of the Policy, as under:

”3.12.4 *Duty Credit Scrip may be used for import of inputs of goods including capital goods, provided same is freely importable under ITC (HS). However, import of items listed in Appendix-37B of the HBP (Vol-I) shall not be permitted to be debited.”*

3.6.3. The erstwhile Vishesh Krishi Upaj Yojana (VKUY) also permitted import as per policy guideline, as under:

**VISHES KRISHI UPAJ YOJNA
(SPECIAL AGRICULTURAL PRODUCE SCHME)**

”3.8.3 *The Duty Credit may be used for import of inputs or goods including capital goods, as may be, notified, provided the same is freely importable under ITC(HS).*

.....

3.8.3.1 *Import of agricultural products listed in Chapter 1 to 24 if ITC(HS) classification of Export & Import items except the following shall be allowed.”*

3.7. Policy Circular No. 40/2005-09 dated 08.12.2005 in respect of utilization of Vishesh Krishi Upaj Yojna Scrips for imports issued by DGFT, clarified that duty credit scrips issued under Vishesh Krishi Upaj Yojna can be utilised for payment of Customs Duty on import of inputs and goods which are freely importable, which includes all freely importable items under Chapter 1 to 24 of ITC(HS) Classification of Export & Import Items except the small negative list already notified as given in Appendix-37B of Hand Book of Procedures Vol-I.

3.7.1. Policy Circular No. 5(RE-2008)/2004-2009 dated 28th April, 2008 issued by DGFT in respect of Utilization of Vishesh Krishi and Gram Udyog Yojana (VKGUY) scrips (Erstwhile Vishesh Krishi Upaj Yojana (VKUY) scrips) further clarified as under:

a) *In terms of the ITC HS Book, all items that are listed from chapters 1 to 98 and where the itemized policy reads as ‘free’, are the freely importable items.*

- b) For VKUY Duty Credit Scrips issued for exports made during 2004-05, Policy - FTP (RE2004) applies. Accordingly Para 3.8.3, read with Para 3.8.3.1 (Notified by Notification No. 15 dated 4.1.2005) would determine the items permitted for imports under the scheme. Notification No. 15 dated 4.1.2005 specified that items under Chapters 1 to 24 were allowed for imports, except a few as listed therein. This is an additional provision (by adding Para 3.8.3.1) and does not undo what is already granted in Para 3.8.3. No negative or positive list for import of capital goods was announced, which means that import of capital goods was not allowed for duty credit scrips earned for export during this period.
- c) For VKUY Duty Credit Scrips issued for exports made during 2005-06, Policy FTP (RE2005) applies. Accordingly Para 3.8.3, read with Para 3.8.3.1 would determine the items permitted for imports under the scheme. The negative list of imports for VKUY was listed as Appendix 37B items. Policy Circular 40 dated 8.12.2005 has been issued during FTP (RE2005), which clarified that all items that are freely importable under ITC HS, are allowed and this would include items covered under Chapters 1 to 24 also, except for a few items listed in Appendix 37B. However capital goods are not allowed, for VKUY scrips earned on export made during 2005-06. Thus all freely importable items except those listed in Appendix 37B were allowed, for duty credit scrips earned for export during this period.
- d) In FTP (RE2006), the scheme was renamed as VKGUY. For VKGUY Scrips issued for exports made during 2006-07, import allowed is governed by Para 3.8.3 read with Para 3.8.3.1 of FTP (RE2006). All freely importable items covered under ITC HS book, except for a few items listed in Appendix 37B of the Handbook of Procedures Vol. I, are allowed. Further all freely importable capital goods are also allowed, except a few capital goods. This was done by amending Appendix 37B vide Public Notice No 61(RE2007)/2004-09 dated 5.10.2006.
- e) VKGUY Duty Credit Scrips issued for exports made during 2008-09 can be used for imports, as governed by Para 3.12.4 of FTP (RE2008), of all freely importable items covered under Chapters 1 to 98 of the ITC HS book, except for a few items as listed in Appendix 37B of the Handbook of Procedures Vol. I. Similarly for VKGUY Duty Credit Scrips issued for exports made during 2007-08, Para 3.12.4 of FTP (RE2007) is relevant, and the Duty Credit Scrips can be used for imports of all freely importable items covered under Chapters 1 to 98 of the ITC HS book, except for a few items as listed in Appendix 37B of the Handbook of Procedures Vol. I.

2. Thus for export made during 2006-09, VKGUY duty credit scrips can be used for payment of duties of Customs on import of any items covered under Chapters 1 to 98 of ITC HS Book that are freely importable therein, except for a few items as listed in Appendix 37B of the Handbook of Procedures Vol. I. There has been no change in permitted items of imports during 2006-09 export periods.

3.7.2. In the above Policy Circular, with regard to Para 3.8 of the Foreign Trade Policy 2004-2009, clarification is issued that all items that are listed from chapters 1 to 98 and where the itemized policy reads as 'free', are the freely importable items. Further, clarification was also issued for admissibility of items of imports under the scheme, permitted to import during different periods. In the matter of Import-Export Policy the DGFT is final authority and its clarification in this matter settles the dispute in favour of Noticee.

3.8. In light of the words and spirit of the policy, I do not find that the policy impose any restriction on import of goods of any Chapter of Customs Tariff Act, 1975 except a small negative list as stipulated under Appendix 37-B of the Hand Book of Procedures Vol-I. The import covered in the present proceeding, are in respect of

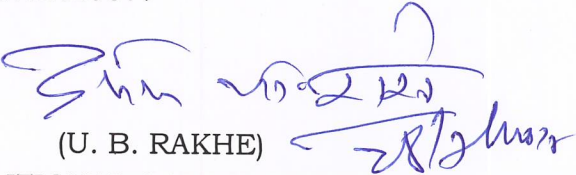
import of Mixed Brass Scrap/ Brass Scrap Honey, which do not fall under the negative list as stipulated under Appendix 37-B of the HBP Vol-I.

3.8.1. In view of the aforesaid discussions and findings, it is very clear that the Noticee had imported goods viz. Mixed Brass Scrap/ Brass Scrap Honey, which were freely importable and chargeable to Customs Duty, and correctly availed the benefit of exemption, in terms of Notification No. 41/2005-Cus dated 09.05.2005, from the payment of Basic Customs duty by debiting Duty Credit against license issued under Vishesh Krishi Upaj Yojna (VKUY) by the DGFT. Therefore, proceeding of demand against the Noticee, under Less Charge Demand deserves to be dropped.

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

ORDER

I hereby drop the proceeding initiated in the Less Charge Demand Notice issued from F. No. S/20-17/ISCL/Gr-VII/2007 dated 30.05.2007.


(U. B. RAKHE)

ADDITIONAL COMMISSIONER

BY RPAD/ Hand Delivery

To

M/s. Rajhans Metals Pvt. Ltd.,
Plot No. 21/3, GIDC, Shanker Tekri,
Udyog Nagar, Jamnagar-361004 (Gujarat)

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. VII), CH, Kandla.
- ✓ iv) Guard File.