



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/6-49/Ref/2018-19 आदेश की दिनांक / Date of Order: 02.04.2019

जारी करने की दिनांक/ Date of Issue: 02.04.2019

पारित कर्ता/ Passed by: - श्री मुकेश चढ़ा / 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/ 03 /Ref/2019-20**

1. जिसके लिये यह प्रतिलिपि जारी की जाती है उस व्यक्ति के उपयोग के लिए यह नि: शुल्क दी जाती है।

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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।

3. 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.

4. 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 जाएँ (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।

5. 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.

6. 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 five only) as prescribed under schedule-I, item 6 of the Court Fees Act, 1870.

8. 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).

9. 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 04.06.2018 for Rs.3,12,634/- (Rupees Three Lakh Twelve Thousand six hundred thirty four Only) filed by M/s. Amber overseas, B-4, Amber tower, Azadpur, Delhi.



**Brief facts of the case:**

1. M/s. Amber Overseas, B-4, Amber Tower, Azadpur, Delhi. (hereinafter referred to as "the claimant") have filed a refund claim of Rs. 3,12,634/- (Rupees Three Lakh Twelve Thousand six hundred thirty four Only) vide letter dated 17.05.2018 received on 04.06.2018.
2. The Claimant filed the refund claim on account of Customs Duty paid on unsold/unclear quantity of imported goods against Bill of Entry for home consumption (other NFEs supplies) in favour of KASEZ warehousing unit/supplier M/s. Zip Zap Exim pvt.ltd., The details of the said claim is as under;
3. The claimant filed the said refund claim for Rs. 3,12,634/- along with the following documents;
  - i. Refund application in prescribed Performa.
  - ii. Bill of Entry no. 0006040 and 0006042 date ; 29/6/2017  
(All original and duplicate copy of B/E original)
  - iii. T.R. 6 challan no. 043/17-18 & 44/17-18 Dt.30.6.17
  - iv. Copy of Performa invoice no . OO/EEFC/012/2017-18  
Declaration dated 17.05.2018 by claimant that refund duty incidence of Rs. 3,12,634/-Being claimed has not been passed on to any other person and in borne by them only and also they have not availed CVD/CENVAT credit thereof .
  - v. C.A. certificate of Manish Dubey & Associates on un utilized / un-cleared goods .any above \ no unjust enrichment.
  - vi. Worksheet for arriving refund duty involved Rs. 312634/- On un-utilized/un-cleared goods.
  - vii. Bank statement for the period June 2017 from State Bank of India.
  - viii. NOC dated 2/4/2018 of supplier M/s. Zip Zap Exim pvt.ltd.,

**FINDINGS**

4. I have carefully gone through the documents submitted by the claimant and find that the claimant (DTA importer)has filed two Bill of Entry no. 0006040 and 0006042 dated ; 29/6/2017 for supply of imported goods in favour KASEZ sector-II Kandla Special Economic Zone , Gandhidham-370230.

The claimant paid the Customs duty and claimed refund of duty as per the following details.

TABLE - A

Sr No	B/E No. & Date	Description of goods imported	Qty	Dispatc h Qty. (MT)	Balance unsold Qty.	Customs duty paidTR-6 ch.no.dt.	Total Duty utilized	Duty attributeable for balance unsold qty for which refund is claimed.
1.	0006040 29/6/2017	Small Rechargeable battery 4v	215000 Pcs	0	215000 Pcs	44/17-18Dt 30.06.17	0	120964/-
2	0006040 and 0006042 date ; 29/6/2017	Rechargable led with emergency light	11730 PAC	0	11730 PAC	191670/- 043/2017-18 Dt.30.06.2017	0	124017/-
		Mosquito bat w/o light	1780 Doz	0	1780 Doz			
		Spare parts (Assorted)	369 Kgs	0	369 Kgs			
TOTAL						312634/-	0	244981/-



5. I find from the above table that, the claimant paid the Customs Duty as per Table –A. Goods covered in the aforesaid Bill of Entries however the same could not be sold /cleared by M/s. Amber overseas, B-4, Amber tower , Azadpur,Delhi. to M/s. Zip Zap Exim pvt.ltd., due to implementation of GST w.e.f. 01/07/2017 and subsequent cancellation of their supply . I find the claimant is liable to get refund of Custom Duty of Rs. 312634/-. The actual duty amount of DTA BOE 6042 is Rs. 124017/- while the unit has paid challan of Rs. 191670/-. Hence they have also paid the excess duty of Rs.67653/- . The payment particulars of TR-6 CHALLAN as mentioned above has been verified with the concerned Bank i.e. SBI. KASEZ and found genuine. Therefore, the unutilized duty portion of duty is Rs. 244981/- for the balance quantity along with excess duty of Rs.67653/- paid by the unit appears to be eligible for refund.

I find the claimant has paid the said duty amount as per the given Bank statement. I find, the supplier M/s. Zip Zap Exim pvt.ltd.,has given a NOC in favour of the claimant for sanction of this refund claim.

6. I find the claimant has paid the Customs Duty vide afore mentioned TR-6 challan no. 043/2017-18 & 044/2017-18 dated 30/6/2017 and the claimant has filed this claim on dated 17.05.2018 received on 04.06.2018 to this office, Which is within one year of stipulated period from the date of payment of duty under the provisions of Section 27 of the Customs Act, 1962 and find that the claim is not hit by time bar. The claimant has paid Customs Duty on 30.06.17 They are unable to release or purchase above entire quantity on which the duty has been paid on bill of entry no 0006040 and 0006042 date ; 29/6/2017. The goods has not been released from KASEZ due to implementation of GST W.E.F. 01.07.17. As per the point no.3.3. Of Circular no 11/2017 dated 31.03.2017 issued by D.G.E.P, C.B.E.C. New Delhi Dated 31.03.2017. they have valid claim for refund of Rs. 312634/- .Further since there was no provision of giving refund in SEZ law , that provision has now been extended by way of amending SEZ rules by inserting new Rule 47(5 ) empowering officers of customs to issue refund claims. Therefore refund cases of past which are otherwise in order, both on account of limitation end merit (even though filed in the office of the Development Commissioner) should be issued by customs officers.

7. Further, I find the claimant has furnished a C.A. certificate from Manish Dubey & Associates, Chartered Accountant, certifying that the said refund claim amount of Rs. 312634/- was not recovered or not passed on by the applicant to any other person, hence no unjust enrichment exists in this case, further, the claimant has also given a declaration dated 17/05/2018 declaring that refund duty amount being claimed has not been passed on to any other person and is borne by them only. Thus, relying upon the same , I find that no unjust enrichment exists in this case and the refund claim is made first time by the Claimant, and hence same becomes refundable to them.

8 .In this context, I find that a letter dated 07/6/2018 and 18/09/2018 was sent to the Deputy Commissioner. of Custom, KASEZ from this office seeking verification report in the matter. I find, the D.C. (Customs) KASEZ, Gandidham vide letter F.No. KASEZ/Cus/Tech/01/Zipzap/2018-19--12638 dated 18.02.2019 has Reported that in respect of DTA BOE NO. 6040 dated 29.06.2017 the party has paid cusom duty of Rs. 120964/- vide



TR6 challan no.044/2017-18 dated 30.06.2017 and Duty amount of DTA BOE 6042 is Rs. 124017/- while the unit has paid challan of Rs. 191670/-.Hence they have also paid the excess duty of Rs.67653/- . The payment particulars of TR-6 Challan as mentioned above has been verified with the concerned Bank i.e. SBI. KASEZ and found genuine. Therefore, the unutilized duty portion of duty is Rs. 244981/- for the balance quantity. Further excess duty of Rs.67653/- paid by the unit appears to be eligible for refund.

9. In view of the above, I conclude that the above duty was paid by the claimant for entire goods covered in aforesaid Bill of Entry and subsequently entire goods could not be cleared/sold against because they were unable to sell this goods to their supplier in DTA due to implementation of GST w.e.f. 01.07.2017. Accordingly they claimed refund of Customs Duty Rs. 312634/- paid and attributable on this unsold qty. of materials for which the claimant is liable to get refund of duty on entire unsold quantity of goods as referred in the table. Further they have also paid the excess duty of Rs.67653/- the payment particulars of TR-6 Challan as mentioned above has been verified with the concerned Bank i.e. SBI. KASEZ and found genuine. Therefore, the unutilized duty portion of duty is Rs. 244981/- for the balance quantity along with excess duty of Rs.67653/- paid by the unit appears to be eligible for refund. No unjust enrichment arises in this case; accordingly the C.A. has also given necessary Certificate thereof. Therefore the Customs Duty amount of Rs. 312634/- paid by the claimant is liable for refund under the provision of Section 27 of the Customs Act. 1962.

In view of the above discussion and findings, I pass the following order :

ORDER

I, sanction refund of Rs.312634/- (Rupees Three Lakh Twelve Thousand six hundred thirty four Only) filed by M/s. Amber overseas, B-4, Amber tower , Azadpur,Delhi. of Customs duty under Section 27 of the Customs Act 1962.

*Mukesh Chadha*  
02/04/19

(Mukesh Chadha)  
Assistant Commissioner (Refund)  
Custom House, Kandla  
Date: /04/2019

BY RPAD/HAND DELEVERY

F.No. S/6-49 /Ref/2019-20

To,  
M/s. Amber overseas, B-4, Amber tower , Azadpur,Delhi.  
Copy To:

- 1) Deputy Commissioner (RRA), Custom House, Kandla
- 2) Guard File Refund Section.
- 3) Respective Refund sanction file.
- 4) EDI system. Section

