



GOVT. OF INDIA

**OFFICE OF THE COMMISSIONER OF CUSTOMS,  
CUSTOM HOUSE, KANDLA**

TELE: 02836-271468/69, FAX: 02836-271467

website: [www.Kandlacustoms.org](http://www.Kandlacustoms.org)

**निबन्धित पावती डाक द्वारा / By REGISTERED POST A.D.**

फा. सं./ S/10-01/MCD/EGM-574/2018-19

आदेश की तारीख/Date of Order : 08 .04.2019.

जारी करने की तारीख/Date of Issue : 08 .04.2019.

द्वारा पारित/Passed by:-

हेमेश छाबरा, सहायक आयुक्त

**Hemesh Chhabra, ASSISTANT COMMISSIONER**

**मूल आदेश संख्या /**

**Order-In-Original No. : KDL/AC/02/MCD/2019-20**

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 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 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 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।

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. जहाँ ड्यूटी या ड्यूटी और जुर्माना विवाद या दण्ड में है, जहाँ सिर्फ जुर्माना विवाद में है। यह अपील मांग शुल्क के 7.5% भुगतान पर स्वीकार की जाती है।

This appeal is accepted on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, where penalty alone is in dispute.

5. अनुसूची-I में न्यायालय शुल्क अधिनियम, 1870 के मद सं० 6 के तहत इस आदेश की प्रतिलिपि साथ निर्धारित 1/- 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. 1/- (Rupees one only) as prescribed under schedule-I, item 6 of the Court Fees Act, 1870.

6. मूल अपील के साथ ड्यूटी/जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty/ penalty etc. should be attached to the original appeal

7. अपील के साथ निर्धारित 5/- रुपए का स्टाम्प कोर्ट फीस के रूप में वहन करना चाहिए।

Appeal should also bear a Court Fee Stamp of Rs. 5/-. (Rupees five only)

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विषय: - कारण बताओ सूचना S/10-01/MCD/EGM-574/2018-19 Dt 13.04.2018 for late filing of EGM electronically by M/s Mihir & Company, Gandhidham.



## **BRIEF FACTS OF THE CASE**

M/s Mihir & Company, Neelkanth, B.B.Z., S-60, Zanda Chowk Gandhidham, Kachchh-370201 (herein after referred to as "noticee" for the sake of brevity) has filed Manual EGM No. F-574 dated 08.07.2017 (EDI Rotation number 120970 Dt. 22.06.2017) with this Custom House in respect of Vessel "MV QING YUN SHAN" on behalf of the Master of the vessel under section 41 of the Customs Act 1962, which sailed from Kandla Port on 09.07.2017. This rotation No. is shown as 'invalid' in the EDI System at present and the correct Rotation /EGM No. is 130319/23.06.2017 for the Shipping Bill No. 6934086/23.06.2017 and for the vessel "MV QING YUN SHAN" which sailed from Kandla on 15.07.2017.

(1) Section 41 of CA 1962 stipulates delivery of Export Manifest or Export Report as under:-

*(1) The person-in-charge of a conveyance carrying export goods shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest by presenting **electronically**, and in the case of a vehicle, an export report, in the prescribed form:*

*(2) The person delivering the export manifest or export report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.*

*(3) If the proper officer is satisfied that the export manifest or export report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented.*

### The Export Manifest (Vessels) Regulations, 1976

*Regulation 3(3); The export manifest for all goods shipped and transshipped and endorsed by the person-in-charge of the vessel as to the quantities shipped and transshipped, shall be delivered to the proper officer in the Export Department, **before the departure of the vessel or within seven days from the date of departure of the vessel:***

*Provided that where the export manifest is delivered within seven days from the date of departure of the vessel, the agent of the person-in-charge of the vessel shall furnish such security as the proper officer deems sufficient for that purpose.*

2. In view of the above said provisions, the EGM in electronic form is required to be filed in the system within seven days of sailing of the vessel. On scrutiny of the above manual EGM filed by the Noticee, it is observed that goods had been exported under shipping Bill No. 6934086 dated 23.06.2017 as mentioned in Manual EGM. However on examination in EDI Systems of Customs Kandla, it was noticed that they have not filed the EGM electronically in system till date i.e. 13.04.2018, whereas they were required to file the same within stipulated time limit of 7 days i.e. Upto 16.07.2017 from sailing date of the vessel i.e. 09.07.2017, as per Section 41 of Customs Act, 1962. The purpose of filing of EGM in Electronic form in stipulated time limit is to ensure that all obligations imposed on the master / steamer agents of the vessel under the provisions of Section 41 and 42 and 148 of the Customs Act 1962 read with



Regulation 3 of Export Manifest (Vessels) Regulations, 1976 have been duly fulfilled. As they have contravened the said provisions.

3. As they have contravened the provisions of Section 41 and 42 and 148 of the Customs Act 1962 read with Regulation 3 of Export Manifest (Vessels) Regulations, 1976 by not filing the EGM Electronically thereby they have rendered themselves liable for penal action under Section 117 read with Section 148 of the Customs Act, 1962.

4. Accordingly a SCN dated 13.04.2018 was issued as to why penalty should not be imposed upon them under Section 117 of the Customs Act, 1962 for contravention of provisions contained in Section 41 of the Customs Act, 1962 and the Export Manifest (Vessels) Regulations, 1976.

5. Here, it is again mentioned that on verification of the Rotation No. shown in SCN i.e. 120970 dated 22.06.2017 is wrong. The correct Rotation No. is 130319 dated 23.06.2017 and the sailing date of the vessel i.e. 15.07.2017, accordingly, they were required to file the same within stipulated time limit of 7 days i.e. upto 22.07.2017. However, the EGM was filed electronically on 25.09.2018.

#### **DEFENCE AND PERSONAL HEARING**

5. M/s Mihir & Company was issued a Show Cause Notice vide F. No. S/10-01/MCD/EGM-5742/2018-19 dated 13.04.2018. In the said SCN, M/s Mihir & Company was directed to submit their defense within 7 days of receipt of SCN. The noticee vide letter F.No. Nil dated 19.04.2018 replied to the SCN and submitted in defense that they had filed EGM No. F-574 manually as well as electronically through EDI system on dtd. 14.07.2017 and also requested to consider EDI EGM in order and grant relaxation in penalty.

6. Three letters F.No. S/10-01/MCD/EGM-574/2018-19 dated 28.02.2019, 12.03.2019, and 04.04.2019 were sent to M/s Mihir & Company for personal hearing in the matter. Personal hearing in the case was held on 04.04.2019 wherein Shri Bharat Agariya, Manager and Authorized Representative of M/s Mihir & Company appeared and reiterated their submission dated 19.04.2018. Shri Bharat Agariya during the personal hearing stated that the Rotation No. shown in SCN i.e. 120970 dated 22.06.2017 is wrong. The correct Rotation No. is 130319 dated 23.06.2017. He also stated that the CMC could not submit the EGM Electronically in time. However, the EGM was filed electronically on 25.09.2018. He regretted the delay and requested for lenient view as the fact is that EGM was not filed electronically within stipulated time limit. He also stated that they do not want to say anything else in the matter and do not want any further personal hearing and requested for earliest disposal of the matter with a lenient view.

#### **DISCUSSION AND FINDINGS**

7. I have carefully gone through the case records, defense submission and record of personal hearing. The fact on record is that the Agent had not filed the EGM in electronic form



within stipulated time limit of seven days from the date of sailing of vessel under the provision of Section 41 of Customs Act'1962 read with Rule 3 of Export Manifest (Vessels) Regulations, 1976 and Section 148 of the Customs Act. I also find the that the Rotation No. 120970 dated 22.06.2017 was mentioned wrongly in SCN instead of Rotation No. 130319 dated 23.06.2017.I also find that M/s Mihir & Company's letter dated 19.04.2018 appears to have been written. Keeping in mind the Rotation No. 120970/22.06.2017 which ultimately found t o be invalid as per the EDI System and correct Rotation / EGM No. is 130319 for the Shipping Bill No. 6934086/23.06.2017. However, the EGM in electronic form for the Rotation No. 130319 dated 23.06.2017 was required to be filed by 22.07.2017 i.e seven days from sailing of vessel on dated 15.07.2017. M/s. Mihir & Company filed EGM on dated 25.09.2018 i.e. beyond the stipulated time period of 7 days from the sailing of Vessel. The above facts are kept in mind, while deciding the quantum of penalty.

8. I find that said agent was to file the EGM and is responsible to file EGM in electronic form on behalf of the Master of the vessel under section 41 of the Customs Act 1962 read with Rule 3 of Export Manifest (Vessels) Regulations, 1976 and Section 148 of the Customs Act within seven days of sailing of vessel. I find that the Shipping Agent has failed to file the electronic EGM within stipulated time limit. The agent has filed EGM in electronic after a delay of more than 14 months as stated above. They have filed the EGM on dated 25.09.2018 and hence, I take the notice of above facts at the time of deciding the matter.

9. I also find that they have filed manual EGM on 14.07.2017, however not filed EGM in electronically within time frame of 7 days of sailing of vessel i.e upto 22.07.2017 but later on they have filed on 25.09.2018 in EDI system. I find that, as they filed EGM electronically with delay of more than 14 months after the stipulated time limit, they have contravened the provisions contained in Section 41 and 148 of the Customs Act, 1962 and the Export Manifest (Vessels) Regulations, 1976 and rendered themselves liable for penalty under Section 117 of CA 1962.

Accordingly, I hereby pass the following order:-

**ORDER**

I hereby impose a penalty of **Rs. 5000/- (Rs. Five Thousand Only)** under Section 117 of Customs Act, 1962, for violating, the provisions of Section 41 of Customs Act 1962 read with Section 148 of Customs Act' 1962, and for contravention of Rule 3 of Export Manifest (Vessels) Regulation 1976.

  
(Hemesh Chhabra)  
Assistant Commissioner (MCD)  
Custom House, Kandla.



**By Regd Post AD/ Speed post.**  
F.No. S/10-01MCD/EGM-574/2018-19

Dated: 08.04.2019

To,  
M/s Mihir & Company,  
Neelkanth, B.B.Z., S-60,  
Zanda Chowk Gandhidham,  
Kachchh-370201

Copy To :-

- 1- The Assistant Commissioner (RRA), Customs House, Kandla.
- 2- The Assistant Commissioner (Recovery), Customs House, Kandla.
- 3- The Assistant /Deputy Commissioner (EDI), Customs House, Kandla with a request please upload OIO on the official website of Custom Commissionerate Kandla.
- 4- Guard file.

O/O COMMISSIONER  
OF CUSTOMS  
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INWARD SECTION  
Customs House, Kandla

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