



GOVT. OF INDIA

OFFICE OF THE COMMISSIONER OF CUSTOMS,

CUSTOM HOUSE, KANDLA

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

फा. सं./ S/10-05/MCD/EGM-612/2017-18

आदेश की तारीख/Date of Order : 09.05.2019.

जारी करने की तारीख/Date of Issue : 09.05.2019.

द्वारा पारित/Passed by:-

हेमेश छाबरा, सहायक आयुक्त

Hemesh Chhabra, ASSISTANT COMMISSIONER

मूल आदेश संख्या /

Order-In-Original No. : KDL/AC/04 /MCD/2019-20

- 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.
- 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.
- 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.
- 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.
- 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)

विषय: - कारण बताओ सूचना S/10-05/MCD/EGM-612/2017-18 Dt 09.11.2017 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-612 dated 14.07.2017 (EDI Rotation number 131174 Dt. 10.07.2017) with this Custom House in respect of Vessel "MV Global Dream" on behalf of the Master of the vessel under section 41 of the Customs Act 1962, which sailed from Kandla Port 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 Bills as mentioned in Manual EGM. However on examination in EDI Systems of Customs Kandla, it was noticed that they had not filed the EGM electronically in the systems till the issuance of SCN , whereas they were required to file the same within stipulated time limit of 7 days i.e. Upto 22.07.2017 from sailing date of the vessel i.e. 15.07.2017, 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.

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 within time limit, 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 09.11.2017 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.

DEFENCE AND PERSONAL HEARING

5. M/s Mihir & Company was issued a Show Cause Notice vide F. No. S/10-05/MCD/EGM-612/2017-18 dated 09.11.2017. 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 28.11.2017 replied to the SCN and submitted in defense that they have submitted manually EGM No. F-612 on dtd. 14.07.2017 and electronically through EDI system and also requested to consider EDI EGM in order and grant relaxation in penalty.

6. A letter F.No. S/10-05/MCD/EGM-612/2017-18 dated 01.12.2017 was sent to M/s Mihir & Company for personal hearing in the matter. Personal hearing in the case was held on 05.12.2017 but the OIO was not issued by the Adjudicating Authority. Further, a letter F.No. S/10-05/MCD/EGM-612/2017-18 dated 24.04.2019 was sent to M/s Mihir & Company for personal hearing in the matter. Personal hearing in the case was held on 08.05.2019 wherein Shri Bharat Agariya, Manager and Authorized Representative of M/s Mihir & Company appeared and reiterated their submission dated 28.11.2017. Shri Bharat Agariya during the personal hearing stated that they have seen the printout of CMC checklist dated 10.11.2017 submitted by them alongwith the said letter dated 28.11.2017 in token of having file the EGM with CMC. However, on being shown the EDI System, he admitted that the date of submission of EGM is 12.10.2018. Further, he also agreed that they could not follow up with CMC regarding filing of the EGM Electronically within stipulated time limit of 7 days i.e.Upto 22.07.2017 in the EDI system. However the fact is that EGM was not filled electronically on stipulated time limit for which they regret. He also stated that they do not want to say anything else in the matter and also 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 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. The EGM in electronic form was required to be filed by 22.07.2017 i.e seven days from sailing of vessel on dtd. 15.07.2017. However M/s. Mihir & Company did file the EGM on dated 12.10.2018 i.e. beyond the stipulated time period of 7

days from the sailing of Vessel. This fact is to be kept in mind, while deciding the quantum of penalty.

8. I find that said agent was to file the EGM and it 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 had failed to file the electronic EGM within stipulated time limit. The agent had filed EGM electronically on dated 12.10.2018.

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 12.10.2018 in EDI system. I find that, as they filed EGM electronically beyond 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.6,000/- (Rs. Six 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.

JH 9/5/19

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

By Regd Post AD/ Speed post.
F.No. S/10-05/MCD/EGM-612/2017-18

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



Dated:09.05.2019

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.