



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/6-704/Ref/2011

आदेश की दिनांक / Date of Order: 08.05.2019

जारी करने की दिनांक/ Date of Issue: 08.05.2019

पारित कर्ता/ Passed by: - श्री डी पी बामनावत / SHREE D P BAMANAVAT
संयुक्त आयुक्त/Joint Commissioner,
सीमा शुल्क सदन, कांडला/ Customs House, Kandla.

आदेश में मूल सं/ ORDER-IN- ORIGINAL NO: KDL/ JC/DPB/ 52 /Ref/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.
- अनुसूची-1 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.
- 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).
- यदि कोई व्यक्ति इस आदेश के विरुद्ध अपील करना चाहता है तो, उक्त अपील में मांगा गया शुल्क अथवा उस पर लगायी गयी शास्ति जमा करने और उक्त अपील के साथ ऐसे भुगतान का सबूत प्रस्तुत करने पर विचाराधीन रहेगी, ऐसे करने में असफल होने पर उक्त अपील सीमा शुल्क अधिनियम-1962 की धारा-128 के प्रावधानों के गैर अनुपालन करने के लिए अस्वीकृत किए जाने योग्य होगी।
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 07.07.2011 for Rs. 2,66,098/- (Two Lakh Sixty Six Thousand Ninety Eight Only) filed by M/s. Shah Traders, F/4, Lati Bazar Zone – 2, Gita Mandir, Ahmedabad-380022.

Brief facts of the case:

(1) M/s. Shah Traders, F/4, Lati Bazar Zone – 2, Gita Mandir, Ahmedabad- 380022. (hereinafter referred to as "the claimant") have filed a refund claim of Rs. 2,66,098/- (Rupees Two Lakh Sixty Six Thousand Ninety Eight Only) filed vide letter dated 07.07.2011 received on 07.07.2011. The claimant has claimed the refund of 4% SAD paid by them at the time of importation. The refund claim is filed on the basis of the exemption as granted vide Notification No.102/2007-Cus. dated 14.09.2007. The claimant have been issued deficiency memo 13.04.2019 and in the response of same, the claimant have submitted their reply along with all required documents vide their letter dated 30.04.2019 (received in this office on 01.05.2019) Accordingly the claim have been taken for processing. The refund claim is filed under Section 27 of the Customs Act, 1962.

(2) The claimant has filed a refund claim along with following documents.

II) Triplicate copy of in original TR-6 Challans evidencing payment of all custom duty and Duplicate copy (in Original) of B/Es showing the import of Qty. 522.460 CBM by the claimant as detailed below.

Sr. No.	B/E No. & Date	TR-6 No. & Date	As per Indian CBM	Total 4% SAD Paid	Total Duty Paid (Rs.)
1	357081/22.07.2010	20237631/27.07.2010	104.340	59456	132257.00
2	3224/24.09.2010	3728/27..09.2010	192.911	154885	344533.00
3	5034/07.10.2010	400/11.10.2010	11.569	7864	17492.00
4	2264574/20.10.2010	2000205107/25.10.2010	28.520	16100	35814.00
5	2499961/30.12.2010	2000379035/31.12.2010	84.260	53307	119579.00
6	2747411/09.02.2011	2000567418/15.02.2011	44.650	27498	61168.00
7	2784545/16.02.2011	2000591035/18.02.2011	56.210	34617	77003.00
Total			522.460	353727	787846.00

III) Copies of Sale invoice as evidence of sale of the imported goods to the buyers with an endorsement that "No credit of the SAD duty levied under sub-section 5 of section 3 of the Customs shall be admissible" as required under Para 2(b) of the exemption Notification No.102/2007. Other details like B/E No, VAT payable is reflected in the sale Invoices.

IV) Worksheet showing the details of import made under above B/E and sales affected there under.

V) Copies of VAT /CST challan evidencing total VAT /CST payment, as shown in below mentioned table

Sl	VAT Paid in Cash	VAT Paid th ITC	Total VAT Paid	CST Paid in Cash	CST Paid th ITC	Total CST Paid	Return Period
GUJARAT							
1	224,899	0	224,899				Sep-10
2	490,000	0	992,682				Oct-10
	450,000	0					
	52,682	0					
3	39,230	0	39,230				Dec-10
4	315,350	0	615,350				Jan-11
	300,000	0					
5	282,687	0	282,687				Feb-11
6	296,328	0	296,328				Mar-11

VI) Undertaking from the claimant that the 4% SAD has not been passed on by them to buyer/any other person.

VII) Declaration regarding the appointment of Chartered Accountant M/s. A N Ruparel & Co., for the financial year 2010-11 & 2011-12.

VIII) Copy of Ledger Account of 4% SAD refundable, VAT/CST and certificate issued by the Chartered Accountant showing the amount of SAD receivable under the Head SAD refund receivable.

IX) Declaration regarding filing of single claim in a month of July 2011.

X) C.A. Certificate certifying co-relation between VAT/CST payment and sale invoice and burden of 4% SAD has not passed on to buyer or any other person.

(3) As per Notification No.102/2007-Cus. Dated 14.09.2007, the exemption contained in this notification shall be given effect, if the conditions, as stipulated in the said notification are fulfilled. The conditions are that the importer of the said goods shall pay all duties, including the said additional duty of customs leviable thereon. as applicable, at the time of importation of the goods; the importer, while issuing the invoice for sale of the goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under Sub-section (5) of Section 3 of the Customs Tariff Act, 1975 shall be admissible; the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional customs officer; the importer shall pay on sale of the said goods appropriate sales tax or value added tax, as the case may be. Further, as per Para 2(e), the importer at the time of claiming of the refund shall, inter alia, provide copies of the documents evidencing the payment of the said additional duty; the invoice of sale of the imported goods in respect of which refund of the said additional duty is claimed and documents evidencing the payment of appropriate sales tax or value added tax as the case may be, by the importer, on sale of such imported goods.

(4) The claimant has subsequently sold imported Qty. 404.179 CBM of Teak Logs to the as detailed below.

1. BE No. 357081/22.07.2010, Import Qty. 104.34 CBM					
Sr. No.	Inv. No. & date	Sold Qty (in CBM)	VAT	ADD. VAT	CST
1	TI-00098/10-11 28.09.10	21.094	46143	9229	0
2	TI-00099/10-11, 28.09.10	21.494	47018	9404	0
3	TI-00100/10-11, 02.10.10	15.673	36979	7396	0
4	TI-00102/10-11, 05.10.10	14.470	30623	6125	0
Sales Qty		72.731			
Short Sales Qty		31.609			
Import Qty		104.340	160763	32154	0
2. BE No. 3224/24.09.2010, Import Qty. 192.911 CBM					
Sr. No.	Inv. No. & date	Sold Qty (in CBM)	VAT	ADD. VAT	CST
1	RI-00033/10-11, 01.10.10	15.789	0	0	7070
2	TI-00109/10-11, 09.10.10	23.919	68082	13616	0
3	TI-00137/10-11, 20.01.11	22.943	66105	13221	0
4	TI-00140/10-11, 22.01.11	20.459	59016	11803	0
5	TI-00142/10-11, 10.02.11	23.136	86653	17331	0
Sales Qty		106.246			
Short Sales Qty		86.665			
Import Qty		192.911	279856	55971	7070
3. BE No. 5034/07.10.2010, Import Qty. 11.569 CBM					
Sr. No.	Inv. No. & date	Sold Qty (in CBM)	VAT	ADD. VAT	CST
1	TI-00127/10-11, 01.01.11	11.569	32474	6495	0
Sales Qty		11.569			
Short Sales Qty		0.000			
Import Qty		11.569	32474	6495	0
4. BE No. 2264574/20.10.2010, Import Qty. 28.52 CBM					
Sr. No.	Inv. No. & date	Sold Qty (in CBM)	VAT	ADD. VAT	CST
1	TI-00128/10-11, 04.01.11	14.020	36569	7314	0
2	TI-00126/10-11, 18.12.10	14.500	32688	6538	0
Sales Qty		28.520			
Short Sales Qty		0.000			
Import Qty		28.520	69257	13852	0
5. BE No. 2499961/30.12.2010, Import Qty. 84.26 CBM					
Sr. No.	Inv. No. & date	Sold Qty (in CBM)	VAT	ADD. VAT	CST
1	TI-00129/10-11, 07.01.11	16.910	33653	6731	0

1	357081/22.07.2010	104.340	72.731	31.609	59456	18042	41413
2	3224/24.09.2010	192.911	106.246	86.665	154885	69582	85303
3	5034/07.10.2010	11.569	11.569	0.000	7864	0	7864
4	2264574/20.10.2010	28.520	28.520	0.000	16100	0	16100
5	2499961/30.12.2010	84.260	84.256	0.004	53307	3	53304
6	2747411/09.02.2011	44.650	44.649	0.001	27498	1	27497
7	2784545/16.02.2011	56.210	56.208	0.002	34617	1	34616
Total		522.460	404.179	118.281	353727	87629	266098

I find that the claimant has sold quantity of imported goods i.e. 404.179 CBM. out of total imported quantity 522.460 CBM, As per Para-2(d) of Notification No. 102/2007-Cus. Dated 14.09.2007 the importer shall pay on sale of the said goods, appropriate Sales Tax or Value Added Tax, as the case may be and as per Para 4.1 of Circular No. 06/2008-Cus. Dated 28.04.2008, unsold stock would not be eligible for refund. In other words, refund can be granted only for the quantity of imported goods sold on payment of applicable VAT/CST. Accordingly, the claimant is eligible for refund for the quantity sold only, which comes to Rs. 2, 66, 098/- as per Table above and the claimant has filed refund claim for same amount. The claimant has also given an undertaking that they shall not claim the refund on short sold quantity i.e. 118.281 CBM in future also.

(11) The claimant have been issued deficiency memo 12.09.2018 and in the response of same, the claimant have submitted their reply along with all required documents vide their letter dated 18/09/2018 (received in this office on 19/09/2018) Accordingly the claim have been taken for processing.

(12) Board has issued Circular No.06/2008 dated 28.04.08, 16/2008 and 18/2010, wherein certain procedures are to be adopted for refund of 4 % SAD. The procedures are outlined as under.

- (i) The refund claim has to be filed within one year.
- (ii) A single claim against a particular B/E has to be filed.
- (iii) C.A. Certificate certifying co-relation between VAT/CST payment and sale invoice and burden of 4% SAD has not passed on to buyer or any other person.
- (iv) Self certification by the importer with respect to the unjust enrichment.
- (v) Copies of VAT/CST challan/returns.

(13) I find that the refund claim is filed within the prescribed time limit and a single claim has been filed against a particular Bill of Entry. The Chartered Accountant, M/s. A N Ruparel & Co vide their certificate dated Nil has certified that M/s Shah Traders, has made the VAT/CST payment which co-relates with the sale invoices. They have further certified that the burden of 4% SAD has not been passed on to buyer or any other person. The importer has given an undertaking that they have not passed on the burden of 4% SAD to buyer or any other person. The claimant has also submitted VAT/CST challans & returns in co-relation to the Chartered Accountant certificate for the said claim. Hence, I am satisfied that there is no unjust enrichment in the present case.

(14) The Board has issued Circular No. 06/2008 dated 28.04.2018, wherein certain procedures are to be adopted for claiming the refund of 4% SCVD. This requires to be examined in the present case. I find that the importer has filed the refund claim within the time limit of one year as laid down in the circular. Further the condition of filing a single claim against a particular Bill of entry has also been fulfilled by the importer. Apart from the above, I find that the claimant has submitted proof that the burden of duty has not been passed on to any buyer which takes care of the unjust enrichment issue. Further, as required, the Chartered Accountant has also certified that the payment of the VAT/ST on imported goods has been co-related with the sale invoices. In view of this, the claim appears to be correct.

(15) The documents showing the payment of VAT/CST related to the refund claim have been forwarded to the proper authorities for verification of its genuineness. However, the refund claim is sanctioned subject to the verification of genuineness of VAT/CST documents submitted with the refund claim. Action under section 28 of the Customs Act, 1962 will be initiated against the claimant, if any discrepancy is noticed/reported in respect to the genuineness of VAT/CST challan during its verification by the concerned authority.

(16) In view of the foregoing para, I find that the claimant has fulfilled all the conditions as laid down in the notification No. 102/2007 Cus, dated 14.09.07 read with Board Circular No. 06/2008,16/2008 and 18/2010 and therefore the claimant is eligible for the refund of Rs.2,66,098/- Only.

(17) In view of the above discussion, I pass the following order.

ORDER

I sanction refund of Rs. 2,66,098/- (Rupees Two Lakh Sixty Six Thousand Ninety Eight Only) filed by M/s. Shah Traders F/4, Lati Bazar Zone – 2, Gita Mandir, Ahmedabad- 380022 in terms of notification no. 102/2007-cus-dated 14.09.2007 as amended under section 28 of the Customs Act, 1962.



(D P Bamanavat)
Joint Commissioner (Refund)
Customs House, Kandla
Date 08/05/2019

By Reg. Post/By Hand Delivery

F. No. S/6-~~492~~/Ref/2010
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To,
M/s. Shah Traders
S. No.262/263, National Highway, 8/A,
Gandhidham-Kutch, Gujarat-370201

Copy to: 1) The Deputy Commissioner (RRA), Customs House, Kandla.
2) The Deputy Commissioner (EDI), Customs House, Kandla.
3) Guard file Refund Section.
4) Respective Refund file.

