



सीमा शुल्क आयुक्त का कार्यालय, सीमा शुल्क सदन, कांडला
नया सीमा शुल्क भवन, बालाजी मंदिर के नजदीक, कांडला, गुजरात
OFFICE OF THE COMMISSIONER OF CUSTOMS: CUSTOM HOUSE: KANDLA.
New Customs Building, Near Balaji Temple
Kandla, GUJARAT

फा.सं./ F. No. S/10-BRC/SCN-61/AC/17-18

आदेश की दिनांक/ Date of Order: 24.07.2019

जारी करने की दिनांक/Date of Issue: 24.07.2019

पारित कर्ता/ Passed by :

HEMESH CHHABRA
ASSISTANT COMMISSIONER (BRC)
CUSTOM HOUSE, KANDLA.

आदेशमेंमूलसं. -KDL/AC/HC/45/BRC/2019

ORDER-IN-ORIGINAL NO. -KDL/AC/HC/45/BRC/2019

- जिसके लिये यहप्रतिलिपिजारीकी जातीहैउस व्यक्तिकेउपयोगकेलिए यहनिः शुल्कदीजातीहै।
This copy is granted free of charge for the use of person to whom it is issued.
- इस आदेशके विरुद्ध अपील सीमा शुल्क अधिनियम-1962 कीधारा-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 380009में इस आदेश के जारी होने की तिथि से साठ दिनों केभीतरदायरकी जानीचाहिए।
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.
- यहअपील सीमाशुल्कनियमावली-1982 केनियम-3 केउपनियम-(2) में निर्दिष्ट व्यक्ति द्वारा हस्ताक्षरित निर्धारित प्रारूप में दायर किया जाना चाहिए।उक्त अपील को दो प्रतियों में दाखिल कियाजाएतथाजिसआदेशके विरुद्ध अपीलकी गई हो, उसकीभी उतनी ही प्रतियां संलग्न की जाएँ (उनमेंसे कमसेकम एकप्रति प्रमाणित होनी चाहिए)।संबन्धित सभी दस्तावेज चार प्रतियों में भेजे जाने चाहिए।उक्त अपील,अपील के उचित समय और दिनांक को कमिश्नर (अपील) कार्यालय, अहमदाबादमें व्यक्तिगत रूप से प्रस्तुतकियाजाए।
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-I में न्यायालयशुल्क अधिनियम, 1870 केमद सं. 6 केतहतइसआदेशकीप्रतिलिपिसाथ निर्धारित 5/- रुपए का स्टाम्पकोर्टफीसके रूप में वहनकरनाचाहिए।
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 सीमाशुल्कअधिनियम-1962कीधारा-128के 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 noncompliance of the provisions of Section 128 of the Customs Act, 1962.

Sub: Drawback claim of Rs. 13189/- of M/s Jaroli Agro Private Limited., (IEC No.0314081569), having their office at C-506, Gokul Garden, Thakur Complex, Kandivali East, Mumbai, Maharashtra, Pin- 400 101

BRIEF FACTS OF THE CASE:

M/s Jaroli Agro Private Limited., (IEC No.0314081569), having their office at C-506, Gokul Garden, Thakur Complex, Kandivali East, Mumbai, Maharashtra, Pin- 400 101 (hereinafter referred to as the exporter) is engaged in the export of Indian Millets from Kandla.

2. The exporter had exported Indian Millets from Kandla vide DBK Shipping Bills mentioned in the table below and had claimed drawback amount as shown against the respective shipping bill. The drawback amount of Rs. 13,189/- (Rupees Thirteen Thousand One Hundred and Eighty Nine only) was sanctioned and paid to them against the following S/Bills.

Sr. No	IEC Name	SB No. and Date	FOB (Rs.)	DBK (Rs.)
1.	JAROLI AGRO PRIVATE LIMITED	5820767 dated 12.02.2016	893050	8931
2.	JAROLI AGRO PRIVATE LIMITED	5820844 dated 12.02.2016	425806	4258
			Total	13189

3. As per the records available, the exporter had failed to produce the evidence in respect of realization of export proceeds within 180 days from the date of export against this Shipping Bill.

4. As per Rule 16 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Rule- 17 of the Customs, Central Excise and Service Tax Drawback Rules, 2017), Where an amount of drawback and interest, if any has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub section (1) of Section 142 of the Customs Act, 1962 (52 of 1962).

5. As per Rule 16A of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Rule- 18 of the Customs, Central Excise and Service Tax Drawback Rules, 2017), where an amount of drawback has been paid to an Exporter or a person authorized by him, but the sale proceeds in respect of such export goods have not been realized by or on behalf of the Exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the drawback shall be recovered.

6. As per Rule 16A(2) If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act, 1995, or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be shall cause notice to be issued

to the exporter for production of evidence of realisation of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within thirty days of the receipt of the said order.

7. Since the Exporter had failed to produce the evidence in respect of realization of export proceeds against the said Shipping Bills within 180 days from the respective date(s) of export, a Show Cause Notice was issued to them vide F. No. S/10-BRC/SCN-61/AC/2017-18 dated 13.12.2017 to show cause as to why the drawback amount of Rs. 13,189/- (Rupees Thirteen Thousand One Hundred Eighty Nine only) sanctioned and paid to them should not be recovered from them along with applicable interest as per the provisions of the Rule 16 A of Customs, Central Excise & Service Tax DBK Rules, 1995 read with Section 75 and 75 A of the Customs Act, 1962 and why penal action should not be initiated under section 117 of Customs Act, 1962.

Defence Reply:

8. Exporter vide their letters dated 28.12.2017 and 03.06.2019 had submitted photo copy of Bank Realization Certificate No. YESB0000001000119744 dated 03.06.2016 in respect of realization of the export proceeds against the Shipping Bill 5820767 dtd 12.02.2016 and Bank Realization Certificate No. YESB0000001000119745 dated 03.06.2016 in respect of Shipping Bill No. 5820844 dtd 12.02.2016 vide above mentioned two BRCs, the amount of USD \$19505.24 has been realized (USD \$9752.62 each) (exchange rate Rs. 67.40).

9. Exporter vide their letter dated 03.06.2019 submitted certified short shipment notice and informed that there was a short shipment in Shipping Bill No. 5820844 dated 12.02.2016. The shipped goods vide above mentioned two shipping bills value was Rs. 4,25,806/- i.e. USD \$6317.60 (Exchange rate Rs. 67.40) and the realized amount was USD \$9752.62. The total FOB value of shipped goods amounted to USD \$19567.60. The Payment for both the Shipping Bills received in a single transaction, which was divided into 2 parts by the Bank after deducting bank charges. These Shipping Bills are complete and closed by Yes Bank Ltd. and do not appear outstanding in the RBI List of EDPMS DATA and requested to drop the proceeding.

Personal Hearing-

10. To compliance of the necessity of natural justice, three opportunities of Personal Hearing were granted on 08.03.2019, 13.05.2019 and 06.06.2019 but the exporter did not turn up for personal hearing.

Discussion and Finding:

11. I have carefully gone through the records of the case and defence reply dated 03.06.2019 submitted by the exporter along with documents. I find that the exporter realized export proceeds under Bank Realization Certificate No. YESB0000001000119744 dated 03.06.2016 in respect of Shipping Bill No. 5820767 dtd 12.02.2016 and Bank Realization Certificate No. YESB0000001000119745 dated 03.06.2016 in respect of Shipping Bill No.5820844 dated 12.02.2016. It is also noticed that the exports proceeds of both the shipping bills have been realized within stipulated time limit.

12. I further find from the shipping bills, that both shipping bills are of the same date i.e. 22.02.2016, the consignee of the exported goods of both shipping bills are same, the export proceeds of both shipping bills received by bank in a single bill ID i.e. 001BM75161530020 and date of realization is 03.06.2016 and Bank's File No. YESB000000103062016001 and upload date 03.06.2016 is also same.

13. The FOB value of Shipping Bill No. 5820767 was Rs. 8,93,050/- (USD \$13250) and FOB value of Shipping Bill No. 5820844 (considering short shipment) was Rs. 4,25,806/- (USD \$6317.60). The FOB value of both shipping bills comes to Rs. 13,18,856/- (USD \$19567.60) against these, export proceeds realized by USD \$19505.24. Exporter short realized USD \$62.36 i.e. Rs. 4,203/- (Exchange rate Rs. 67.40) in respect of the above two Shipping Bills.

14. Further, I consider the plea of the exporter that the export proceeds of shipping bills was divided into 2 equal parts by the Bank and considering these, exporter received short export proceeds by USD \$62.36.

	Total FOB Value Rs.	Total DBK sanctioned @ 1%	Realized amount In Rs.	Diff. in realization Rs.	DBK to be recovered @ 1%
Total	1318856	13189	1314653	(-) 4203	42

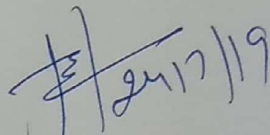
15. From the table above, it is seen that, the Drawback amount of Rs. 42/- (Rupees Forty Two only) received by the Exporter is in Excess compare to what they were entitled for, on the basis of actual receipt of Export Proceeds, it is required to be recovered from the Exporter under rule 16 of the Customs, Central Excise Duties and Service Tax drawback Rules,1995 (Rule - 17 of the Customs, Central Excise and Service Tax Drawback Rules, 2017), read with Section 75 of the Customs Act, 1962, along with the applicable interest under Section 75A of the Customs act, 1962.

16. Thus, it is observed that the exporter has attracted the provision of the Rule 16 of Customs Central Excise Duties and Service Tax Drawback Rules 1995 (Rule- 17 of the Customs, Central Excise and Service Tax Drawback Rules, 2017) in respect of excess avilment of drawback amount 42/- (Rupees Forty Two only). Hence, the instant case attracts the penal action under section 117 of Customs Act, 1962.

In view of the above discussion, I pass order as under:-

ORDER

- (i) I confirm the demand of Rs. 42/- (Rs. Forty Two only) drawback received in excess by M/s Jaroli Agro Private Limited., (IEC No.0314081569), having their office at C-506, Gokul Garden, Thakur Complex , Kandivali East, Mumbai, Maharashtra , Pin- 400 101, under Rule 16 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Rule- 17 of the Customs, Central Excise and Service Tax Drawback Rules, 2017), read with Section 75 of The Customs act,1962 along with the interest under Section 75A of The Customs act, 1962.
- (ii) I impose a penalty of Rs.200/- (Rupees Two hundred only) under section 117 of the customs Act, 1962 on M/s Jaroli Agro Private Limited., (IEC No.0314081569), having their office at C-506, Gokul Garden, Thakur Complex, Kandivali East, Mumbai, Maharashtra, Pin- 400101.


(Hemesh Chhabra)
Assistant Commissioner (BRC)
Customs House, Kandla.

BY RPAD/SPEED POST

F.No – S/10-BRC/SCN - 61/AC/2017-2018

Date- 24.07.2019

To,
M/s Jaroli Agro Private Limited.,
C-506, Gokul Garden,
Thakur Complex,
Kandivali East, Mumbai,
Maharashtra, Pin- 400 101.



INWARD SECTION
Custom House, Kandla

Copy to :-

1. The Deputy/Assistant Commissioner (RRA), Custom House, Kandla.
- ✓ 2. The Deputy/Assistant Commissioner (Adjudication), Customs House Kandla.
3. The Deputy/Assistant Commissioner (Recovery Cell), Customs House Kandla.
4. M/s Shri Maruti Shipping Services,18-19, Swaminarayan Mandir Building, Gandhidham (Kutch) - 370201, Gujarat, India for information please.
5. Guard File.