



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- 107/Ref/2018-19

आदेश की दिनांक / Date of Order: 28 / 06 / 2019

जारी करने की दिनांक/ Date of Issue: 28 / 06 / 2019

पारित कर्ता/ Passed by: - मुकेश चड्ढा / Mukesh Chadha
सहायक आयुक्त/Assistant Commissioner,
सीमा शुल्क सदन, कंडला/ Customs House, Kandla.

Spdt (RMA)
- put up in file
28
9-7-2019

आदेश में मूल सं/ ORDER-IN- ORIGINAL NO: KDL/AC/MC/84/Ref/2019-20

1. 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.

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 7th floor, Mridal 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 शु 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 जाएं (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. 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 128 of the Customs Act, 1962.

Sub-Refund claim application dated 02.05.2018 (filed on 07.05.2018) for **Rs. 2,47,11,965/-** (Rupees Two Crore Forty Seven Lakh Eleven Thousand Nine Hundred Sixty Five Only) filed by M/s KLJ Plasticisers, KLJ House, 63, Rama Marg, Najafgarh Road, New Delhi-110015.

Spdt (EDS)

- beo uploading on website

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12-7-2019

Brief facts of the case:

M/s KLJ Plasticisers, KLJ House, 63, Rama Marg, Najafgarh Road, New Delhi-110015 (hereinafter referred to as 'the claimant' for the sake of brevity) have filed a refund claim of **Rs. 2,47,11,965/-** (Rupees Two Crore Forty Seven Lakh Eleven Thousand Nine Hundred Sixty Five Only) under Section 27 of Customs Act, 1962 vide letter dated 02.05.2018 (received on 07.05.2018).

2. The DRI has gathered information that M/s KLJ Group of companies i.e. M/s KLJ Plasticisers Ltd (KLJPL), Survey No. 98/1, Village, Silly, Silvassa-396320, Dadar & Nagar Haveli holding IEC No. 0596059035, M/s KLJ Polymers and Chemicals Ltd. (KLJPCL), Survey No. 177, Jamalpada Road, Silly, Silvassa-396320, Dadar & Nagar Haveli, holding IEC No. 0590012762 and M/s KLJ Organics Ltd. (KLJOL), Plot No. 759, GIDC, Jhagadia, Bharuch Gujarat, holding IEC No. 0596059302 and having their registered office at KLJ House, 63 Rama Marg, Najafgarh Road, New Delhi-110015, require lesser quantity of inputs/materials for fulfillment of Export obligations than imported by them duty free under Advance Authorizations (AAs); were utilizing the excess duty free inputs for manufacture of goods cleared to DTA; and were thus evading Customs Duty on such quantity of duty free imported input/materials. Acting upon the intelligence, an investigation was conducted by the DRI in this regard.

3. M/s. KLJPL vide letter dated 18.09.2014 submitted three Demand Drafts totally amounting to Rs. 10 crores as voluntary payment towards their duty liability on underutilized quantity of raw materials imported under AAs and used in the manufacture of finished goods cleared in DTA during the last five years. These amounts paid voluntarily by M/s. KLJPL were deposited with Nhava Sheva and Kandla customs and detailed below:-

Sr.no.	DDs no.	Amount(Rs.)	Challan no.	Deposited on	Deposited with
1	508853	40000000	HC-5041	30.09.2014	Nhava-Sheva Customs
2	508873	10000000			
3	508862	50000000	RD-61	14.10.2014	Kandla Customs
TOTAL		100000000			

4. Whereas as per summary of investigation :-

- M/s. KLJPL, KLJPCL, and M/s. KLJOL have been importing material/inputs duty free and exporting under Advance Authorizations.
- As per the relevant provisions of the FTP read with HBP and relevant Customs Notifications , under which the materials/inputs were exempted from payments of duty, It was provided that only those materials/inputs were permitted duty free which were used in/required for manufacture of resultant product.
- M/s. KLJPL, KLJPCL, and M/s. KLJOL had certain excess quantity of duty free imported materials/inputs after fulfillment of export obligation under various Advance Authorizations and they utilized such materials/inputs for manufacture of finished goods cleared by them to local market .
- the above quantity of inputs/materials imported duty free over and above their actual requirement for manufacture of resultant product were not used for export production but has been used in the manufacture of finished goods sold in DTA , without payment of customs duty on such inputs /materials.
- M/s. KLJPL, KLJPCL, and M/s. KLJOL have not maintained true and correct records to indicate consumption of various inputs/materials consumed per unit for manufacture of finished goods.
- based on the quantification, the amount of Customs duty not paid on the excess portion of the duty free imported inputs which were not used for export production, but for manufacture of finished goods which were cleared to DTA by M/s. KLJPL, KLJPCL, and M/s. KLJOL is liable to be realized from them, which works out to Rs. 2,87,07,440/-, Rs.49,35,162/- and Rs. 1,07,18,774/- respectively.
- The quantity of inputs not utilized /less utilized in manufacture of goods for export , was imported duty free various Advance Authorizations in terms of Customs Notifications No. 93/2004-Cus. Dated 10.09.2004 and 96/2009 dated 11.09.2009. Such duty free imports were subject to the conditions mentioned in para 10 and 11 above including the condition that the inputs were required for and will be used in the

manufacture of finished goods for export. M/s. KLJPL, KLJPCL, and M/s. KLJOL have used the excess imported duty free for manufacture of finished goods which were cleared to DTA. To that extent the conditions of the exemption Notifications, under which the goods were imported duty free, have been violated. The impugned such inputs, with A.V. of Rs. 14,54,00,806/- of M/s. KLJPL, Rs. 2,87,92,517/- of M/s. KLJPCL and Rs. 4,22,46,983/- of M/s. KLJOL are therefore appear to be liable for confiscation under Section 111(0) of the Customs Act 1962. And M/s. KLJPL, KLJPCL, and M/s. KLJOL appear to be liable for penalty under Section 112(a) ibid. However, the impugned goods are not physically available for confiscation having been utilized in manufacture of finished goods.

5. Therefore an SCN No. DRI/MZU/B/INTL-121/2014/5860 dated 29.06.2015 was issued to M/s. KLJPL, KLJPCL, and M/s. KLJOL under Section 28 and 124 of the Customs Act 1962 by the Additional Director General, DRI whereby they were called upon to Show cause in writing to the respective adjudicating authorities, as mentioned in above said SCN for respective imports as to why: -

- i) the Customs Duty totally amounting to Rs. 4,04,07,226/- should not be demanded and recovered from them under the extended period provisions of Section 28 of the Customs Act, 1962 along with interest amounting to Rs. 1,36,42,625/- under Section 28AA, ibid, as detailed in this notice should not be demanded and recovered from them.
- ii) the Customs Duty totally amounting to Rs. 13,11,131/- should not be demanded and recovered from them under the bonds executed by them along with interest amounting to Rs. 8,59,446/- under Section 28 AA to this notice.
- iii) The Customs Duty totally amounting to Rs. 26,42,719/-. Along with interest amounting to Rs. 17,40,454/- where the bonds have already been cancelled and which is beyond five years, should not be appropriated from the amount of Rs. 10,00,00,000/- deposited by them voluntarily during investigation leaving a balance of Rs. 9,56,16,827/- .
- iv) The impugned goods to this notice with total AV of Rs. 21,64,40,306/- should not be held liable for confiscation under Section 111(0) of the Customs Act 1962. However the goods are not available for confiscation having been used for manufacture of finished goods.
- v) Penalty under Section 112(a) or 114A of the Customs Act 1962 should not be imposed on them.
- vi) The balance amount of Rs. 9,56,16,827/- deposited by them voluntarily during investigations should not be appropriated against the above demand of duty and interest and any penalty that may be imposed on them in these proceedings.

6. The OIO No. KDL/Commr/PVRR/03/2016-17 (issued from F.No. S/10-22/Adj/Commr/2015-16 was adjudicated by Common Adjudicating Authority i.e. Principal Commissioner of Customs, Kandla on 17.05.2016 issued on 31.5.16 against Directorate of intelligence F.No. DRI/MZU/B/INTL-121/2014 dated 29.6.2015 has ordered to appropriate Rs. 10 Crore which was deposited voluntarily during

investigations towards confirmed custom duty, interest and penalty, whose details are as under ;

- (i) I hold that the goods having total assessable value of Rs. 21,64,40,306/- liable for confiscation under Section 111(o) of the Customs Act, 1962. Since these goods are physically not available, I refrain from imposing any redemption fine in lieu of confiscation.
- (ii) I impose penalty of Rs. 2,00,00,000/- upon the Notices in respect of Confiscation of goods under Section 112(a) of the Customs Act, 1962.
- (iii) I confirm the Customs Duty amounting to Rs. 4,04,07,226/- and order to recover the same from them under proviso to Section 28(i) of the customs Act, 1962, presently Section 28(4) of the Act along with interest amounting to Rs. 1,36,42,625/- under Section 28AA, ibid and impose penalty of Rs. 5,40,49,851/- under Section 114A of the Customs act, 1962 as detailed below:-

(Amount in Rs)

Sr.No.	Port of Import	Assessable Value	Differential Duty	Interest Confirmed	Penalty U/S 114A
A	B	C	D	E	F
M/s KLJ Plasticisers Ltd.					
1	Nhava Sheva	6,03,53,453/-	1,21,45,282/-	32,40,923/-	
2	Mumbai	1,37,14,333/-	31,92,185/-	7,95,956/-	

3	Kandla	4,92,65,493/-	80,66,162/-	38,76,125/-	
4	Dahej	69,04,824/-	16,66,397/-	8,32,167/-	
Sub-Total		13,02,38,103/-	2,50,70,026/-	87,45,171/-	3,38,15,197/-
M/s KLJ Polymers and Chemicals Ltd.,					
5	Nhava Sheva	1,69,52,555/-	22,28,687/-	10,05,167/-	
6	Kandla	95,03,627/-	21,29,322/-	8,72,095/-	
7	Mudra	11,66,898/-	2,95,851/-	51,151/-	
Sub-Total		2,76,23,080/-	46,53,860/-	19,28,413/-	65,82,273/-
M/s KLJ Organics Ltd.					
8	Kandla	4,21,37,259/-	1,06,83,340/-	29,69,041/-	1,36,52,381/-
Total U/S 28 (A-1 to A-8)		19,99,98,442/-	4,04,07,226/-	1,36,42,625/-	5,40,49,851/-

(iv) I confirm the Customs Duty amounting to Rs. 13,11,131/- and order to recover the same from them in terms of the bonds executed by them along with interest amounting to Rs. 8,69,446/- and impose penalty of Rs. 21,80,577/- under Section 112(a) of the of the Customs Act, 1962, as detailed below; (Amount in Rs.)

Sr. No.	Port of Import	Assessable Value	Differential Duty Confirmed	Interest Confirmed	Penalty U/S 112(a) Of the Act
1	Nhava Sheva	15,78,057/-	3,80,845/-	2,70,933/-	6,51,778/-
2	Kandla	22,62,002/-	5,45,907/-	3,67,727/-	9,13,634/-
3	Dahej	5,26,924/-	1,27,167/-	60,204/-	1,87,371
Sub-total of KLJPL		43,66,983/-	10,53,919/-	6,98,864/-	17,52,783/-
M/s KLJ Polymers & Chemicals Ltd.					
4	Nhava Sheva	7,75,593/-	1,94,493/-	1,26,680/-	3,21,173/-
5	Kandla	1,30,422/-	27,585/-	19,309/-	46,894/-
Sub-Total of KLJPCL		9,06,015/-	2,20,078/-	1,45,989/-	3,68,067/-
M/s KLJ Organics Ltd.					
6.	Kandla	1,09,724/-	35,134/-	24,593/-	59,727/-
Total Demand under Bond		53,82,722/-	13,11,131/-	8,69,446/-	21,80,577/-

(iv) The penalty imposed under Section 114 A of the Customs Act, 1962, above shall stand reduced to 25% if the duty along with interest is paid within 30 days from the date of communication of this order.

(v) I drop the demand of Customs Duty amounting to Rs. 26,42,719/- along with demand of interest amounting to Rs. 17,40,454/- pertaining to the period beyond limitation of 5 Years and where bonds have already been cancelled.

(vi) I order to appropriate the amount of Rs. 10 Crore which was deposited voluntarily during investigations towards confirmed Custom duty, interest and penalty as above.

7. Whereas, in reference of above OIO, the claimant had to pay Confirmed Customs Duty Rs. 4,17,18,357/- + Interest Rs. 1,45,12,071/- + Rs. 2,00,00,000/- under Section 112A + Rs. 21,80,577/- Penalty under Section 112A + Rs. 1,35,12,463/- (Rs. 5,40,49,851/- under Section 114A * 25% penalty Rs. 1,35,12,463/-), = Total Rs. 9,19,23,468/- and the Balance amount to be refunded to the claimant comes to **Rs. 80,76,532/-**.

8. Whereas, the Claimant has filed the refund claim of Rs. 2,47,11,965/- on 07/05/2018 after the Order in Original No. KDL/ Commr / PVRR / 03 / 2016-17 dated 17.05.2016 (Issued on 31.05.2016), after one year and eleven months , which is considered as time barred. Hence, M/s KLJ Plasticisers, KLJ House, 63, Rama Marg, Najafgarh Road, New Delhi-110015, are called upon to show cause to the Assistant Commissioner (Refund), Custom House, Kandla within 30 days of receipt of this notice as to why -

9. The Refund Claim of **Rs. 80,76,532/-** (Rupees Eighty Lakh Seventy Six Thousand Five Hundred Thirty Two Only), should not be rejected under Provisions of Section 27(1)(a) of the Customs Act, 1962 for being time barred, since the refund claim filed by the claimant was not filed within one year from the OIO No. KDL/COMMR/PVRR/03/2016-17 dated 17.05.2016.

10. In the matter, the personal hearing was granted to the Assessee on 28.03.2019 but they have not even replied the letter but also did not heed any order and instead come forward with the CESTAT order No. A/10569-10574/2019 dated 25.03.2019 under Appellant's appeal No. C/11519-11521,11704-11706/2016-DB arising out of OIO-KDL-Commr-PVRR-03-2016-17 dated 17.05.2016 passed by the Commissioner of Customs-Kandla. And requested to file a revised claim in terms of CESTAT Order No. A/10569-574/2019 dated 25.03.2019 covering entire amount of deposit Rs. 10 Crore, deposited during investigation. Further, vide letter dated 27.03.2019 M/s. KLJ Plasticisers requested to withdraw their refund claim dated 02.05.2018 without going into the merits of the case.

Findings :

11. I have carefully gone through the related documents and circumstances of the case. The brief facts of the case are that the above named assessee concerns had imported duty free materials against advance license for manufacture of goods for export or deemed export. They were also clearing their goods in domestic market. They were issued show cause notice dated 19.06.2015 that after fulfilling of export obligation under various authorizations they were left with certain quantity of duty free imported material /inputs which they utilized in the manufacture of finished goods cleared to DTA . The show cause notice relied upon statements of employees/directors of the assessee concerns. It was alleged that the materials imported duty free but which were in excess of the actual requirement were not exempted from payment of duty and require to suffer Custom duty. The said material was not required to be used for manufacture of goods for DTA without paying duty thereon. The assessee appellants filed reply to said SCN stating that the goods were permitted to be imported as per SION(Standard Input output Norms) and were issued in the production of finished goods. During manufacture of export quality goods some off quality goods and waste was also produced which was cleared in DTA. That after fulfillment of export obligation even if goods produced from such imported material is cleared n to DTA, then also no duty can be demanded as the clearance has been made on payment of Central Excise Duty. They also submitted that the quantum of inputs for use in manufacture of export goods is different from goods cleared in to DTA. The adjudicating authority vide impugned order confirmed the demands against the assessee appellants along with penalty and imposed redemption fine in lieu of confiscation of the imported goods as the same were not physically available.

12. The Claimant filed the refund claim on 07/05/2018 after the Order in Original No. KDL/ Commr / PVRR / 03 / 2016-17 dated 17.05.2016 (Issued on 31.05.2016), after one year and eleven months , which is considered as time barred. Since the refund claim filed by the claimant was not filed within one year from the OIO No. KDL/COMMR/PVRR/03/2016-17 dated 17.05.2016, hence an SCN was issued to the claimant as to why the said Refund Claim should not be rejected for being time barred. The claimant vide reply to SCN dtd. 05.12.2018 submitted that what was deposited remained a deposit with Government and it was neither a deposit against duty nor against interest and they are not seeking refund of duty under Section 27 of Customs Act 1962 and sought a Personal hearing. rather they are seeking refund of deposit which is not appropriated against any duty liability. Besides, deposit by them is a mere , time bar of one year for the refund application or the issue of unjust enrichment does not apply to such refund. deposit nor against penalty and for seeking refund of this amount under Section 27 of Customs has no application and sought a P.H. . Accordingly, 2nd personal hearing was granted to the Assessee on 23.01.2019 but they sought adjournment since their Representative is out of Station. Thereafter, vide letter dated 27.03.2019 M/s. KLJ Plasticisers requested to withdraw their refund claim dated 02.05.2018 without going into the merits of the case and came forward with the CESTAT order No. A/10569-10574/2019 dated 25.03.2019 under Appellant's appeal No. C/11519-11521,11704-11706/2016-DB arising out of OIO-KDL-Commr-PVRR-03-2016-17 dated 17.05.2016 passed by the Commissioner of Customs-Kandla and requested to withdraw their earlier refund claim and file a revised claim in terms of CESTAT Order No. A/10569-574/2019 dated 25.03.2019.

13. I find that, since the assessee has requested withdrawal of their claim dated 02.05.2018 (received on 07.05.2018) in view of the Hon'ble CESTAT's Order No. A/10569-574/2019 dated 25.03.2019 whereby the OIO-KDL-Commr-PVRR-03-2016-17 dated 17.05.2016 was set aside and party's appeal was allowed with consequential relief if any. Therefore, going into the merits of the SCN dated 15.11.2018 which

issued to the said assessee as the claim was hit by time limit becomes infructuous. Therefore I am inclined to allow the assessee to withdraw their refund claim dated 02.05.2018 (received on 07.05.2018).

ORDER

14. In view of above narration, I allow the claimant to withdraw the refund claim dated 02.05.2018 (received on 07.05.2018) filed with this Commissionerate. The SCN bearing F. No. S/6 - 107/REF/18-19 dated 15.11.2018 stands disposed of in above terms.

Mukesh
28/06/2019
(Mukesh Chadha)

Assistant Commissioner (Refund)
Custom House, Kandla
Dated.28.06.2019

F. No. S/6 - 107/REF/18-19

To.
M/s KLJ Plasticisers,
KLJ House, 63, Rama Marg,
Najafgarh Road,
New Delhi-110015

Copy to:

1. Assistant Commissioner, (RRA Section), Custom House , Kandla
2. Assistant Commissioner, (EDI Section), Custom House , Kandla
3. Guard file.

