



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.

F. No. - S/6-397/Ref/2018 आदेश की दिनांक / Date of Order : 06/08 / 2019

जारी करने की दिनांक / Date of Issue : 06/08 / 2019

पारित कर्ता / Passed by: - मुकेश चढ़ा / Mukesh Chadha

सहायक आयुक्त / Assistant Commissioner,

सीमा शुल्क सदन, कांडला / Customs House, Kandla.

spdt (EDT)
- 28
7-8-2019

आदेश में मूल सं/ ORDER-IN- ORIGINAL NO: KDL/AC/MC/ 90/ Ref/2019-20

1. जिसके लिये यह प्रतिलिपि जारी की जाती है उस व्यक्ति के उपयोग के लिए यह निः शुल्क दी ती 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 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. 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 of Rs. 13,81,785/- (Rupees Thirteen Lakh Eighty One Thousand Seven Hundred Eighty Five Only) filed by M/s Mantora Oil Products Pvt. Ltd., 26/49, Birhana Road, Kanpur-208001.

BRIEF FACTS OF THE CASE :-

M/s Mantora Oil Products Pvt. Ltd., 26/49, Birhana Road, Kanpur-208001 (India) (hereinafter referred to as the "Claimant") has filed a refund claim for Rs. 13,81,785/- under the provisions of section 27 of the Customs Act, 1962 vide their letter dated 09/10/2017 received on 23/10/2017. The claimant has submitted required documents to this office.

1. The Claimant has claimed the refund of amount of double duty deposited at the time of import clearance of 'Crude Palm Oil' (Edible Grade) imported vide B.E. No. 3257959 dated 15.09.2017. The Claimant has filed the above said refund claim along with following documents:-

- Refund application in prescribed format.
- Calculation Sheet.
- Self Attested Cyber Receipt.
- Duplicate (Importer Copy) of B/E No. 3257959 dated 15/09/2017.
- E-Receipt of Challan No. 2019771199 dtd. 18.09.2017 for Rs. 13,81,785/- and Challan No. 2019771199 dtd. 19.09.2017 for Rs. 13,81,785/-.
- Authorization Letter to M/s Unique Speditorer P.Ltd to file Refund Claim Dtd. 09/10/2017.
- Undertaking regarding Unjust Enrichment by the Claimant.
- Appointment Letter of C.A M/s Jai Kishan for April 2017 to March-2018.
- Bank Covering letter with details of twice duty paid callan and B/Entry.
- Duty paid scroll generated transection detail / cyber receipts.
- Copy of Account Ledger showing twice payment of duty.
- Copy of Bank Statement.

2. In the instant case, the claimant had filed Bill of Entry No. 3257959 dtd. 15.09.2017 for the clearance of Crude Palm Oil (Edible Grade). The said bill of entry was assessed to duty on merits and the importer paid the duty accordingly. The said transaction was completed online vide internet transaction No.CKD5781625 dated 18.09.2017 and second internet Transaction No. CKD5819013 dtd. 19.09.2017. However, as stated by the importer in their application dtd. 23.10.2017 that they have paid duty twice as per statement of Accounts of State Bank of India dtd. 19/12/2018 shown double duty payment of Rs. 13,81,785/- on 18.09.2017 and Rs. 13,81,785/- on 19.09.2017. Therefore they paid the duties once again on 19.09.2017 for same bill of entry No. 3257959 dtd. 15.09.2017.

3. The said refund claim has been scrutinized in terms of section 27 of the Custom Act, 1962 and it is found that the claim has been received within eligible time limit of one year; that all necessary original documents i.e. the bill of entry in original and a self-certified copy of ledger account have been furnished, Statement issued by the Bank, self-declaration appointing Chartered Account & non passing on of duty burden to any other firm/Company or person have been furnished.

Findings:

4. I have carefully gone through the case record submitted by the claimant and find that the claimant has imported Crude Palm Oil (Edible Grade) and the goods were assessed to total Customs duty of Rs. 13,76,785/-. The claimant has paid twice/double Duties of Customs amounting to Rs. 13,81,785/- (Rs. 13,76,785/- paid towards said customs duty + Rs. 5000/- paid towards penalty for late filing which is as under-

Sr. No.	Name of the bank	Challan No.	Amount	Bank transaction No.	ICEGATE Ref. ID	Date of payment
1.	SBI, Centaur Hotel	2019771199	1381785	CKD5781625	IG180917072513727 222	18.09.17
2.	SBI, Centaur Hotel	2019771199	1381785	CKD5819013	IG190917124902281 428	19.09.17

I find that the said bill of entry was assessed to duty on merit rates and it seems that the reason for double payment of duty given by the claimant seems to be genuine.

5. On account of non-updation of payment of above duty paid on 18.09.17 in the system due to technical error which could not be rectified and the duty was still shown as pending, hence the claimant has paid said duty second time on 19.09.2017. Accordingly, I find that the importer paid the duty twice on the said imported goods covered under B/E No. 3257959 dtd. 15.09.2017. I find that the claimant has submitted both the copies of the TR-6 challan/E-receipts, evidencing the payment of the duty each of Rs. 13,81,785/- and showing same document number and challan no. It is seen from these challans that even though the bill of entry no. and E-challan no. is same, the date of payment are different. Thus, I find that the claimant's contention that they have paid the duty twice on the same import consignment appears to be genuine. In view of this, I find that the claimant has paid an excess amount of Customs duty of Rs. 13,76,785/- (excluding penalty amount of Rs. 5000/-) which therefore becomes refundable and same has been rightly claimed by them.

6. AS regards to excess payment of Rs. 5000/- towards penalty and refund thereof; I find under Section 27 of the Customs Act, 1962 only duty or interest paid by the claimant shall be refunded, whereas the claimant has paid penalty of Rs. 5000/- and same cannot be treated as duty or interest. Hence, I find the claimant is not eligible for refund of Rs. 5000/- paid by them towards penalty and I hold that same are liable for rejection. Accordingly, their total refund claim is liable to be restricted to Rs. 13,76,785/- instead of Rs. 13,81,785/-. I find the claimant vide letter dtd. 19.12.2017 has admitted these facts and they have urges this office to refund balance amount of Rs. 13,76,785/- (excluding penalty amount).

7. A letter written to the Sr. Account Officer, E-PAO office, Room No. 233. New Custom House, Near IGI Airport, New Delhi dated 16.11.2017 to verify the payment particulars regarding Bill of Entry No. 3257959 dated 15.09.17 but the reply from them did not come after lapse of many days. Hence, this office is going to process the refund claim Rs. 13,81,785/- on basis of Standing Order No. 04/2017 dtd. 21.09.2017 which states if Verification Report from PAO/E-PAO office is not received within 15 days from the date of request made to PAO/E-PAO in this regard, the Deputy/Assistant Commissioner of Customs, Refund, Customs, Kandla will further process the claim on the basis of verification reports as provided under clause (b) to (d) above and considering other facts and evidences available on record.

7. Now, I proceed to ascertain as to whether the claimant has fulfilled all the conditions as envisaged in section 27 of the Customs Act thereby making them eligible for the refund. I find that as per section 27 in cases where the duty has been paid finally, the limitation of one year shall be computed from the date of final assessment. In the instant case, as such the said claim has been filed well within the time period and is not time barred.

8. The claim is not barred by unjust enrichment since the claimant has submitted a certificate No. NIL dated 09.10. 2017, wherein it is certified that the amount sought as refund has not been passed on by the claimant to any other firm / Company or person. As such I find that the claim is not barred by unjust enrichment. The claim was scrutinized under the provisions of Section 27 of Customs Act, 1962 and is found in order.


9. In view of the foregoing paras, I find that the claimant has fulfilled all the conditions as laid down in section 27 of the Act and therefore the claimant is eligible for the refund of Rs. 13,76,785/-.

10. The claim is cleared from Pre-Audit by the Assistant Commissioner (Audit) vide letter F. No. S/7-268/Pre-Audit/Pre-audit/2019-20 Dated 26.07.2019. Further, the Assistant Commissioner (pre-audit) has reported that the claimant was required to pay Rs. 13,76,785/- as duty on the imported products. The extra Rs. 5,000/- has been paid by the claimant towards penalty for late filing; hence the same is not admissible for refund and net eligible refund amount comes to Rs. 13,76,785/-. This fact has already been agreed upon by the claimant vide their letter dtd. 19.12.2017 and requested for refund of Rs. 13,76,785/-.

11. In view of the above discussion, I Pass the following Order.

ORDER

I sanction refund of Rs. 13,76,785/- (Rupees Thirteen Lakhs Seventy Six Thousand Seven Hundred & Eighty Five Only) being Extra duty paid and reject an amount of Rs. 5000/- paid by them as penalty towards late filing from the total amount claimed by M/s Mantora Oil Products Pvt. Ltd., 26/49, Birhana Road, Kanpur- 208001 (India), under section 27 of the Customs Act, 1962.


06/8/19
(Mukesh Chadha)
Assistant Commissioner,
Customs House, Kandla

F. No. S/6- 397/Refund/2017-18

Dated: 06/08 / 2019

रजिस्टर्डडक

To
M/s Mantora Oil Products Pvt. Ltd.,
26/49, Birhana Road,
Kanpur-208001.
(India).

CC TO: 1 Asstt. Commissioner (RRA), Custom House Kandla.
2 Asstt. Commissioner (EDI), Custom House Kandla.
3. Guard File.

