



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/6-51/Ref/2018-19

आदेश की दिनांक / Date of Order: 04/09/2019

जारी करने की दिनांक/ Date of Issue: 04/09/2019

पारित कर्ता/ Passed by: -

श्री मुकेश चढ़ा / Shree Mukesh Chadha

सहायक आयुक्त/Assistant Commissioner,

सीमा शुल्क सदन, कंडला/ Customs House, Kandla.

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आदेश में मूल सं/ ORDER-IN- ORIGINAL NO: KDL/AC/MC/ 93 /Ref/2019-20

1. जिसके लिये यह प्रतिलिपि जारी की जाती है उस व्यक्ति के उपयोग के लिए यह निःशुल्क दी जाती है।

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5-9-2019

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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।

3. 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.

4. 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 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।

5. 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.

6. 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.

8. 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).

9. 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 25.06.2018 for Rs.2,33,883/- (Rupees Two Lakh Thirty Three Thousand Eight Hundred Eighty Three Only) filed by M/s.Tulip Exim Pvt. Ltd., Plot No,299,300,301A,302A, Sector-4, Kandla Special Economic Zone, Gandhidham -370230, Gujarat, India.

Chief facts of the case:

1. M/s.Tulip Exim Pvt. Ltd., Plot No,299,300,301A,302A, Sector-4, Kandla Special Economic Zone, Gandhidham -370230, Gujarat, India. (hereinafter referred to as "the claimant") have filed a refund claims of Rs. 2,33,883/- (Rupees Two Lakh Thirty Three Thousand Eight Hundred Eighty Three Only) vide letter dated 28.06.2018 has been claimed as refund
2. The claimant filed the claim on account of customs duty paid on implementation of GST changes in duty structure took place with effect from 01/07/2017 KASEZ Customs not permitted the clearance of balance quantity as on date, hence unutilized customs duty available on balance unsold/uncleared quantity of imported goods against Bill of Entry for home consumption (shown in table) in favour of KASEZ warehousing unit/supplier M/s Tulip Exim Pvt. Ltd. has been claimed as refund.
3. The claimant filed the said refund claim for Rs. 2,33,883/- along with the following documents;
 - Refund application in prescribed Performa.
 - Bill of Entry No.0000635 dated 19/01/2017, 2012903 dated 15.11.2017, 2013476 dated 24.11.17, 2013478 dated 24.11.17 and 2013479 dated 24/11/2017
 - T.R. 6 Challan No. 118 dtd. 23.01.17 for Rs. 30,075/- , 094/15.11.17 for Rs. 61,259/-, 105/29.11.17 for Rs. 1,03,346/-, 106/27.11.17 for Rs. 41,339/- and Rs.107/27.11.17 for Rs 41,339/-.
 - Undertaking that claim has not been passed on to any other person and is borne by them only and also they have not availed CVD/CENVAT credit thereof .
 - C.A. certificate dated 12/01/2019 of Satish Khushalani & Co. on un utilized / un-cleared goods and about no unjust enrichment.
 - Bank statement for the period 01.04.17 to 31.03.18 from AXIS Bank.
 - Ledger Account for the period 01.04.17 to 31.03.18 from AXIS Bank.
 - Undertaking form of claimant stating that duty not passed on to anyone.

Deficiency memo dtd. 20.09.2018 and dtd. 26.07.2019 was issued to the claimant to which the claimant has submitted the reply on dtd. 07.08.2019 and 22.08.2019.

FINDINGS

4. I have carefully gone through the documents submitted by the claimant and find that the claimant (SEZ to DTA importer) has filed one Bill of Entry No. 0000635 dated 19/01/2017, 2012903 dated 15.11.2017, 2013476 dated 24.11.17, 2013478 dated 24.11.17 and 2013479 dated 24/11/2017 for supply of imported goods in favour of KASEZ sector-II Kandla Special Economic Zone, Gandhidham-370230. The calculation sheet regarding payment of duty and working out of refund amount is as tabled below-

Table A

Details of duty paid

Sr. No.	B/E No. & Date	TR-6 Challan No. & Date	Challan Amount Rs.
1	0000635/19.01.17	118/23.01.17	30075
2	2012903/15.11.17	094/15.11.17	61259
3	2013476/24.11.17	105/29.11.17	103346
4	2013478/24.11.17	106/27.11.17	41339
5.	2013479/24.11.17	107/27.11.17	41339
			277358/-

Table B

Calculation of duty on goods cleared

Sr. No.	B/E No. & Date	Quantity of goods cleared (in kgs.)	Value of Goods	Duty (5% BCD + 2% Edu cess + 1% S.H.E Cess) and 5% IGST calculated on Assessable value +BCD incl. cess
1.	0000635/19.01.17	6580	135811.20	14135
2.	2013476/24.11.17	17290	343379.4	35737
TOTAL				49872/-

Table C

REFUND ELIGIBILITY

Total Duty Paid	Duty calculated on goods cleared under B/E No. 2013476/24.11.17	Duty on goods cleared under B/E No. 0000635/19.01.17 but claim withdrawn by the claimant vide letter dtd. 07.08.19	Amount Refundable {A-(B+C)}
A	B	C	D
2,77,358/-	35737/-	30075/-	211546/-

5. I find from 'Table A' that the above table that the claimant has paid total duty of Rs. 2,77,358/- for the five Bill of Entries as mentioned in the above table. I also find that above has paid the Customs duty on the entire quantity of goods / consignment of goods covered in the aforesaid Bill of Entry but only goods attracting duty amount of Rs. 49,872/- detailed in 'Table-B' above were cleared before the implementation of GST w.e.f 01.07.2017 by M/s.Tulip Exim Pvt. Ltd., Plot No., 299,300,301A,302A, Sector-4, Kandla Special Economic Zone, Gandhidham -370230, Gujarat, India. Besides, the claim in respect of Bill of Entry No. 000635 was withdrawn by the claimant vide letter dtd. 07.08.2019. Hence, the unutilized Customs duty on unsold/uncleared quantity of imported goods vide Bill of Entry No. as mentioned in Sr. No. 2 to 4 in Table A is liable to be refunded as per Table C to the tune of Rs. 2,11,546/-.

6. I find the claimant has paid the duty vide aforementioned TR-6 Challans in 'Table-A' as stated above and the claimant has filed this claim on dated 25.06.18 to this office, which is within one year of stipulated period from the date of payment under the provision of section 27 of the Customs Act, 1962 and find that the claim is not hit by time bar. I also find that refund for B/E No. 0000635 dtd. 19.01.17 for the duty amount of Rs. 30,075/- has been withdrawn by the claimant.

7. Further, I find the claimant has furnished a C.A. Certificate dated 16/05/2018 of Shri Sanjay Jhanwar chartered accountant certifying that the said refund claim amount of Rs. 2,33,883/- was not recovered or not passed on by the applicant to any other person, hence no unjust enrichment exists in this case. Further, the claimant has also given a declaration declaring that refund duty amount is being claimed only once. Thus, relying upon the same, I find no unjust enrichment exists in this case and the claim is made for the first time by the claimant, which becomes refundable to them. Further, the refund amount is shown as receivable amount under the head of Customs Duty Account in the company's ledger account.

8. In this context, I find that a letter dated 29/11/2018, sent to the Deputy Commissioner of Customs, KASEZ from this office seeking verification report in the matter. I find, the D.C. (Customs) KASEZ, Gandhidham vide letter F.No. KASEZ/Cus/ D & R / Misc/18-19 -941 dated 16.04.2019 has confirmed the authenticity of the said Bill of Entry, its description of goods, quantity receipt, quantity cleared, quantity balance and customs duty amount paid thereof. It is also reported that on examination of the available records / documents the payments as stated above are correct. Therefore, the unutilized portion of duty is for the balance quantity (i.e. unsold quantity) appears to be eligible for refund.

9. A letter dtd. 31.01.2019 and dtd. 13.03.2019 were written to the Manager of State Bank of India, KASEZ, Kandla, Gandhidham to confirm the genuineness of challans mentioned in 'Table-A'. The Branch Manager, State Bank Of India vide letter dtd. 14.02.2019 and dtd.26.03.2019 confirmed the genuineness of all the challans.

10. In view of the above, I conclude that the above duty was paid by the claimant for entire goods covered in aforesaid Bill of Entries and subsequently entire goods could not be cleared/sold against because they were unable to sale these goods to their supplier in DTA due to implementation of GST with effect from 01.07.2017. Accordingly they claimed refund of Custom Duty amount of Rs. 2,33,883/- paid and attributable on the above unsold quantity of materials and later on vide letter dtd. 07.08.2019 withdrawn the amount of refund attributable towards B/E No. 0000635 dtd. 19.01.2017 reducing the refund amount to the tune of Rs. 2,11,546/- which the claimant is liable to get refund of duty on account of excess payment of duty against above said Bill of Entry. I also find that no unjust enrichment arises in this case; accordingly the C.A. has also given necessary certificate thereof. Therefore the duty amount Rs. 2,11,546/- paid by the claimant is liable for refund under the provisions of Section 27 of the Customs Act. 1962.

11. Further, I find the claimant has submitted a certificate from Chartered Accountant Sanjay Jahnwar dated 16/05/2018 that the duty was not passed on to any person, hence no unjust enrichment arise.

12. As regards to limitation of filing refund claim within one year from the date of payment of duty or from the date of final assessment, I find this refund claim was filed to this office on 25.06.2018, which is well within stipulated period of one year from the date of payment of duty on 15.11.2017 under the provisions of Section 27 of the Customs Acts, 1962, therefore, I find the claim is not hit by time bar. Hence, the claimant is eligible for the refund of Rs 2,11,546/-. The claim was scrutinized in terms of Section 27 of Customs Act, 1962 and is found in order.

13. In view of the above discussion and findings, I pass the following order:

ORDER

I sanction refund of Rs. 2,11,546/- (Rupees Two Lakhs Eleven Thousand Five Hundred Forty Six Only) filed by M/s. Tulip Exim Pvt. Ltd., Plot No,299,300,301A,302A, Sector-4, Kandla Special Economic Zone, Gandhidham -370230, Gujarat, India under Section 27 of the Customs Act 1962.

Mukesh Chadha
04.09.19

(Mukesh Chadha)

Assistant Commissioner (Refund)
Custom House, Kandla.

BY REGD. POST / HAND DELIVERY

Dated: 04/09/2019

To
M/s. Tulip Exim Pvt. Ltd.,
Plot No 299,300,301A,302A,
Sector-4, Kandla Special Economic Zone,
Gandhidham -370230, Gujarat, India.

Copy to:

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

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04.09.19