



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-51/AC/17-18

आदेश की दिनांक/ Date of Order: 27.09.2019

जारी करने की दिनांक/Date of Issue: 27.09.2019

पारित कर्ता/ Passed by :

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

Salt (EDT)
Per necessary
action
306
30-9-2019

आदेशमूलसं. -KDL/AC/HC/75/BRC/2019
ORDER-IN-ORIGINAL NO. -KDL/AC/HC/75/BRC/2019

1. जिसके लिये यहप्रतिलिपिजारीकी जातीहैउस व्यक्तिकेउपयोगकेलिए यहनिः शुल्कदीजातीहै।

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2. 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, 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.

3. 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.

4. अनुसूची-1 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.

5. 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).

6. 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. 22,957/- of M/s. D.M. International, (IEC No.0504061437) having their office at D-31, 1st Floor, Sector-9, Noida, Uttar Pradesh, Pin 201301.

BRIEF FACTS OF THE CASE:

M/s. D.M. International, (IEC No.0504061437) having their office at D-31, 1st Floor, Sector-9, Noida, Uttar Pradesh, Pin 201301 (hereinafter referred to as the exporter) is engaged in the export of Fully Electronic Weigh Bridge Cap from Kandla under claim of Drawback.

2. The exporter had exported Fully Electronic Weigh Bridge Cap vide DBK Shipping Bill No. 7495108 dated 06.05.2016 and claimed Drawback for Rs. 22,957/- against FOB value Rs.11,47,827/- of the Shipping Bill. The drawback amount of Rs. 22,957/-(Rupees twenty two thousand nine hundred fifty seven only) was sanctioned and paid to them against the said Shipping Bill vide scroll No. 15748/2016 dated 24.05.2016.

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 Shipping Bill No. 7495108 dated 06.05.2016.

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 the provision of Rule 16A of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Rule- 17 of the Customs, Central Excise and Service Tax Drawback Rules, 2017), where the sale proceeds in respect of exported goods have not been realized by Exporter or a person authorized by him, fails to produce evidence for realization of such export proceeds within the period allowable under Foreign Exchange Management Act, 1999 (42 of 1999), or any extension of he said period by the RBI, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be shall issue a notice to exporter for production of evidence of realization of export proceeds failing which, 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 exporter and the exporter shall repay the amount so demanded within thirty days of the receipt of the said order.

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 Shipping Bill No. 7495108 dated 06.05.2016 within 180 days from the respective date of export, a Show Cause Notice was issued to them vide F. No. S/10-BRC/SCN-51/AC/2017-18 dated 12.12.2017 to show cause as to why the drawback amount of Rs. 22,957/- (Rs. twenty two thousand nine hundred fifty seven only) sanctioned and paid to them should not be recovered from them under Rule 16A 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 Customs Act, 1962.

Defence Reply-

8. Exporter vide their letter dated 22.12.2017 had submitted self attested copy of Bank Realization Certificate No. KVBL0004401000276211 dated 10.06.2016 in respect of realization of the export proceeds against the Shipping Bill No. 7495108 dated 06.05.2016. Exporter vide letter dated 06.01.2018 had submitted Challan No. 1818 dated 05.01.2018 for Rs. 435/- and requested to withdraw the Show Cause Notice. Personal Hearing was granted on 25.03.2019 but the exporter did not turn up for personal hearing.

Discussion and Finding

9. I have carefully gone through the records of the case, reply to the show cause notice along with documents and challan submitted by the exporter. I find that, exporter realized the amount of USD \$17104 under BRC No. KVBL0004401000276211 dated 10.06.2016 in respect of realization of the export proceeds against the Shipping Bill No. 7495108 dated 06.05.2016 instead of FOB value of Shipping Bill USD \$17365, therefore, an amount of USD \$ 261 was short realized, I also find that the Exporter have realized the said export proceeds within stipulated time limit.

10. From the above, it is seen that, short realization of export proceeds comes to Rs 17,253/- (exchange rate Rs. 66.10) and the Drawback amount of Rs. 345/- (Rupees three hundred forty five only) received by the Exporter was in Excess compare to what they were entitled for, on the basis of actual receipt of Export Proceeds in Indian Rupees. Therefore, it was required to be recovered from the Exporter under rule 16 of

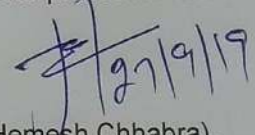
the Customs, Central Excise Duties and Service Tax drawback Rules, 1995 (Rule - 17 of the Customs, Central Excise and Service Tax Drawback Rules, 2017), read with Section 75 of the Customs Act, 1962, along with the applicable interest under Section 75A of the Customs act, 1962.

11. I find that, the excess drawback amount of Rs. 345/- and interest there on of Rs. 90/- total Rs. 435/- (Rupees four hundred thirty five only) had been paid by the Exporter vide Challan No. 1818 dated 05.01.2018.

12. In view of the above, I pass the following order:-

ORDER

- (i) I confirm the demand of Rs.345/- (Rupees three hundred forty five only) drawback received in excess by M/s. D.M. International, (IEC No.0504061437) having their office at D-31, 1st Floor, Sector-9, Noida, Uttar Pradesh, Pin 201301, 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 order to appropriate the excess drawback paid amount of Rs. 345/- and interest of Rs. 90/- thereon total Rs. 435/- (Rupees four hundred thirty five only) paid vide Challan No. 1818 dated 05.01.2018 by M/s. D.M. International, (IEC No.0504061437) having their office at D-31, 1st Floor, Sector-9, Noida, Uttar Pradesh, Pin 201301 towards the above confirmed Demand.
- (iii) I drop the remaining demand of Rs. 22,612/- as the Exports proceeds had been realized within stipulated time.

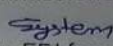

(Hemesh Chhabra),
Assistant Commissioner (DBK),
Customs House, Kandla.

F. No. S/10-BRC/SCN-51/AC/2017-18
By REGD. POST A.D./SPEED POST

Date of Order: 27.09.2019

To,
M/s. D.M. International, (IEC No.0504061437)
Office at D-31, 1st Floor,
Sector-9, Noida,
Uttar Pradesh, Pin 201301.

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. Guard File.
5. The Assistant Commissioner,  for uploading on the website.