



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/6-483/Ref/2017-18

आदेश की दिनांक / Date of Order: 23.10.2019

जारी करने की दिनांक/ Date of Issue: 23.10.2019

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

Spdt (EOJ)
For necessary
action
30
24/10/2019

आदेश में मूल सं/ ORDER-IN- ORIGINAL NO: KDL/AC/MCI/126/Ref/2019-20

- 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.
- 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, 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.
- 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 प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। संबन्धित सभी दस्तावेज चार प्रतियाँ 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.
- 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.
- 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 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 19.01.2018 for Rs. 87,563/- (Rupees Eighty Seven Thousand Five Hundred Sixty Three Only) filed by M/s. Sanrel Rasayan, Shop No. 9 & 10, H-1/679, Industrial Area 2nd Phase, Basni, Industrial Area Jodhpur-342005(Rajsthan).

Brief facts of the case:

(1) M/s. Sanrel Rasayan, Shop No. 9 & 10, H-1/679, Industrial Area 2nd Phase, Basni, Industrial Area Jodhpur-342005(Rajsthan), (hereinafter referred to as "the claimant") have filed a refund claim of Rs. 87,563/- (Rupees Eighty Seven Thousand Five Hundred Sixty Three Only) vide letter dated 18.01.2018 received on 19.01.2018. The claimant has claimed the refund of 4% SAD paid by them at the time of importation. The refund claim is filed on the basis of the exemption as granted vide Notification No.102/2007-Cus.dated 14.09.2007. The claimant have been issued deficiency memo 12/04/2018 and in the response of same, the claimant have submitted their reply along with all required documents vide their letter dated 21/04/2018 (received in this office on 01/05/2018) Accordingly the claim have been taken for processing. The refund claim is filed under Section 27 of the Customs Act, 1962.

(2) The claimant has filed a refund claim along with the following documents.

I) Refund application in prescribed proforma.

II) E-payment receipt evidencing the payment all Custom duties and duplicate copy (in original) of B/Es showing the import of Qty. 40.000 MT. of Vinyl Acetate Monomer by the claimant as detailed below.

Sr No	B/E No. & Date	TR-6 No. & Date	Imp Qty in (Mt)	Total 4% SAD Paid	Total Duty Paid (Rs.)
1	8648829/22.02.17	2017512682/23.03.17	20.000	44632.50	171907.00
2	8261412/20.01.17	2017211690/21.01.17	20.000	44288.20	240706.00
Total			40.000	88920.70	412613.00

III) Copy of sale invoices as evidence of sale of the imported goods to the buyers with an endorsement that "No credit of the ADD duty levied under sub-section 5 of section 3 of the Customs shall be admissible" as required under Para 2(b) of the exemption Notification No. 102/2007. Other details like B/E No, VAT/CST payable is reflected in the sale invoices.

IV) Worksheet showing the details of import made under above B/E and sales affected thereafter.

V) Copies of VAT/CST challan evidencing total VAT/CST payment for the month of November 2015, March 2016 to May 2016 as shown in below mentioned table.

Sr. No	Vat Paid in cash	VAT Paid through adj. of ITC	Total VAT Paid (Rs.)	CST Paid in cash	CST Paid through adj. of ITC	Total CST paid (Rs.)	Period
1	2082196.00	249702.00	2331898.00	N/A	N/A	N/A	Jan-17 to March 17

VI) Undertaking of the claimant that the burden of 4% SAD has not been passed on by them to buyer/any other person.

VII) Declaration regarding the appointment of Chartered Accountant M/s S.V. Puara & Co., Ahmedabad for the financial year 2014-2015,2015-2016 and 2016-2017.

VIII) Copy of Ledger Account of 4% SAD refundable, VAT/CST and certificate issued by the Chartered Accountant showing the amount of SAD receivable under the head "SAD refund receivable".

IX) Declaration regarding filing of single claim in a month.

X) C.A. Certificate certifying co-relation between VAT/CST payment and sale invoice and burden of 4 % SAD has not passed on to buyer or any other person.

(3) As per Notification No.102/2007-Cus. Dated 14.09.2007, the exemption contained in this notification shall be given effect, if the conditions, as stipulated in the said notification are fulfilled. The conditions are that the importer of the said goods shall pay all duties, including the said additional duty of customs leviable thereon. as applicable, at the time of importation of the goods; the importer, while issuing the invoice for sale of the goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under Sub-section (5) of Section 3 of the Customs

Tariff Act, 1975 shall be admissible; the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional customs officer; the importer shall pay on sale of the said goods appropriate sales tax or value added tax, as the case may be. Further, as per Para 2(e), the importer at the time of claiming of the refund shall, inter alia, provide copies of the documents evidencing the payment of the said additional duty; the invoice of sale of the imported goods in respect of which refund of the said additional duty is claimed and documents evidencing the payment of appropriate sales tax or value added tax as the case may be, by the importer, on sale of such imported goods.

Findings:

(4) I have carefully gone through the case records submitted by the claimant and find that the claimant has imported 40.000 MT of VAM and paid duties of customs amounting to Rs. 4,12,613/- inclusive of 4% SAD amounting to Rs. 88,920.70 under B/Es as detailed in para 2 (ii).

(5) As regards to limitation of filing refund claim within one year from the date of payment of duty or from date of filing, I find, in the present case, this refund claim was filed in this office on 19.01.2018, which is within stipulated period of one year from the date of duty payment of Bill of entry I find the claim is not hit by time bar. The claim was scrutinized as per provisions of Section 27 of Customs Act, 1962 and was found in order..

(6) The claim is not barred by unjust enrichment since the claimant has submitted a certificate No Nil dated 17.07.2017 of M/s S V Pujara & Co., Chartered Accountant, wherein it is certified that the amount sought as refund has not been passed on by the claimant to any other party, directly or indirectly. As such I find that the claim is not barred by unjust enrichment.

(7) The sale invoice is endorsed with the remark "No credit of the Additional duty levied under Sub- section (5) of Section 3 of the Customs Tariff Act, 1975 shall be admissible".

(8) The claimant has subsequently sold 39.390 MT. of VAM out of total imported quantity of 40.000 MT. to the buyers as detailed below.

(1) B/E No.8648829/22.02.2017 (Qty.20.000 MT. of VAM)

Sr. no.	Sale Invoice No. dt.	Name of buyer	Sold Qty (in Mts.)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	J03237/03.03.17	Jagdmaba Colours & Chemicals Inds.	19.650	69816.45	0.00	0.00
Total Sales Qty.			19.650			
Short Sales Qty.			0.350			
Total Import Qty.			20.000	69816.45	0.00	0.00

(2) B/E No. 8261412/20.01.2017 (Qty. 20.000 MT. of VAM)

Sr. no.	Sale Invoice No. & date	Name of buyer	Sold Qty (in Mts.)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	J02867/27.01.2017	Jagdmaba Colours & Chemicals Inds.	19.740	68941.00	0.00	0.00
Total Sales Qty.			19.740			
Short Sales Qty.			0.260			
Total Import Qty.			20.000	68941.00	0.00	0.00

(9) 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 and all necessary documents as stated above have been furnished.

(10) The sale invoice are endorsed with the remark "No credit of the Additional duty levied under Sub- section (5) of Section 3 of the Customs Tariff Act, 1975 shall be admissible".

(11) I find that the claimant has sold 39.390 MT. out of total imported quantity of 196.000 MT. and thereby they have short sold 0.610 MT. of the imported goods, as shown in below mentioned table.

Sr. No.	B/E No. & Date	Total Qty Import	Sold Qty (MT.)	Short Sold Qty. (MT.)	Total 4% Sad Paid	4% SAD on Short Sold Quantity	Net Eligible Refund Claim
1	8648829/22.02.17	20.000	19.650	0.350	44632.50	781.07	43851.43
2	8261412/20.01.17	20.000	19.740	0.260	44288.20	575.75	43712.45
Total		40.000	39.390	0.610	88920.70	1356.82	87563.88

(12) I find that the claimant has sold quantity of imported goods i.e. 39.390 MTs. Out of total imported quantity 40.000 MTs., As per Para-2(d) of Notification No. 102/2007-Cus. Dated 14.09.2007 the importer shall pay on sale of the said goods, appropriate Sales Tax or Value Added Tax, as the case may be and as per Para 4.1 of Circular No. 06/2008-Cus. Dated 28.04.2008, unsold stock would not be eligible for refund. In other words, refund can be granted only for the quantity of imported goods sold on payment of applicable VAT/CST. Accordingly, the claimant is eligible for refund for the quantity sold only, which comes to Rs. 87,563/- as per Table above and the claimant has filed refund claim for same amount. The claimant has also given an undertaking that they shall not claim the refund on short sold quantity i.e. 0.610 MTs in future also.

(13) Board has issued Circular No.06/2008 dated 28.04.08, 16/2008 and 18/2010, wherein certain procedures are to be adopted for refund of 4 % SAD. The procedures are outlined as under.

- (i) The refund claim has to be filed within one year.
- (ii) A single claim against a particular B/E has to be filed.
- (iii) C.A. Certificate certifying co-relation between VAT/CST payment and sale invoice and burden of 4% SAD has not passed on to buyer or any other person.
- (iv) Self certification by the importer with respect to the unjust enrichment.
- (v) Copies of VAT/CST challan/returns.

(14) The claimant have been issued deficiency memo 12/04/2018 and in the response of same , the claimant have submitted their reply along with all required documents vide their letter dated 21/04/2018 (received in this office on 01/05/2018) Accordingly the claim have been taken for processing.

(15) I find that the refund claim is filed within the prescribed time limit and a single claim has been filed against a particular Bill of Entry. The Chartered Accountant, M/s S.V. Pujara & Co., vide their certificate dated 17.07.2017 has certified that M/s. Sanrel Rasayan Udhog., has made the VAT/CST payment which co-relates with the sale invoices. They have further certified that the burden of 4% SAD has not been passed on to buyer or any other person. The importer has given an undertaking that they have not passed on the burden of 4% SAD to buyer or any other person. The claimant has also submitted VAT/CST challans & returns in co-relation to the Chartered Accountant certificate for the said claim. Hence, I am satisfied that there is no unjust enrichment in the present case.

(16) The Board has issued Circular No. 06/2008 dated 28.04.2018, wherein certain procedures are to be adopted for claiming the refund of 4% SCVD. This requires to be examined in the present case. I find that the importer has filed the refund claim within the time limit of one year as laid down in the circular. Further the condition of filing a single claim against a particular Bill of entry has also been fulfilled by the importer. Apart from the above, I find that the claimant has submitted proof that the burden of duty has not been passed on to any buyer which takes care of the unjust enrichment issue. Further, as required, the Chartered Accountant has also certified that the payment of the VAT/ST on imported goods has been co-related with the sale invoices. In view of this, the claim appears to be correct.

(17) The documents showing the payment of VAT/CST related to the refund claim were forwarded to the proper authorities for verification of its genuineness. The State Tax Officer vide letter dated 02.08.2019 verified that the payment made by the party for the said **Two Invoice** was found in order.

(18) In view of the foregoing para, I find that the claimant has fulfilled all the conditions as laid down in the notification No. 102/2007 Cus, dated 14.09.07 read with Board Circular No. 06/2008, 16/2008 and 18/2010 and therefore the claimant is eligible for the refund of Rs. 87,563/-. **Only.**

(19) In view of the above discussion, I pass the following order.

ORDER

I sanction refund of Rs. 87,563/- (Rupees Eighty Seven Thousand Five Hundred Sixty Three Only) file by M/s. Sanrel Rasayan, Shop No. 9 & 10, H-1/679, Industrial Area 2nd Phase, Basni, Industrial Area Jodhpur-342005(Rajsthan)..., in terms of notification no. 102/2007-cus-dated 14.09.2007 as amended.

Mukesh Chadha
23/10/19

(Mukesh Chadha)
Assistant Commissioner (Refund)
Customs House, Kandla
Date:23/10/2019

By Rgd.Post

F. No. S/6-483/Ref/2017-18

To,

M/s. Sanrel Rasayan
, Shop No. 9 & 10, H-1/679, Industrial
Area 2nd Phase, Basni, Industrial Area
Jodhpur-342005(Rajsthan)..,

Copy to: 1) The Deputy Commissioner (RRA), Customs House, Kandla.
2) The Deputy Commissioner (EDI), Customs House, Kandla.
3) Guard file Refund Section.
4) Respective Refund file.

