



**OFFICE OF THE COMMISSIONER OF CUSTOMS**  
**CUSTOM HOUSE: KANDLA**  
**NEW CUSTOMS BLDG, NR. BALAJI TEMPLE**  
**KANDLA, KUTCH, GUJARAT**

PHONE: 02836-271468-469

FAX: 271467

F. No. S/6-44/Ref/2019-20

Date of Order: 13 / 12 / 2019

Date of Issue: 13 / 12 / 2019

Passed by: R.R. PAWAR

ASSISTANT COMMISSIONER (REFUND),  
CUSTOM HOUSE, KANDLA.

Spdt (EDT)  
- 200  
13-12-2019

**ORDER-IN-ORIGINAL NO. KDL/AC/RRP/134 /Ref/2019-20**

1. This copy is granted free of charge for the use of person to whom it is issued.
2. An appeal against this order lies with the Commissioner (Appeals), Having office at 7th floor, Mrudal 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. 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), but the date of receipt in the office will be relevant date of appeal whether in time or not.
4. 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. The appeal should bear a court fee stamp of Rs. 5/- (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/- (Rupee Five Only).
6. Any person desirous of appealing against this 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 31.07.2019 for Rs. 52,16,750/- (Rupees Fifty Two Lakhs Sixteen Thousand Seven Fifty Only) filed by **M/s. Farlin Commodities Pvt. Ltd.**, 609, Bonanza, Sahar Plaza, Kondivita Village, M V Road, Nr. Hotel Kohinoor, Andheri East, Mumbai- 400059.

**BRIEF FACTS OF THE CASE:-**

1. M/s. **Farlin Commodities Pvt. Ltd.** (IEC 0312073496) having registered office at 609, Bonanza, Sahar Plaza, Kondivita Village, M V Road, Nr. Hotel Kohinoor, Andheri East, Mumbai- 400059 (hereinafter referred to as the 'Importer' filed refund claim application for Rs. 52,16,750/- (Rupees Fifty Two Lakhs Sixteen Thousand Seven Fifty Only) on 31.07.2019. The Importer has imported various items vide 17 Bills of Entry respectively for the period 2013-2014, wherein 01% Extra Duty Deposit (EDD) were paid through 17 Challans as shown in the Table-1 below:

Table-1

Sr. No.	BOE No.	BOE Date	RD challan No.	RD challan date	RD Amt
1	2195030	21.05.13	270	22.05.13	87500
2	2360661	07.06.13	09	14.06.13	162000
3	2377417	11.06.13	408	17.06.13	449000
4	2594679	02.07.13	10	04.07.13	467500
5	2719633	16.07.13	560	17.07.13	331600
6	2707559	15.07.13	595	22.07.13	459000
7	2989104	29.07.13	779	14.08.13	766000
8	2289318	31.05.13	327	31.05.13	454700
9	3172661	03.09.13	909	12.09.13	69500
10	3175625	09.09.13	908	12.09.13	298200
11	5096768	03.04.14	90	07.04.14	96045
12	3812850	15.11.13	1411	18.11.13	34550
13	3849934	19.11.13	1433	20.11.13	167540
14	5105027	04.04.14	92	07.04.14	160385
15	3937853	28.11.13	1646	05.12.13	67230
16	3442590	03.10.13	2470	05.02.14	484000
17	3128952	29.08.13	859	02.09.13	662000
<b>Total</b>					<b>52,16,750</b>

2. The valuation aspect of import by M/s. **Farlin Commodities Pvt. Ltd.** from its associates/affiliates were under scrutiny by SVB Cell under F.No. S/9-32 GATT/2014 GVC. Hence, the goods imported were cleared provisionally against Revenue Deposit @ 1% pending till finalization of the valuation aspect by SVB Cell, Mumbai. The Valuation aspect has been decided vide DOV Registration No. DOV0008965 as communicated vide letter F. No. S/9-32 GATT/2014 GVC dtd 13.02.2017.

3. The Importer submitted the following documents along with the refund application:-

- Covering Letter
- Refund application in Form Part A/B/C
- Copy of SVB report F. No. S.9-32 GATT/2014 GVC dtd. 13.02.2017 by Assistant Commissioner of Customs, SVB, Mumbai.
- Finally assessed Bills of Entry.
- Extra Duty Deposit (EDD) Challans/Photocopy of Extra Duty Deposit (EDD) challans.
- Worksheet duly signed.
- Invoice and packing list.
- Ledger and Audited Balance Sheet.
- Authority Letter
- List of relevant Bills of Entry
- Self Declaration letter.

4. A show cause notice dtd. 18.09.2019 was issued to the claimant vide F. No. S/6-44/Ref/2019-20 under section 27 of customs Act, 1962 and M/s. Farlin Commodities Pvt. Ltd. was called upon to show cause to the Assistant Commissioner of Customs (Refund), Custom House, Near Balaji Temple, Kandla, as to why

- i. the refund of Rs **52,16,750/-** (Rupees Fifty Two Lakhs Sixteen Thousand Seven Hundred Fifty Only) should not be rejected for not fulfilling the conditions prescribed under Section 27 (1) of Customs Act, 1962.

**DEFENCE REPLY:**

5. The claimant M/s. Farlin Commodities Pvt. Ltd. vide letter dtd. 18.10.2019 made the following submissions in reply against the SCN issued to them on dtd. 18.09.2019 which is as under-

At the outset, the claimant denies the allegations set out in the SCN as incorrect and unsustainable on the basis of the following grounds-

- a) The claimant has stated that they have deposited extra amount over and above the applicable customs duty on the imported goods as mentioned in the bills of entry. The claimant has this extra amount towards duty liability that may arise in future as a safeguard and not as an advance deposit of extra duty, as the amount collected by the department cannot be treated as duty until and unless the said deposit is adjusted towards such duty on finalization thereof as per law. They have further stated that the claimant is not supposed to file the formal refund claim under section 27 *ibid*.
- b) The department should take suo motu action to refund the 'extra amount' deposited by the claimant for the safeguard of revenue. Factually, EDD of 1% has been deposited by the claimant as a precaution to safeguard the interests of revenue. If after final assessment any part of this deposit is found in excess, it is liable to be refunded *suo motu* once the bill of entry is finalized, or atleast on a simple letter request by the importer.
- c) Extra duty deposit is collected 'extra' or over and above what is allowed under the statute can be termed as a duty. What is meant is that an extra amount has been deposited towards duty liability that may arise in future as a safeguard and not as an advance deposit of extra duty, as the amount collected cannot be treated as duty until and unless the said deposit is adjusted towards such duty on finalization thereof as per law. They have further added that the claimant has deposited 'extra duty' 1% in terms of section 18 of the Customs Act, 1962, for the purpose of provisional assessment of bills of entry.
- d) In support of their above submission, claimant relies upon the following case laws-
  - i. judgment of Hon'ble HIGH COURT OF JUDICATURE AT MADRAS in the case of COMMISSIONER OF CUS. (EXPORT), CHENNAI *Versus* SAYONARA EXPORTS PVT. LTD. [2015 (321) E.L.T. 583 (Mad.)].

- ii. judgment of Hon'ble THE HIGH COURT OF DELHI in the case of COMMISSIONER OF CUSTOMS Versus INDIAN OIL CORPORATION [2012 (282) E.L.T. 368 (Del.)]
- iii. judgment of Hon'ble HIGH COURT OF DELHI in the case of COMMISSIONER OF CUSTOMS Versus INDIAN OIL CORPORATION [2012 (282) E.L.T. 368 (Del.)]
- iv. judgment of Gujarat High Court in the case of *Hindalco Industries* (supra).
- v. Orissa High Court in *CCE C.& ST, Bhubaneshwar-I v. Paradeep Phosphates Ltd.* - 2010 (252) E.L.T. 502 (Ori.).

#### **PERSONAL HEARING:**

6. The personal hearing was fixed on dtd. 27.11.2019 in the matter by the Assistant Commissioner (Refund), Customs House, Kandla. The hearing was attended by Shri Devang Mehta, Consultant for M/s. Farlin Commodities Pvt. Ltd. and Shri Vinamka Kacholia, Marketing Executive, Farlin Commodities Pvt. Ltd. and they reiterated their earlier submissions made vide letter dtd. 18.10.2019 to the Assistant Commissioner, Custom House, Kandla. They also requested to provide a week's time for further submission.

7. The claimant vide letter dtd. 03.12.2019 (received on dtd. 04.12.2019) made the following submissions-

- Ledger and Audited Balance Sheet showing refundable amount.
- Customs Circular 11/2001 showing 1% is Extra Duty Deposit.

#### **DISCUSSION AND FINDINGS**

8. I have carefully gone through the submission of importer, available records in the file and proceed with recording the following findings in this case.

**9. Merits of the Case:** - As discussed in brief facts of case, I find that the Importer filed the refund claim for amount of Rs. 52,16,750/- (Rupees Fifty Two Lakhs Sixteen Thousand Seven Hundred Fifty Only) on 31.07.2019 against 17 Bills of Entry wherein 01% Extra Duty Deposit (EDD) had been paid through 17 RD Challans as shown in Table-1 above. The valuation aspect of import by M/s. Farlin Commodities Pvt. Ltd. from its associates/affiliates were under scrutiny by SVB Cell, Mumbai. Hence, the goods imported were cleared provisionally against Revenue Deposit @ 1% pending till the finalization of the valuation aspect by SVB Cell, Mumbai. The Valuation aspect has been decided vide Investigation Report, as communicated vide letter F. No. S.9-32 GATT/2014 GVC dtd. 13.02.2017 by Assistant Commissioner of Customs, SVB, Mumbai; wherein the declared invoice value for goods imported by the claimant were accepted.

Accordingly, the said Bills of Entry were finally assessed by the concerned Group-I between September-2013 and February- 2018. The Assistant Commissioner (Group-I), Customs House, Kandla vide letter F. No. S/20-01/Gr. I/Misc./2019-20 dtd. 19.08.2019 reported that extra duty deposit made by M/s. Farlin Commodities Pvt. Ltd. is genuine.

**10. Limitation:** I find that this is refund of Revenue Deposit (RD) made by the claimant and is not refund of duty under section 27 of Customs Act 1962; hence the law of limitation is not applicable in this refund case. Besides, it is seen that all 17 Bills of entry were finally assessed between September-2013 and February- 2018 as reported by the Assistant Commissioner (Group-I), Custom House, Kandla which was also finally assessed in pursuance of decision of the Valuation aspect vide Investigation Report, as communicated vide letter F. No. S/9-32 GATT/2014 GVC dtd. 13.02.2017 by Assistant Commissioner of Customs, SVB, Mumbai. Following are the relevant case laws:-

- 1) Commissioner of Customs (Exports) Vs M/s. Sayonara Exports Pvt. Ltd. (Madras High Court)

*In the case of Commissioner of Customs (Exports) Vs M/s. Sayonara Exports Pvt. Ltd., it was held by High Court of Madras that the assessee is entitled for automatic refund of the Extra Duty Deposit made pending finalisation of the provisional assessment without filing an application for refund under Section 27 of the Customs Act, 1962.*

- 2) SKF Technologies (I) Pvt. Ltd. Vs. CC, Bangalore, 2017 (352) ELT 355
- 3) CC, Bangalore Vs. Ecomaster (India) Pvt. Ltd., 2007 (213) ELT 281(Tri-Bang)

**Further, Section 18 (2) (a) of Customs Act, 1962 reads as under-**

(2) When the duty leviable on such goods is assessed finally [or re-assessed by the proper officer] in accordance with the provisions of this Act, then -

(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty [finally assessed or re- assessed, as the case may be,] and if the amount so paid falls short of, or is in excess of [the duty [finally assessed or re-assessed, as the case may be,]], the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

From the above, it is clear that the instant refund has occurred as a result of section 18 of the Customs Act, 1962, and the claimant is eligible for refund in terms of clause (a) of section 18 (2) *ibid*.

In view of the above, provisions of section 27 *ibid* are not applicable in this case and the claimant is eligible for refund of EDD.

**11. Quantification:** I find that Revenue Deposit of Rs. **52,16,750/-** (Rupees Fifty Two Lakhs Sixteen Thousand Seven Hundred Fifty Only) was paid through 17 Extra Duty Deposit (EDD) Challans as shown in the Table-1 against the said 17 Bills of Entry by the Importer during the pendency of scrutiny of valuation of the said imported goods. The Valuation aspect was decided vide Investigation Report, as communicated vide letter F. No. S/9-32 GATT/2014 GVC dtd. 13.02.2017; wherein the declared invoice value for goods

imported by the claimant were accepted. Hence, the amount of Rs. 52,16,750/- becomes refundable to them.

**12. Unjust Enrichment:** I find that Deposit made during the pendency of investigation by SVB is in the form of a security and the doctrine of Unjust Enrichment is not applicable for refund of the same. Following are the relevant case laws:-

- 1) **SKF Technologies (I) Pvt. Ltd. Vs. CC, Bangalore, 2017 (352) ELT 355**
- 2) **Commissioner of Customs , Chennai vs Minevera Trade Links (P) Ltd 2009(233) ELT 399 (Tri-Chennai)**
- 3) **CC, Bangalore Vs. Ecomaster (India) Pvt. Ltd., 2007 (213) ELT 281(Tri- Bang)**

The refund being claimed herein is being shown in the books of accounts under the ledger of 'Customs duty Paid under Protest' refundable and in Balance Sheet shown as "Deposits with government authorities" under the head "OTHER CURRENT ASSETS (Note No. 14) of the Current assets. In support of their claim, the claimant has submitted Balance Sheet of the Company dtd. 02.09.2014 for the F.Y. 2013-14 as well as Independent Auditor's Report dtd. 02.09.2014 both from Bakliwal & Co, Chartered Accountants.

**13** The Deputy Commissioner (Group-I), Custom House, Kandla vide his letter F. No. S/26-10/Gr-II/Misc./2019-20 dated 04.10.2019 reported the date of finalization of Bill of Entry and the payment of challans thereof in the case of M/s Farlin Commodities Pvt. Ltd. They further reported that the 17 bills of entry mentioned in the above list have been finally assessed between September-2013 and February- 2018.

**14** The Cashier, Customs House, Kandla on dated 13.12.2019 informed that all the 17 Challans have been verified with cash records and found in order and further countersigned all the 17 challans authenticating the same.

**15.** The issue in hand squarely falls under the above explained situation and I find that the importer is eligible for refund of Rs. **52,16,750/-** (Rupees Fifty Two Lakhs Sixteen Thousand Seven Hundred Fifty Only) under Customs Act, 1962 and the Show Cause Notice No. S/6-44/Ref/2019-20 dated 18.09.2019 is not sustainable as the provisions of section 27 ibid are not applicable in this case, therefore, limitation of one year is also not applicable here in this case.

**16.** After the clearance from Pre-Audit of this Refund Claim, the file is returned by Assistant commissioner (Audit), C.H., Kandla vide letter F. No. S/6-51/Ref/19-20 on 11.12.2019 (received on dtd. 13.12.2019) with following remarks-

*The original refund claim file alongwith all documents is returned herewith as cleared from pre-audit for Rs. 52,16,750/- subject to-*

- I. Confirmation of genuineness of TR-6 payment Challans made by the claimant from the cashier as requested by your office letter F. No. S/6-44/Ref/2019-20 dated 03.12.2019.
- II. No government dues pending against the claimant.

The cashier, Custom House, Kandla on dtd. 13.12.2019 informed that all the 17 Challans have been verified with cash records and found in order and further countersigned all the 17 challans authenticating the same. Further, the Assistant Commissioner (TRC), Custom House, Kandla vide letter dtd. 29.08.2019 informed that no government are pending against M/s. Farlin Commodities Ltd. at Custom House, Kandla, as per available records. Accordingly, I find that the claimant is eligible for refund of Rs. 52,16,750/-.

17. In view of the above findings, I pass the following order:

**ORDER**

- I. I, hereby drop the Show Cause Notice No. S/6-44/Ref/2019-20 dated 18.09.2019 issued against M/s. Farlin Commodities Pvt. Ltd., 609, Bonanza, Sahar Plaza, Kondivita Village, M V Road, Nr. Hotel Kohinoor, Andheri East, Mumbai- 400059 under Customs Act, 1962.
- II. I sanction the amount of Rs. **52,16,750/-** (Rupees Fifty Two Lakhs Sixteen Thousand Seven Hundred Fifty Only) paid as Extra Duty Deposit (EDD) in respect of the 17 Bills of Entry, mentioned in Column-I above, as Refund to M/s. **Farlin Commodities Pvt. Ltd.** having registered office at 609, Bonanza, Sahar Plaza, Kondivita Village, M V Road, Nr. Hotel Kohinoor, Andheri East, Mumbai- 400059 under Customs Act, 1962.

*RRP*  
13/12/2019

(R.R. PAWAR)

Assistant Commissioner of Customs  
Customs House, Kandla

Dated: 13 /12/2019

To

M/s. **Farlin Commodities Pvt. Ltd.**  
609, Bonanza, Sahar Plaza, Kondivita Village,  
M V Road, Nr. Hotel Kohinoor,  
Andheri East, Mumbai- 400059

**Copy to:**

- 1) The Asstt. Comm. (RRA), Custom House, Kandla.
- 2) The Asstt. Comm. (EDI), Custom House, Kandla.
- 3) Guard File Refund Section.

