



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-47/AC/2017-18

आदेश की दिनांक/ Date of Order: 20.12.2019.

जारी करने की दिनांक/Date of Issue 20.12.2019.

पारित कर्ता/ Passed by : HEMESH CHHABRA  
ASSISTANT COMMISSIONER (BRC)  
CUSTOM HOUSE, KANDLA.

आदेशमूलसं. -KDL/AC/HC/115/BRC/2019

ORDER-IN-ORIGINAL NO. -KDL/AC/HC/115/BRC/2019

*Sd/- (EDJ)  
- Per necessary  
action*

*208  
23-12-2019*

1. 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.

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 380009में 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 7<sup>th</sup> 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.

3. यह अपील सीमाशुल्कनियमावली-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 कमसेकम 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 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 सीमा शुल्क अधिनियम-1962 की धारा-128 के प्रावधानों के तहत 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. 1, 38,004/- ( Rs. One Lakh Thirty Eight Thousand Four only) of M/s Bharat Industrial Enterprises Limited., having their office at BP-109, DDA Flats, Pitampura, Delhi, Pin- 110 034.



### **BRIEF FACTS OF THE CASE:**

M/s Bharat Industrial Enterprises Limited., (IEC No.0588135585), having their office at BP-109, DDA Flats, Pitampura , Delhi , PIN- 110 034, (hereinafter referred to as the exporter) is engaged in the export of Indian 1121 Basmati Sella Rice from Kandla.

2. The exporter had exported Indian 1121 Basmati Sella Rice from Kandla vide 04 (Four) DBK Shipping Bills mentioned in the table below and had claimed drawback amount as shown against the respective shipping bill. Drawback totally amounting to Rs. 1, 38,004/- ( Rs. One Lakh Thirty Eight Thousand Four only) was sanctioned and paid to them against these S/Bills.

Sr. No	Shipping Bill No.	Date	FOB in Rs.	Drawback Sanctioned
1	6343598	09/3/2016	28175000	17251
2	7879789	26/5/2016	33925000	40251
3	7882744	26/5/2016	33925000	40251
4	7944691	30/5/2016	33925000	40251
			Total	138004/-

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 these Shipping Bills.

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 Rule 16A of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Rule- 18 of the Customs, Central Excise and Service Tax Drawback Rules, 2017), where an amount of drawback has been paid to an Exporter or a person authorized by him, but the sale proceeds in respect of such export goods have not been realized by or on behalf of the Exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the drawback shall be recovered.

6. As Per Rule 16A(2), if the exporter fails to produce evidence in respect of realization of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, 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 issue show cause notice to the exporter for producing the evidence of realization 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 exporter and the exporter shall repay the amount so demanded within thirty days of the receipt of the said order.

*Provided that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds.*

7. Since the Exporter had failed to produce the evidence in respect of realization of export proceeds against the said S/Bills within 180 days from the respective date(s) of export, a Show Cause Notice was issued to them vide F. No. S/10-BRC/SCN-47/AC/2017-18 dated 07.12.2017 to show cause as to why the drawback amount of Rs. 1,78,255/- (Rs. One Lakh Seventy Eight Thousand Two Hundred Fifty Five only) sanctioned and paid to them, should not be recovered from them along with applicable interest as per the provisions of the Rule 16 A of Customs, Central Excise & Service Tax DBK Rules, 1995 read with Section 75 and 75 A of the Customs Act, 1962 and why penal action should not be initiated under section 117 of Customs Act, 1962. ***However, due to mistake in calculation of Duty drawback Amount, the Shipping Bill No. 7879789 dated 26.05.2016 has been counted twice in Annexure-A of Said Show Cause Notice. Therefore, the amount of Rs. 40251/- has been increased in said Show Cause Notice. The calculation of correct Amount is shown in para 2 above.***

#### **Defence Reply-**

8. The exporter did not submit any defence reply of the above mentioned Show Cause notice.

#### **Personal Hearing-**

9. Thereafter, a letter dated 08.03.2019 was written to the said exporter for Personal Hearing on 20.03.2019 at 16.30 Hrs. The representative of the exporter not attended the Personal Hearing on 20.03.2019 but informed vide letter dated 18.03.2019 that they would submit the all BRCs in next two or three days. The Exporter did not submit any documents within next three days as requested vide letter dated 18.03.2019. Again, next Personal Hearing was granted on 03.04.2019 to the Exporter for submission of BRCs and other documents to this office. The Exporter submitted the copies of E-Bank Realization Certificate vide letter dated 16.03.2019 received by this office on 22.03.2019. On verification of the E-Bank Realization Certificate submitted by the exporter it is found that they have realized the export proceeds in respect of the Shipping Bills mentioned in the SCN.

#### **Discussion and Finding**



10. I have carefully gone through the records of the case and reply letter dated 16.03.2019 and 18.03.2019 submitted by the exporter along with documents. Ongoing through the copies of E-Bank Realization Certificates submitted by the exporter, I find that the Exporter have availed the excess Drawback in the following Shipping Bills as the export proceeds realized in shorts, and availed excess Drawback to the tune of Rs. 17112/- (Rs. Seventeen Thousand One Hundred Twelve only). The details are shown in the table A below:-

Table-A

Sr. No.	Shipping Bill No.	date	FOB Amt. In Rs.	Realized amount In Rs.	Outstanding Amt. in Rs.	Total sanctioned Amount	Excess Drawback Amount to be recovered
01	6343598	09/3/2016	28175000	20462500	7712500	17251	4722
02	7879789	26/5/2016	33925000	30444258	3480742	40251	4130
03	7882744	26/5/2016	33925000	30444258	3480742	40251	4130
04	7944691	30/5/2016	33925000	30444258	3480742	40251	4130
			<b>129950000</b>	<b>111795274</b>	<b>18154726</b>	<b>138004</b>	
Total Amount of Drawback to be recovered in Rs.							<b>17112/-</b>

Similarly the table below is showing the realization dates within or beyond the stipulated time limit:

Table-B

Sr. No.	Shipping Bill No.	Date of Shipping Bill	FOB Amt. In Rs.	Realized amount In Rs.	LEO Date	Realization date of export proceeds	Expected date of realization (on or before 180 days)	Delay (No. of Days)	Interest Payable
01	6343598	09/3/2016	28175000	20462500	09.03.2016	15.05.2017	08.09.2016	251	1292
02	7879789	26/5/2016	33925000	30444258	02.06.2016	14.06.2017	01.12.2016	198	2939
03	7882744	26/5/2016	33925000	30444258	31.05.2016	14.06.2017	30.11.2016	200	2969
04	7944691	30/5/2016	33925000	30444258	03.06.2016	14.06.2017	02.12.2016	197	2924
									<b>10124/-</b>

11. From the above table A, it is seen that the Drawback amount (in total) of Rs. 17112/- (Rs. Seventeen Thousand One Hundred Twelve only) received by the Exporter is in Excess compare to what they were entitled for, on the basis of actual receipt of Export Proceeds. As such, excess amount of drawback Rs. 17112/- (Rs. Seventeen Thousand One Hundred Twelve only) received by the Exporter is required to be recovered from the Exporter under Rule 16A (2) Proviso of the Customs, Central Excise Duties and Service Tax drawback Rules, 1995 (Rule- 18 (2) Proviso 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.

12. Further, as per the table B above, in all shipping bill export proceeds has not been realized within stipulated time. It is observed that the exporter



has attracted the provision of the Rule 16 A of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Rule-18 of the Customs, Central Excise and Service Tax Drawback Rules, 2017) for the delayed realization of export proceeds in respect of all Shipping Bills mentioned in Table B. Hence, the Interest at the rate of 15 % may be recovered for delayed realization of export proceeds on equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds as per Notification No. 33/2016-Customs(N.T) dated 01.03.2016.

13. Thus, it is observed that the exporter has attracted the provision of the Rule 16A (2) Proviso of the Customs, Central Excise Duties and Service Tax drawback Rules, 1995 (Rule- 18 (2) Proviso of the Customs, Central Excise and Service Tax Drawback Rules, 2017) in respect of export proceeds not realized for drawback amount of Rs. 17112/- (Rs. Seventeen Thousand One Hundred Twelve only) and 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) in respect of Interest to be recover on excess Duty Drawback paid to the exporter.

14. Further, M/s Bharat Industrial Enterprises Limited., are liable for penal Interest on late realization of Export proceeds under Section 75A (2) of the Customs act, 1962 read with 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) and therefore the exporter are also liable for penal action under section 117 of Customs Act, 1962.

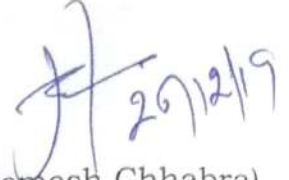
In view of the above discussion, I pass order as under:-

#### **ORDER**

- (i) I confirm the demand of Rs. 17112/- (Rs. Seventeen Thousand One Hundred Twelve only) Drawback received in excess by M/s Bharat Industrial Enterprises Limited., BP-109, DDA Flats, Pitampura , Delhi , PIN-110034, under Rule 16A (2) Proviso of the Customs, Central Excise Duties and Service Tax drawback Rules, 1995 (Rule- 18 (2) Proviso 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 till the payments of the said amount from the date of disbursal of Duty Drawback 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 75A of The Customs act, 1962. Further, the remaining demand of **Rs. 1,20,892/-** is dropped as the Exports sales proceeds had been realized.
- (ii) I raise the demand of Rs. 10124/- (Rs. Ten Thousand One Hundred Twenty Four only) as Interest calculated in Table B above in para 10 under Section 75A of The Customs act, 1962 against M/s Bharat

Industrial Enterprises Limited., BP-109, DDA Flats, Pitampura , Delhi , PIN-110034.

(iii) I impose a penalty of Rs.3000/- (Rs. Three Thousand Only) under section 117 of the customs Act, 1962 on M/s Bharat Industrial Enterprises Limited., BP-109, DDA Flats, Pitampura , Delhi , PIN- 110034.



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

Date of Order: 20.12.2019

F. No. S/10-BRC/SCN-47/AC/2017-18

**By REGD. POST A.D./SPEED POST**

To,  
M/s Bharat Industrial Enterprises Limited.,  
BP-109, DDA Flats, Pitampura ,  
Delhi , PIN- 110 034

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. The Deputy/Assistant Commissioner (System), Customs House Kandla to upload on Website.
5. Guard File.

