



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-45/AC/17-18

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/116/BRC/2019

ORDER-IN-ORIGINAL NO. -KDL/AC/HC/116/BRC/2019

Spdt (E.I.)
- for upload
on website
288
23-12-2019

1. जिसके लिये यह प्रतिलिपि जारी की जाती है उस व्यक्ति के उपयोग के लिए यह नि: 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 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 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.

3. यह अपील 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 किया जाए तथा जिस आदेश के विरुद्ध अपील की 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 न्यायालय शुल्क अधिनियम, 1870 के मद सं. 6 के तहत इस आदेश की प्रतिलिपि साथ निर्धारित 5/- रुपए का स्टाम्प कोर्टफीस 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 कीधारा-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. 12,740/- (Rs. Twelve Thousand Seven Hundred Forty only) of M/s Ashapura International Limited, Jeevan Udyog Building , 3rd Floor 27, 8 D N RD Fort Mumbai , Maharashtra , Pin- 400 001

BRIEF FACTS OF THE CASE:

M/s Ashapura International Limited , (IEC No. 0391010433), having their office at., Jeevan Udyog Building , 3rd Floor 27, 8 D N RD Fort Mumbai , Maharashtra , Pin- 400 001 (hereinafter referred to as the exporter) are engaged in the export of Processed Bentonite Powder from Kandla.

2. The exporter had exported Processed Bentonite Powder from Kandla vide DBK Shipping Bills mentioned in the table below and had claimed drawback amount as shown against the respective shipping bill. The drawback amount of Rs. 12,740/- (Rs. Twelve Thousand Seven Hundred Forty only) was sanctioned and paid to them against the following S/Bills.

Sr. No.	Shipping Bill No.	Date	FOB in Rs.	Drawback Sanctioned
1	7293942	26/04/2016	711180	7034
2	8470852	24/06/2016	570610	5706
			Total	12740/-

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.

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-44/AC/2017-18 dated 29.11.2017 to show cause as to why the drawback amount of Rs. 12,740/- (Rs. Twelve Thousand Seven Hundred Forty 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.

Defence Reply-

8. In reply to the Show Cause Notice, the exporter did not submit any reply or documents to this Office.

Personal Hearing-

9. Thereafter, a letter was written to the Exporter on 08.03.2019 for Personal Hearing on 29.03.2019. The representative of the exporter not attended the Personal Hearing on 29.03.2019. The Exporter submitted the copies of E-Bank Realization Certificate vide letter dated 26.03.2019 received by this office on 02.04.2019. 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 a letter dated 26.03.2019 submitted by the exporter along with documents. 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 all Shipping Bills. Also, I find that the Exporter has realized the export proceeds within stipulated time for Shipping Bill No. 7293942 dated 26.04.2016. Moreover, During the Scrutiny it is found that the Exporter has not realized the export proceeds for the Shipping Bill No. 8470852 dated 24.06.2016 in stipulated time. Which is mentioned as below:-

Table-A

Sr. No.	Shipping Bill No.	Date of Shipping Bill	FOB Amt. In Rs.	LEO Date	Realization date of export proceeds	Expected date of realization (on or before 180 days)	Delay (No. of Days)	Interest Payble
01	8470852	24/06/2016	570610	30.06.2016	25.05.2017	29.12.2016	155	364
								364/-

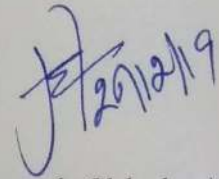
11. Further, as per the table A above, in the mentioned shipping bill export proceeds has not been realized within stipulated time. It is observed that the exporter has attracted the provision of the Rule 16 A of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Rule-18 of the Customs, Central Excise and Service Tax Drawback Rules, 2017) for the delayed realization of export proceeds in respect of all Shipping Bills mentioned in Table A. 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.

12. Further, M/s Ashapura International Limited, Jeevan Udyog Building , 3rd Floor 27, 8 D N RD Fort Mumbai , Maharashtra , Pin- 400 001, 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 drop the demand of Rs. 12,740/- (Rs. Twelve Thousand Seven Hundred Forty only) raised against M/s Ashapura International Limited, Jeevan Udyog Building , 3rd Floor 27, 8 D N RD Fort Mumbai , Maharashtra , Pin- 400 001, vide Show Cause Notice bearing No. F. No. S/10-BRC/SCN-44/AC/2017-18 dated 29.11.2017 as the exports sale proceeds have already been realized.
- (ii) I raise the demand of Rs. 364/- (Rs. Three Hundred Sixty Four only) as Interest under Section 75A of The Customs act, 1962 against M/s. Ashapura International Limited.
- (iii) I impose a penalty of Rs.100/- (One Hundred Only) under section 117 of the customs Act, 1962 on M/s. Ashapura International Limited.



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

F. No. S/10-BRC/SCN-44/AC/17-18
By REGD. POST A.D./SPEED POST

Date of Order:20.12.2019

To,
M/s Ashapura International Limited,
Jeevan Udyog Building,
3rd Floor 27, 8 D N RD Fort Mumbai,
Maharashtra, Pin- 400 001.

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 Commissioner (System), Customs House Kandla for upload on Website please.
5. Guard File.

