



**मूल आदेश सं/ ORDER-IN-ORIGINAL NO: KDL/ADC/GCJ/21/2019-20**

आदेश की दिनांक / Date of Order: 08.11.2019

जारी करने की दिनांक/ Date of Issue: 08.11.2019

पारित कर्ता/ Passed by: - श्री जी. सी. जैन/ Shri G.C. Jain

अपर आयुक्त / Additional Commissioner,

सीमा शुल्क सदन, कांडला/ Custom House, Kandla.

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 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 7<sup>th</sup> 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. 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 प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियां संलग्न की जाएँ (उनमें से कम से कम 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-I 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 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.

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

The facts of the case are, M/s. Rama Cylinders Pvt. Ltd., Survey No. 332, Village Bhimasar, Bhachau-Anjar Road, Taluka Anjar, Distt. Kutch, Gujarat – 370240 (hereinafter referred to as the 'noticee'), filed a refund claim of Rs.28,63,704/- for the period from October-2010 to December-2010 for refund of 4% Special Additional Duty of Customs (SAD) in terms of Notification No. 102/2007-Cus dated 14.09.2007 for the goods imported by them from SEZ which were subsequently sold to the domestic buyers upon payment of VAT/CST as applicable. The said claim was filed with Kandla Special Economic Zone (KASEZ) in terms of Hon'ble High Court of Gujarat order dated 21.11.2013 in SCA No. 15822 of 2013.

2. The Dy. Commissioner (KASEZ) vide common Order No. KASEZ/DC(Cus)/Refund/02/KCM/2013-14 dated 20.03.2014 rejected the aforesaid refund claim on merits. Being aggrieved by the said Order-in-Original, the noticee filed an appeal before the Commissioner of Customs (Appeal), Ahmedabad. The Commissioner of Customs (Appeal), Ahmedabad upheld the decision of the Dy. Commissioner (KASEZ) and rejected the appeal of the noticee vide OIA No. KDL-CUSTM-000-APP-400-14-15 dated 16.10.2014.

3. Being aggrieved by the above said Order-in-Appeal, the noticee filed an appeal before the CESTAT Ahmedabad. CESTAT Ahmedabad decided the issue vide order No. A/12674/2018 dated 27.11.2018 and set-aside the OIA No. KDL-CUSTM-000-APP-400-14-15 dated 16.10.2014 and allowed the appeal of the noticee with consequential relief.

4. The Joint Commissioner (Refund) Custom House, Kandla vide OIO No. KDL/JC/DPB/65/Ref/2019-20 dated 08.05.2019 sanctioned the refund of Rs.28,63,704/- for the period from October-2010 to December-2010 to the noticee in terms of the CESTAT Ahmedabad's Order No. A/12674/2018 dated 27.11.2018 wherein it was held by the Tribunal that *"we do not agree with any of the reason stated by the lower authorities for rejection of the refund claim of the appellant. We hold that appellant is legally entitled for refund. Accordingly, impugned order is set-aside and the appeal is allowed with consequential relief."*

5. After sanctioning the consequential refund of Rs.28,63,704/- a protective show cause notice F.No. S/06-1456/Ref/2011 dated 10.05.2019 under Section 28(1) of the Customs Act, 1962 was issued by the Joint Commissioner (Refund), Custom House, Kandla to the noticee on the ground that, at any point of time in future if any appeal is filed by the department in Hon'ble High Court of Gujarat and the decision comes in favour of department, the said amount is required to be deposited by the claimant with interest.

6. Vide letter F.No. S/23-146/order/CESTAT/RC/RRA/2018-19 dated 21.05.2019 issued by the Deputy Commissioner (RRA) Custom House, Kandla it was reported that, CESTAT Ahmedabad Order No. A/12674/2018 dated 27.11.2018 in the matter of M/s Rama Cylinders Pvt. Ltd. has been accepted by the department. Office of the Chief Commissioner of Customs, Gujarat Zone vide letter F.No. VIII/28-05/CCO/CESTAT/2019-20 dated 09.05.2019 has communicated the Chief Commissioner's concurrence for acceptance of the aforesaid CESTAT order.



**DISCUSSION AND FINDINGS:**

7. I have carefully gone through the facts of the case and protective show cause notice dated 10.05.2019.

8. I find that, the protective show cause notice F.No. S/06-1456/Ref/2011 dated 10.05.2019 of Rs.28,63,704/- was issued under Section 28(1) of the Customs Act, 1962 by the Joint Commissioner (Refund), Custom House, Kandla to the noticee on the ground that, at any point of time in future if any appeal is filed by the department against CESTAT Ahmedabad's Order No. A/12674/2018 dated 27.11.2018 in Hon'ble High Court of Gujarat and the decision comes in favour of department, the said amount is required to be deposited by the claimant with interest.

9. I find that, the demand/proposed recovery involved in the show cause notice is of protective nature only. The ground of issuance of the show cause notice was that, the decision for acceptance of CESTAT Ahmedabad order No. A/12674/2018 dated 27.11.2018 was pending.

10. I find that, vide letter F.No. S/23-146/order/CESTAT/RC/RRA/2018-19 dated 21.05.2019 issued by the Deputy Commissioner (RRA) Custom House, Kandla it is reported that, CESTAT Ahmedabad Order No. A/12674/2018 dated 27.11.2018 in the matter of M/s Rama Cylinders Pvt. Ltd. has been accepted by the department. Office of the Chief Commissioner of Customs, Gujarat Zone vide letter F.No. VIII/28-05/CCO/CESTAT/2019-20 dated 09.05.2019 has communicated the Chief Commissioner's concurrence for acceptance of the aforesaid CESTAT order.

11. I find that, after acceptance of the CESTAT Ahmedabad Order No. A/12674/2018 dated 27.11.2018 by the department and not preferring any appeal in the matter, no reason for the protective demand/recovery exist in the matter now. Therefore, the protective show cause notice F.No. S/06-1456/Ref/2011 dated 10.05.2019 is of no purpose now and requires to be dropped in toto.

12. In view of the foregoing discussions and findings, I pass the following order:-

**::: ORDER :::**

I hereby drop the show cause notice F.No. S/06-1456/Ref/2011 dated 10.05.2019 issued to M/s. Rama Cylinders Pvt. Ltd., Survey No. 332, Village Bhimasar, Bhachau-Anjar Road, Taluka Anjar, Distt. Kutch, Gujarat - 370240.

  
(G.C. Jain)

Additional Commissioner  
Custom House, Kandla  
Date: 08.11.2019

F. No. S/6-1456/Ref/2011  
BY REGD POST A.D./SPEED POST A.D.  
To,  
M/s. Rama Cylinders Pvt. Ltd.,  
Survey No. 332, Village Bhimasar,  
Bhachau-Anjar Road, Taluka Anjar,  
Distt. Kutch, Gujarat - 370240.

Copy to:

1. The Deputy Commissioner (RRA), Custom House, Kandla
2. Guard File.