



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

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F. No.S/6-73/Ref/2019-20

Date of Order: 27/12/2019

DIN- 20191271ML00004A6CD4

Date of Issue: 27/12/2019

Passed by: R.R. PAWAR

ASSISTANT COMMISSIONER (REFUND),
CUSTOM HOUSE, KANDLA.

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ORDER-IN-ORIGINAL NO. KDL/AC/RRP/139/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 21.08.2019 for Rs. 3,55,25,629/- (Rupees Three Cr. Fifty Five Lakh Twenty Five Thousand Six Hundred Twenty Nine Only) filed by **M/s. Dow Chemical international Pvt. Ltd.**, 1st Floor, Block B 02 Godrej Business District Pirojshanagar, LBS Marg, Vikhroli (West), Mumbai - 400 079.

Brief Facts of the case:-

1. M/s. Dow Chemical international Pvt. Ltd. (IEC-0398016666) having registered office at 1st Floor, Block B 02 Godrej Business District Pirojshanagar, LBS Marg, Vikhroli (West), Mumbai - 400 079. (hereinafter referred to as the 'Importer' filed RD refund claim application for Rs. 3,55,25,629/- (Rupees Three Cr. Fifty Five Lakh Twenty Five Thousand Six Hundred Twenty Nine Only) on 21.08.2019. The Importer has imported various items vide 78 Bills of Entry respectively for the period from Year 2013-2017, wherein 01% Revenue Deposit (RD) was paid through 78 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	8607093	2/18/2017	2017485009	21/02/2017	713162.00
2	2634656	7/28/2017	2019150777	31/07/2017	1132075.00
3	3333056	9/21/2017	2019836728	27/09/2017	1298135.00
4	4886585	4/12/2016	2014534464	16/04/2016	594421.00
5	5447935	5/30/2016	2015153142	17/06/2016	443274.00
6	5819752	6/30/2016	2015302020	7/7/2016	230037.00
7	6563472	8/31/2016	2015897385	2/9/2016	476219.00
8	8398667	2/1/2017	2017320348	3/2/2017	216487.00
9	9356528	4/18/2017	2018073231	20/04/2017	780579.00
10	9746635	5/18/2017	2018388846	22/05/2017	331350.00
11	9893084	5/30/2017	2018511256	01.06.2017	796686.00
12	5627092	5/27/2014	928	16.06.2014	340027.00
13	6051467	7/8/2014	1490	25.07.2014	371662.00
14	6895420	9/26/2014	2317	07.10.2014	210401.00
15	8287579	2/12/2015	3715	16.02.2015	490557.00
16	8920820	4/15/2015	558	01.06.2015	9512.00
17	8368078	2/19/2015	3831	25/02/2015	553971.00
18	7121545	10/17/2016	2016337880	19.10.2016	660490.00
19	7895162	12/20/2016	2016960608	27.12.2016	65659.00
20	3843806	1/7/2016	2013679007	1/12/2016	121306.00
21	4861866	1/18/2018	2021276766	1/22/2018	1707371.00
22	4861902	1/18/2018	2021276768	1/22/2018	90027.00
23	4861762	1/18/2018	2021276753	1/22/2018	300087.00
24	8790101	3/6/2017	2017630049	3/7/2017	128460.00
25	8790236	3/6/2017	2017630052	3/7/2017	128460.00
26	8647559	2/22/2017	2017517060	2/24/2017	445071.00
27	8921567	3/17/2017	2017729438	3/17/2017	244618.00
28	2350213	7/7/2017	2018872332	7/10/2017	687381.00
29	3399032	9/26/2017	2019895320	9/28/2017	487394.00
30	4688878	2/19/2014	2732	2/25/2014	614011.00

31	4972223	3/21/2014	3178	3/27/2014	1039889.00
32	4996785	3/24/2014	3196	3/28/2014	842371.00
33	7450672	11/20/2014	2898	11/26/2014	667320.00
34	7705214	12/15/2014	3158	12/22/2014	1347371.00
35	7719784	12/16/2014	3156	12/22/2014	393030.00
36	8691369	3/23/2015	4107	3/29/2015	387864.00
37	8770764	3/31/2015	15	4/6/2015	1342263.00
38	8791213	4/1/2015	84	4/10/2015	448658.00
39	9369096	5/27/2015	530	5/27/2015	225673.00
40	9369525	5/27/2015	529	5/27/2015	225673.00
41	9369140	5/27/2015	528	5/27/2015	677022.00
42	9691446	6/25/2015	877	7/1/2015	494379.00
43	9690831	6/25/2015	876	7/1/2015	2539793.00
44	3876478	1/11/2016	2013704986	1/13/2016	998986.00
45	4306997	2/18/2016	2014056631	2/23/2016	1078344.00
46	4306893	2/18/2016	2014056636	2/23/2016	113942.00
47	5405457	5/26/2016	2014961262	6/15/2016	327372.00
48	6135447	7/26/2016	2015550518	8/1/2016	253978.00
49	7390130	11/8/2016	2016581487	11/16/2016	429320.00
50	2163947	6/20/2017	2018720566	6/21/2017	62348.00
51	6135410	7/26/2016	2015566032	8/22/2016	627297.00
52	6413146	8/19/2016	2015761357	22.08.2016	297622.00
53	6382424	8/17/2016	2015760312	8/22/2016	628888.00
54	7334847	11/4/2016	2016547049	11/11/2016	56922.00
55	7314922	11/3/2016	2016547071	11/14/2016	657931.00
56	5039551	4/25/2016	2014668900	5/2/2016	99259.00
57	4891678	4/13/2016	113	4/18/2016	134660.00
58	6784070	9/20/2016	1721	9/30/2016	204375.00
59	7045016	10/12/2016	2150	10/28/2016	296982.00
60	7932063	12/22/2016	2975	1/3/2017	73177.00
61	7932562	12/22/2016	2958	1/2/2017	146367.00
62	8921572	3/17/2017	2017729432	17.03.2017	122309.00
63	8921570	3/17/2017	2017729423	3/20/2017	61154.00
64	8921569	3/17/2017	2017729412	3/20/2017	61154.00
65	2163948	6/20/2017	2018720524	6/21/2017	62348.00
66	8297477	2/13/2015	3695	13.02.2015	303463.00
67	2970115	10/19/2015	2268	23.10.2015	152851.00
68	3534436	12/10/2015	3085	14.12.2015	373804.00
69	4306850	2/18/2016	4038	23.02.2016	265126.00
70	5056595	4/26/2016	2014668903	02.05.2016	588681.00
71	9788188	5/23/2017	2018425694	29.05.2017	529291.00

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72	9531540	6/10/2015	731	6/17/2015	162386.00
73	7437580	11/14/2016	2343	15.11.2016	302144.00
74	3890556	1/12/2016	3598	13.01.2016	227581.00
75	7334492	04.11.2016	2016509161	09.11.2016	233594.00
76	7315856	03.11.2016	2016509190	09.11.2016	116711.00
77	7316154	03.11.2016	2016509180	09.11.2016	116711.00
78	7316513	03.11.2016	2016509157	09.11.2016	58355.00
Total					35525629.00

2. The valuation aspect of import by the M/s. Dow Chemical international Pvt. Ltd. from its associates/affiliates were under scrutiny by SVB Cell under F.No. S/9-320 /GATT/1998 GVC, S/9-55 /GATT/2010 GVC & S/9 - 01 /GATT/1997 GVC Date.11.01.2018 Hence, the goods imported were cleared provisionally against Revenue Deposit @ 1% pending finalization of the valuation aspect by SVB Cell, Mumbai. GVC & S/9 - 01 /GATT/1997 GVC Date.11.01.2018 The Valuation aspect has been decided vide Investigation Report vide DOV NO.: 001203, 0005858 as communicated vide letter dtd 11.01.2018 vide F. No. S/9-320 /GATT/1998 GVC, S/9-55 /GATT/2010.

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

- i. Covering Letter
- ii. Form Part A/B/C
- iii. Copy of DOV NO.: 001203, 0005858 dtd 11.01.2018.
- iv. Copy of Investigation report F.No. S/9-320 /GATT/1998 GVC, S/9-55 /GATT/2010 GVC & S/9 - 01 /GATT/1997 GVC Dated 11.01.2018 issued by Asstt. Commissioner (SVB), Mumbai.
- v. Finally assessed Bs/E
- vi. RD Challans/Photocopy of RD challans.
- vii. Auditor's Report by Deloitte Haskins & Sells LLP, Chartered Accountants, Mumbai alongwith Balance Sheet.
- viii. CA certificate for No Unjust-enrichment
- ix. Authority Letter List of relevant Bills of Entry
- x. Self-Declaration letter.

4. The Importer has produced Chartered Accountants Certificates dated 19.07.2019 issued by M/s Kaushik Shaukar & Co., Chartered Accountants (M.No.115868) who certified that the burden of extra duty deposit has not been passed on by the importer M/s Dow Chemical international Pvt. Ltd. to the buyers and they fulfill the requirement of Unjust Enrichment. They have further certified that the amount claimed has not been charged to the Profit & Loss Account. The said chartered accountant certificate is further substantiated and supported by the auditor's report dated 28.09.2017 containing balance sheet and profit and loss account for the financial year 2016-17 from Deloitte Haskins & Sells LLP, Chartered Accountants, Mumbai.

5. Letters F. No. S/6-73/Ref/2019-20 dated 25.10.2019 and 18.11.2019 were written to the claimant with the following queries-

(i) Bill of Entry Nos. 5819752 dtd. 30.06.2016; 7121545 dtd. 17.10.2016 and 5056595 dtd. 26.04.2016 were found to be not finally assessed and the claimant vide letter dated 25.10.2019 was asked to submit the finally assessed copies of the said Bills of Entry.

(ii) During the scrutiny of the Annexure-A submitted by the claimant, many discrepancies were found which is as under-

- I. RD challan date is found to be 31.09.2017 instead of 28.07.17 for B/E No. 2634656 dtd. 28.07.2017 at Sr. No. 2
- II. RD challan date is found to be 27.09.2017 instead of 21.09.17 for B/E No. 3333056 dtd. 21.09.2017 at Sr. No. 3.
- III. RD challan date is found to be 16.04.2016 instead of 04.12.16 for B/E No. 4886585 dtd. 12.04.16 at Sr. No. 4.
- IV. RD challan date is found to be 17.06.16 instead of 30.05.16 for B/E No. 5447935 dtd. 30.05.16 at Sr. No. 5.
- V. RD challan date is found to be 01.06.17 instead of 30.05.17 for B/E No. 9893084 dtd. 30.05.17 at Sr. No. 11.
- VI. RD challan date is found to be 29.05.17 instead of 30.05.17 for B/E No. 9788188 dtd. 23.05.17 at Sr. No. 71.
- VII. RD Challan No. is found to be 2013679007 instead of 2013677222 for the B/E No. 3843806 dtd. 07.01.16 at Sr. No 20.

the claimant was asked to submit the correct information to this office.

5.1 The claimant vide their letter dated 25.10.2019 (received on 01.11.2019) withdrew the refund claim in respect of provisionally assessed B/Es No.5819752 dtd. 30.06.2016, 7121545 dtd. 17.10.2016 and 5056595 dtd. 26.04.2016 totaling to Rs.14,79,208/- and further requested to sanction the remaining amount of Rs 3,40,46,421/- covered under 75 Bill of Entries.

5.2 The claimant vide their letter dated 26.11.2019 acceded to the error in Annexure-A submitted by them earlier on and submitted the revised Annexure-A and requested to grant them the refund.

6. The file was sent to the Assistant Commissioner (Pre-Audit) on dated 05.12.2019 for the course of pre audit. The Assistant Commissioner (Pre-Audit), Custom House Kandla vide letter F. No. S/6-50/Pre-Audit/2019-20 dated 19.12.2019 (Received on 20.12.2019) made the following observations-

a) The following Bill of Entries mentioned at following serial numbers in Draft Order-In-Original issued by AC(Refund) received vide your above said letter, has been filed by the assessess other than M/s Dow Chemicals(claimant), as mentioned against them-

Sr. No.	BOE No.	BOE Date	RD challan No.	RD challan date	RD Amt	B/E Filed By
1	5627092	5/27/2014	928	16.06.2014	340027	C J Shah & Co.
2	6051467	07/08/2014	1490	25.07.2014	371662	C J Shah & Co.
3	6895420	9/26/2014	2317	07.10.2014	210401	C J Shah & Co.
4	8287579	2/12/2015	3715	16.02.2015	490557	C J Shah & Co.
5	8920820	4/15/2015	558	01.06.2015	9512	C J Shah & Co.
6	4891678	4/13/2016	113	4/18/2016	134660	VimalIntertrade Pvt. Ltd
7	6784070	9/20/2016	1721	9/30/2016	204375	Hazel

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						Mercantile Ltd.
8	7045016	10/12/2016	2180	10/28/2016	296982	VimalIntertrade Pvt. Ltd
9	7932063	12/22/2016	2975	1/3/2017	73177	Hazel Mercantile Ltd
10	7932562	12/22/2016	2958	1/2/2017	146367	Hazel Mercantile Ltd
11	8297477	2/13/2015	3695	13.02.2015	303463	Hazel Mercantile Ltd
12	2970115	10/19/2015	2268	23.10.2015	152851	C J Shah & Co.
13	3534436	12/10/2015	3085	14.12.2015	373804	C J Shah & Co.
14	4306850	2/18/2016	4038	23.02.2016	265126	Hazel Mercantile Ltd
15	9531540	6/10/2015	731	6/17/2015	162386	VimalIntertrade Pvt. Ltd
16	7437580	11/14/2016	2343	15.11.2016	302144	VimalIntertrade Pvt. Ltd
17	3890556	1/12/2016	3598	13.01.2016	227581	VimalIntertrade Pvt. Ltd
Total					33,19,609	

However, the payment of 1% Extra Duty Deposit against the above Bill of Entries have been deposited by M/s Dow Chemicals.

b) The final assessment copy of the Bills of Entry, as detailed under, is not available in the refund claim files-

Sr. No.	BOE No.	BOE . Date	RD challan No.	RD challan date	RD Amt
1	6051467	07/08/2014	1490	25.07.2014	371662
2	3534436	12/10/2015	3085	14.12.2015	373804
TOTAL					7,45,466

6.1 The pre-audit concurrence was granted subject to the submission of the above Bills of Entries. Further, the Assistant Commissioner (Pre-audit), Custom House, Kandla vide letter F. No. S/6-50/Pre-Audit/2019-20 dated 23.12.2019 reported that-

M/s. Dow Chemicals had sold its goods on HSS basis to other parties/importers and hence M/s. Dow Chemicals had relinquished the ownership of the goods. In such a case it needs to be verified as why M/s. Dow Chemicals paid the 1% EDD, at the time of assessment & Out of Charge of Bills of entry filed by others. Accordingly, the High Sea Sale contract between M/s. Dow Chemical and the actual importers filing Bills of entry may be verified.

As the claimant of refund is different from the importers who had filed the said 17 Bills of entry, an indemnity bond may be obtained from M/s. Dow Chemicals/ claimant to safeguard government revenue.

6.2 This office vide letter dtd. 23.12.2019 enquired of the above queries raised by the Assistant Commissioner (Pre-audit), Custom House, Kandla with the claimant, M/s. Dow Chemicals International Pvt. Ltd.

7. REC
6.3 The claimant vide letter dtd. NIL received on dtd. 26.12.2019 made the following submissions-

In case of these 17 bills of entry we have imported the goods and sold on high sea sales basis. The said bills of entry were filed by the High sea sales buyers and they have paid the duty after loading the appropriate HSS rate. The said HSS load rates are also mentioned in the bills of entry and the same may be verified at your end from the system. We i.e. M/s Dow Chemical International Pvt. Ltd., are the original importer and related to the foreign suppliers therefore in terms of Circular No.11/2001 Cus. dated 23.02.2001 we have paid 1% extra duty deposit (EDD). The above details are also mentioned in the concerned Challans submitted by us.

Entire duty on imports was paid by the HSS buyers and 1% EDD was paid by M/s Dow Chemical International Pvt. Ltd., and upon finalization of the bills of entry upon receipt of SVB order the 1% EDD is refundable to us. Upon finalisation of assessment no short payment of duty is reported to us by the Assessing Officers of the concerned group.

The 1% extra duty deposit (EDD) is paid by M/s Dow Chemical International Pvt. Ltd., and the refund of the same was claimed by M/s Dow Chemical International Pvt. Ltd., only under the refund procedure provided in the Customs Act.

The High sea sales contract was submitted to the concerned assessment group, after taking into account the entire valuation requirement and after being satisfied with the documents submitted by us at the time of final assessment the said bills of entry were finalized by the Custom Department.

6.4 The claimant vide above letter withdrew the refund claim to the tune of Rs. 33,19,609/- covered under 17 Bills of Entry, mentioned above. They also claimed that they reserve their legitimate right to file the refund claim of Rs. 33,19,609/- and requested to return their original documents pertaining to the refund of these 17 Bills of Entry. They also demanded the return of provisionally assessed B/Es No. 5819752/30.06.2016, 7121545/17.10.2016 & 5056595/26.04.2016 and original documents pertain to the Bill of entry No. 5819752/30.06.2016, 7121545/17.10.2016 & 5056595/26.04.2016. Further, the claimant submitted copy of B/Es No.6051467 dated 07/08/2019 & 3534436 dtd. 12/10/2015 and requested to expedite the refund claim for the remaining amount of **Rs. 3,07,26,812/-**.

Discussion And Findings

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

8. **Merits of the Case:** - As discussed in brief facts of case, I find that the Importer filed the refund claim for amount of Rs. 3,55,25,629/- (Rupees Three Cr. Fifty Five Lakh Twenty Five Thousand Six Hundred Twenty Nine Only) in this section on 21.08.2019 against 78 Bills of Entry wherein 01% Revenue Deposit (RD) was paid through 78 RD Challans as shown in Table-1 above. The valuation aspect of import by the M/s. Dow Chemical international Pvt. Ltd. from its associates/affiliates were under scrutiny by SVB Cell under F.No. S/9-320 /GATT/1998 GVC, S/9-55 /GATT/2010 GVC & S/9 - 01 /GATT/1997 GVC Date.11.01.2018 Hence, the goods imported were cleared provisionally against Revenue Deposit @ 1% pending finalization of the valuation aspect by SVB Cell, Mumbai. The Valuation aspect has been decided vide Investigation Report vide DOV NO.: 001203, 0005858 as communicated vide letter dtd 11.01.2018 vide F. No. S/9-320 /GATT/1998 GVC, S/9-55 /GATT/2010 GVC & S/9 - 01 /GATT/1997 GVC Date.11.01.2018.

As per the letter dtd 11.01.2018, B/E pertaining the imports of Methyl Methacrylate (MMA) and butyl Acrylate (BA) shall be re-assessed or finalized by Loading the value by percentage indicated against each B/E as per said letter dtd 11.01.2018, declared invoice of goods, barring imports from M/s. Filmtec Corporation, USA and import of MMA and BA may be accepted as transaction value.

Accordingly, the said Bills of Entry were finally assessed by the concerned Group-II between August-2015 and August 2019. However during the scrutiny of the Bill of Entry and as per the report F. No S/26-10/Gr-II/Misc/2019-20 dated 04.10.2019 of the Assistant Commissioner Gr-II three Bill of Entries viz 5819752/30.06.2016, 7121545/17.10.2016 and 5056595/26.04.2016 found to be only provisionally assessed. Hence, a letter dtd. 25.10.2019 was written to the claimant by this office citing this deficiency who in turn vide letter dated 25.10.2019 withdrew the refund claim in respect of provisionally assessed B/Es No. 5819752 dtd. 30.06.2016, 7121545 dtd. 17.10.2016 and 5056595 dtd. 26.04.2016 totaling to Rs.14,79,208/- and further requested to sanction the remaining amount of Rs 3,40,46,421/- covered under 75 Bill of Entries. Thus the claimant is eligible for the refund of Rs.3,40,46,421/-. The claimant vide letter dtd. 26.11.2019 submitted the revised Annexure-A correcting the discrepancies noticed by this office in letter dtd. 18.11.2019 written to them. Further, the claimant vide letter received on dated 26.12.2019

withdrew the refund claim amounting to Rs. 33,19,609/- and claimed the remaining amount of **Rs. 3,07,26,812/-** as refund.

9. 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 75 Bills of entry were finally assessed between August-2015 and August 2019 as reported by the Assistant Commissioner (Group-II), Custom House, Kandlawich was also finally assessed in pursuance of decision of the Valuation aspect vide Investigation Report vide DOV NO.: 001203, 0005858 as communicated vide letter dtd 11.01.2018 vide F. No. S/9-320 /GATT/1998 GVC, S/9-55 /GATT/2010 from the date of Order i.e. 11.01.2018.

10. Quantification: I find that Revenue Deposit of Rs. 3,55,25,629/- (Rupees Three Cr. Fifty Five Lakh Twenty Five Thousand Six Hundred Twenty Nine Only) Revenue Deposit (RD) were paid through 78 RD Challans as shown in the Table-1 were paid against the said 78 Bills of Entry by the Importer during the pendency of scrutiny of valuation of the said imported goods. The Valuation aspect has been decided vide Investigation Report vide DOV NO.: 001203, 0005858 as communicated vide letter dtd 11.01.2018 vide F. No. S/9-320 /GATT/1998 GVC, S/9-55 /GATT/2010 GVC & S/9 - 01 /GATT/1997 GVC Date. 11.01.2018. However, since, the amount of Rs. 14,79,208/- has been withdrawn by the claimant vide letter dtd. 25.10.2019 (received on 01.11.2019), the RD of Rs. Rs. 3,40,46,421/- (Rupees Three Crore Forty Lakhs Forty Six Thousand Four Hundred Twenty One Only) becomes refundable and is qualified. Further, the claimant vide letter received on dated 26.12.2019 withdrew the refund claim amounting to Rs. 33,19,609/- and claimed the remaining amount of **Rs. 3,07,26,812/-** as refund.

11. 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:

- * **Hon'ble CESTAT, Bangalore Order No. 22755 / 2017 dtd. 04.11.2017 in Texas Instruments India Pvt Ltd vs Commissioner Of Customs, Bangalore.**
- * **SKF Technologies (I) Pvt. Ltd. Vs. CC, Bangalore, 2017 (352) ELT 355;**
- * **CC, Bangalore Vs. Ecomaster (India) Pvt. Ltd., 2007 (213) ELT 281 (Tri-Bang);**
- * **Wind World India Ltd. Vs. CC, Mumbai, 2015 (324) ELT 196.**

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the

Commissioner of Customs, Chennai vs Minevera Trade Links (P) Ltd
2009(233) ELT 399 (Tri-Chennai)

"Section 27 of Customs Act, 1962 regulates refund of excess duty deposit made by importer- Section 27 ibid don't cover refund of a deposit made by importer for any purpose including hearing of its appeal"

However, the Importer produced Chartered Accountants Certificates dated 19.07.2019 issued by M/s Kaushik Shaugar & Co., Chartered Accountants (M.No.115868) in the case before sanction of refund of revenue deposit (RD) amounting to Rs. 3,55,25,629/- (Rupees Three Cr. Fifty Five Lakh Twenty Five Thousand Six Hundred Twenty Nine Only) who certified that the said amount has never been debited in the profit and loss account and has not been debited to purchase cost. We certify that the extra burden is borne by the aforesaid importer company and the incidence of revenue deposit (RD), is not passed on the buyer directly or indirectly. The refund being claimed herein is being shown in the books of accounts under the ledger of 'Customs duty refund receivable' and in Balance Sheet shown as "Deposits with government authorities" under the head "OTHER NON-CURRENT ASSETS (Note No.07) of the Non-Current assets. In support of their claim, the claimant has submitted Balance Sheet of the Company and auditor's report from Deloitte Haskins & Sells LLP, Chartered Accountants, Mumbai.

12. The Deputy Commissioner (Group-II), 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 Dow Chemical International Pvt. Ltd., Mumbai. They further reported that the 75 bills of entry mentioned in the above list have been finally assessed between August-2015 and August 2019 and 3 Bills of Entry 5819752/30.06.2016, 7121545/17.10.2016 & 5056595/26.04.2016 have not been finally assessed.

13. I find that the claimant vide letter dtd. 26.11.2019 (received on dated 01.12.2019) has withdrawn the refund amount of **Rs. 14,79,208/-** in respect of the following 3 provisionally assessed Bills of Entries-

Sr. No,	BOE No.	BOE . Date	RD challan No.	RD challan date	RD Amt
1	5819752	6/30/2016	2015302020	7/7/2016	230037.00
2	7121545	10/17/2016	2016337880	19.10.2016	660490.00
3	5056595	4/26/2016	2014668903	02.05.2016	588681.00
Total					1479208.00

F. No. S/6-73 /Ref/2019-20

13.1 I also find that the claimant vide letter dtd. 26.12.2019 has withdrawn the refund claim amounting to Rs. 33,19,609/- involving the following Bills of Entry-

Sr. No.	BOE No.	BOE Date	RD challan No.	RD challan date	RD Amt	B/E Filed By
1	5627092	5/27/2014	928	16.06.2014	340027	C J Shah & Co.
2	6051467	07/08/2014	1490	25.07.2014	371662	C J Shah & Co.
3	6895420	9/26/2014	2317	07.10.2014	210401	C J Shah & Co.
4	8287579	2/12/2015	3715	16.02.2015	490557	C J Shah & Co.
5	8920820	4/15/2015	558	01.06.2015	9512	C J Shah & Co.
6	4891678	4/13/2016	113	4/18/2016	134660	VimalIntertrade Pvt. Ltd
7	6784070	9/20/2016	1721	9/30/2016	204375	Hazel Mercantile Ltd.
8	7045016	10/12/2016	2150	10/28/2016	296982	VimalIntertrade Pvt. Ltd
9	7932063	12/22/2016	2975	1/3/2017	73177	Hazel Mercantile Ltd
10	7932562	12/22/2016	2958	1/2/2017	146367	Hazel Mercantile Ltd
11	8297477	2/13/2015	3695	13.02.2015	303463	Hazel Mercantile Ltd
12	2970115	10/19/2015	2268	23.10.2015	152851	C J Shah & Co.
13	3534436	12/10/2015	3085	14.12.2015	373804	C J Shah & Co.
14	4306850	2/18/2016	4038	23.02.2016	265126	Hazel Mercantile Ltd
15	9531540	6/10/2015	731	6/17/2015	162386	VimalIntertrade Pvt. Ltd
16	7437580	11/14/2016	2343	15.11.2016	302144	VimalIntertrade Pvt. Ltd
17	3890556	1/12/2016	3598	13.01.2016	227581	VimalIntertrade Pvt. Ltd
Total					33,19,609	

13.2 I also find that the claimant, M/s. Dow Chemicals international Pvt. Ltd. Vide letter dtd. NIL received on dtd. 26.12.2019 submitted following copies of finally assessed Bills of Entry involving an amount of Rs. 7,45,466/-

Sr. No	BOE No.	BOE . Date	RD challan No.	RD challan date	RD Amt
1	6051467	07/08/2014	1490	25.07.2014	371662
2	3534436	12/10/2015	3085	14.12.2015	373804
TOTAL					7,45,466

The assistant Commissioner, (Gr.-II), Custom House, Kandla vide letter F. No S/26-10/Gr-II/Misc/2019-20 dated 04.10.2019 confirmed that the above mentioned 2 Bills of Entry have been finally assessed which appeared at Bullet No. 6 of para 2 of their letter dtd. 04.10.2019. Thus I find that the claimant has complied with the observations raised by Assistant Commissioner (pre-audit) and is eligible for refund of Rs. 7,45,466/- covering the above Bills of Entry as well.

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dtd.

13.3 In view of the facts mentioned in columns 12, 12.1 and 12.2, it is evident that the claimant has withdrawn the refund amounts of Rs. **14,79,208/-** involving 3 Bills of Entry and Rs. **33,19,609/-** involving 17 Bills of Entry (totaling to Rs. 47,98,817/- involving 20 Bills of Entry) out of total refund amount of Rs. 3,55,25,629/- and submitted the copies of finally assessed Bills of Entries No. 6051467 dated 07/08/2014 and B/E No. 3534436 dated 12/10/2015 amounting to Rs. 7,45,466/-. Thus the claimant has claimed refund for an amount of Rs. **3,07,26,812/-** involving 58 Bills of Entry which appears to be refundable to them.

14. I also find that the claimant vide letter dtd. NIL received on dtd. 26.12.2019 requested to return their original documents pertaining to the refund of these 17 Bills of Entry. They also requested the return of provisionally assessed B/Es No. 5819752/30.06.2016, 7121545/17.10.2016 & 5056595/26.04.2016 and original documents pertaining to the Bills of entry No. 5819752/30.06.2016, 7121545/17.10.2016 & 5056595/26.04.2016 of which refund claim were withdrawn by their letter dtd. 26.11.19 and further vide letter dtd. 26.12.19, the claimant requested to return these provisionally assessed Bills of Entry. Therefore, I allow their request. Further, the claimant submitted copies of B/Es No. 6051467 dated 07/08/2019 & 3534436 dtd. 12/10/2015 and requested to expedite the refund claim for the remaining amount of **Rs. 3,07,26,812/-**. Accordingly, I find that the claimant is eligible for refund of **Rs. 3,07,26,812/-** involving 58 Bills of Entry. The request of the claimant for return of documents pertaining to the refund of 17 Bills of Entry as well as provisionally assessed B/Es No. 5819752/30.06.2016, 7121545/17.10.2016 & 5056595/26.04.2016 is considered and documents pertaining to the RD refund claim of **Rs. 47,98,817/-** is returned to the claimant vide letter F.No. S/6-73/Ref/2019-20 dated 27.12.2019.

15. The Cashier, Customs House, Kandla vide letter F. No. S/3-Misc/2018-19/Cash dtd. 24.10.2019 informed that on verification of treasury records it was found that the all 32 Bills of Entry's manual TR-6 Challans have been deposited at Customs Kandla Treasury. They have also certified that 32 manual Challans have been deposited in government account and countersigned 32 manual Challans verifying the same.

16. The assistant Commissioner (TRC), Custom House, Kandla vide letter F. No. S/20-02/NOC-REF/REC/2018-2019 dated 23.10.2019 informed this office that no government dues are pending against the claimant at custom House, Kandla till the time of submission of the report.

17. The issue in hand squarely falls under the above explained situation and I find that the importer is eligible for refund of Rs. **3,07,26,812/- (Rupees Three Cr. Seven Lakhs Twenty Six Thousand Eight Hundred Twelve Only)** involving 58 Bills of Entry under Customs Act, 1962.

18. 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/6-50/Pre-audit/2019-20 dtd. 19.12.2019.

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

ORDER

1. I, hereby sanction the amount of Rs. 3,07,26,812/- (Rupees Three Cr. Seven Lakhs Twenty Six Thousand Eight Hundred Twelve Only) deposited as Revenue Deposit in respect of the above mentioned 58 Bills of Entry, as Refund to M/s. Dow Chemical international Pvt. Ltd. (IEC - 0398016666) having registered office at 1st Floor, Block B 02 Godrej Business District Pirojshanagar, LBS Marg, Vikhroli (West), Mumbai - 400 079 under Customs Act, 1962.

hmm
27/12/19

(R.R. Pawar)

Assistant Commissioner of Customs
Customs House, Kandla

Date: 27/12/2019

To,
M/s. Dow Chemical international Pvt. Ltd.
1st Floor, Block B 02 Godrej Business District Pirojshanagar,
LBS Marg, Vikhroli (West),
Mumbai - 400 079.

Copy to:

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

