



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-78/AC/17-18

आदेश की दिनांक/ Date of Order: 04.02.2020

जारी करने की दिनांक/Date of Issue: 04.02.2020

पारित कर्ता/ Passed by

HEMESH CHHABRA
ASSISTANT COMMISSIONER (BRC)
CUSTOM HOUSE, KANDLA.

आदेशमूलसं. -KDL/AC/HC/129/BRC/2019-20

ORDER-IN-ORIGINAL NO. -KDL/AC/HC/129/BRC/2019-20

DIN-20200271ML00000LF9D7

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 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 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 जाएं (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-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 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. 100399/- of M/s Kailash Oil Cake Industries, National Highway -8-B, Rajkot Road, Gondal, Dist.- Rajkot, Gujarat, Pin- 360311

BRIEF FACTS OF THE CASE:

M/s Kailash Oil Cake Industries, (IEC No. 2489002384), having their office at National Highway -8-B, Rajkot Road, Gondal, Dist.- Rajkot, Gujarat, Pin- 360311 (hereinafter referred to as the exporter) is engaged in the export of Indian Rapeseed Meal (Packing in Bulk) from Kandla.

2. The exporter had exported **Indian Rapeseed Meal (Packing in Bulk)** 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. 1, 00,399/- (Rs. One Lakh Three Hundred Ninety Nine only) was sanctioned and paid to them against the following S/Bills.

Sr. No.	Shipping Bill No.	Date	FOB in Rs.	Drawback Sanctioned
1	5706925	6/2/2016	10039904/-	1,00,399/-
			Total	1,00,399/-

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-78/AC/17-18 dated 08.01.2018 to show cause as to why the drawback amount of Rs. 1, 00,399/- (Rs. One Lakh Three Hundred Ninety Nine 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 has not submitted any reply or documents to this Office.

Personal Hearing-

9. Thereafter, a letter was written to the said exporter for Personal Hearing on 29.03.2019 & 29.11.2019. The representative of the exporter not attended the Personal Hearing on 29.03.2019 & 29.11.2019 and next Personal Hearing was granted on 11.12.2019 & 08.01.2020 again the Exporter/Representative not attended the Personal Hearing on both dates.

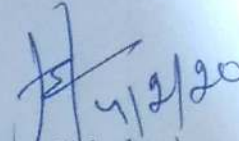
Discussion and Finding-

10. I have carefully gone through the records of the case. Since the exporter or his representative did not attend any Personal Hearing, an effort was made and *e-BRC No. KKBK0000958002710537 dated 29.02.2016* for the Shipping Bill No. 5706925 dated 06.02.2016 could be downloaded from DGFT website. On verification of the E-Bank Realization Certificate, it is found that they have realized the export proceeds in full on 29.02.2016 in respect of all Shipping Bills. Thus, I find that the Exporter has realized the export proceeds within stipulated time. Hence, the action stipulated in 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) is not warranted.

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

ORDER

- (i) I drop the demand of Rs. 1, 00,399/- (Rs. One Lakh Three Hundred Ninety Nine only) raised against M/s Kailash Oil Cake Industries, (IEC No. 2489002384), having their office at National Highway -8-B, Rajkot Road, Gondal ,Dist.- Rajkot, Gujarat,Pin- 360311, vide Show Cause Notice bearing No. F. No. S/10-BRC/SCN-78/AC/17-18 dated 08.01.2018 as the exports sale proceeds have already been realized.


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

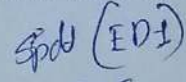
Date of Order: 04.02.2020

F. No. S/10-BRC/SCN-78/AC/17-18
By REGD. POST A.D./SPEED POST

To,
M/s Kailash Oil Cake Industries,
National Highway -8-B, Rajkot Road,
Gondal ,Dist.- Rajkot, Gujarat,Pin- 360311.

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.


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5-2-2020

