



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/20-10/BRC-SCN/AC/2019-20

आदेश की दिनांक/ Date of Order: 19.02.2020

जारी करने की दिनांक/Date of Issue: 19.02.2020

**DIN-20200271ML00008IBD9B**

पारित कर्ता/ Passed by :

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

Spdt (ED)

300  
25-25-2020

आदेशमूलसं. -KDL/AC/HC/140/BRC/2019

ORDER-IN-ORIGINAL NO. -KDL/AC/HC/140/BRC/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 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, 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 जाएगा 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-I में न्यायालय शुल्क अधिनियम, 1870 के मद सं. 6 के तहत इस आदेश की प्रतिलिपि साथ निर्धारित 5/- रुपए का स्टाम्पकोर्ट 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 supplementary claim of Rs. 6,46,565/- of M/s. Vippy Industries Ltd., (IEC No.1188001469) having their Registered Office 28, Industrial Area, A.B. Road, Dewas 455001(M.P.)**

### Brief Facts of the case

M/s. Vippy Industries Ltd., (IEC No.1188001469) having their Registered Office 28, Industrial Area, A.B. Road, Dewas 455001(M.P.), (hereinafter referred to as the exporter) are engaged in the export of Indian Non GMO Soyabean Meal in Bulk for Feed purpose (meal of Soyabean, solvent extracted defatted) under Drawback Serial No. 2304B from Kandla Port.

2. M/s. Vippy Industries Ltd., had exported 5575 MTS of Indian Non GMO Soyabean Meal in Bulk for Feed purpose (meal of Soyabean, solvent extracted defatted) valued at Rs. 13,98,34,937/- (FOB) from Kandla Port vide DBK Shipping Bill No. 7724606 dated 31.07.2017, (for which Let Export Order (LEO) was given on 02-08-2017), under DBK Scheme and had claimed drawback amount Rs. 2,09,752/- @0.15% of FOB value under AIR of DBK Schedule. It was processed and Drawback amount of Rs. 2,09,752/- @ 0.15% (AIR) was sanctioned and paid to them vide scroll No.36173/2019 dated 13.09.2019.

3. Exporter M/s. Vippy Industries Ltd. filed a supplementary claim, (before receiving the DBK Amount of original claim) for differential drawback amount for Shipping Bill No. 7724606 dated 31.07.2017 under Rule 15 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995. (hereinafter referred to as the Rules-1995), / Rule 16 Customs, Central Excise Duties & Service Tax Drawback Rules, 2017) (Hereinafter referred to as the Rules-2017) which was received in this office on 09.11.2017 for differential amount of drawback Rs. 6,46,565/- by claiming Drawback @1% instead of AIR of .15%, on a portion of the exported goods i.e. for 3032.65 MTS. valued at Rs. 7,60,66,444/- which was manufactured from stock lying before roll out of GST (i.e. 30.06.2017) on which CENVAT Credit / ITC had not been availed.

4. As per Rule 15 of Rules-1995 / Rule-16 of Rules- 2017) the exporter shall file supplementary claim within a period of "three months" from the date of export.

5. Since the Exporter had failed to comply with the condition with regard to time period, stipulated in Rule 15 of Rules-1995 / Rule-16 of Rules-2017, as the supplementary claim was received in this office on 09.11.2017 i.e. beyond the three months' period from the date of export i.e. 02-08-2017, a Show Cause Notice bearing F. No. S/20-10/BRC-SCN/AC/2019-20 Dated 19.11.2019 was issued proposing why the supplementary drawback claim should not be rejected under proviso of sub rule 1 of Rule 15 of Rules-1995 / Rule-16 of Rules- 2017.

### Defence Reply and Personal Hearing:

6. Exporter, M/s. Vippy Industries Ltd., (IEC No.1188001469) filed the written submission vide letter No. VIL/024/2019-20 dated 18.12.2019 and submitted that the present supplementary claim was filed under Rule 15 of Customs, Central Excise Duties & Service Tax Drawback Rules-1995, for a part of whole consignment i.e. for 3032.65 MTS valued at Rs. 7,60,66,444/- which was manufactured from stock lying before roll out of GST (i.e. 30.06.2017) on which CENVAT Credit / ITC had not been availed and submitted a copy of letter bearing F.No. IV (16) 209 / Vippy / Verfn / Drawback/Dws/17-18/257 dated 29.01.2018 of jurisdictional Assistant Commissioner, CGST & Central Excise, Division- Dewas to that effect. They confirmed that the first two proviso (i) and (ii) of Rule 15/Rule-16 are not applicable, since neither there was any change in the already determined drawback rate or any revision thereof had taken place under Rule 3 or Rule 4. Similarly No rate of drawback was redetermined or revision had taken place under rule 6 or rule 7 of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995. They further submitted that their drawback claim I falls under proviso (iii) of the Rule 15 of Rules-1995 / Rule-16 of Rules- 2017) which reads .....(iii) *in all other cases, from the date of payment or settlement of the original drawback claim by the proper officer.*

7. They further submitted that, the original Drawback claim payment was settled vide scroll No. 36173/2019 dated 13.09.2019 and amount was credited to their Bank account on 26.09.2019 and supplementary claim was filed earlier on 09.11.2017. The supplementary claim was filed well within the time period as envisaged in the notification. The application for condonation of delay for the extended period is not applicable in this case. They prayed that the proceedings initiated in the above show cause notice be dropped forthwith with a consequential benefit and that personal hearing may be granted before any decision is taken in the matter.

8. In compliance of the necessity of natural justice and as requested by the exporter a personal Hearing was fixed on 17.01.2020. However, as per their request personal hearing was re-fixed on 23.01.2020. Mr. A.V.Roychen, Manager (GST) of the Exporter appeared in the personal hearing on 23.01.2020 and stated that their drawback claim falls under the proviso (iii) of the Rule 15 of Rules-1995 / Rule-16 of Rules- 2017). He further stated that their claim was not filed delayed and requested not to consider their supplementary claim as time barred and that they do not want to say anything else and not want any further personal hearing and also requested that case may be decided on its merit.

## Discussion and Finding:

9. I have carefully gone through the records of the case and defence reply dated 18.12.2019 and the submission made during the personal hearing. In this case, the exporter had exported 5575 MTS of Indian Non GMO Soyabean Meal in Bulk for Feed purpose (meal of Soyabean, solvent extracted defatted) valued at Rs. 13,98,34,937/- from Kandla under AIR drawback shipping Bill No. 7724606 dated 31-07-2017 and the let export order (LEO) was given on 02-08-2017. Due to a technical glitch, the Shipping bill could be processed for Drawback only after so many correspondences with Saksham Seva and Local EDI Systems management. Ultimately, the Drawback amount of Rs. 2,09,752/- @ 0.15% (AIR) was sanctioned and paid to them vide scroll No.36173/2019 dated 13.09.2019. Meanwhile before sanctioning and payment of Drawback amount of Rs. 2,09,752/-, the claimant had filed supplementary claim on 09.11.2017 and claimed additional differential Drawback @1% for Rs. 6,46,565/- instead of @.15% AIR on a portion i.e. 3032.650 MTS of total exported goods, valued at Rs.7,60,66,444/- which was manufactured out of stock available as on 30.06.2017 i.e. before the roll out of GST. The claimant had also declared that they had not availed any inputs credit and supplied self attested copies of RG23A Pt-II for relevant period which were confirmed vide letter F.No. IV (16) 209/ Vippy /Verfn /Drawback/DWS/17-18 dated 29.01.2018 of the Assistant Commissioner, CGST & Central Excise Division, Dewas.

However, before going into the merit of the supplementary claim I take into consideration of the below mentioned facts.

10. Rule 15 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Rule 16 Customs, Central Excise Duties & Service Tax Drawback Rules, 2017) says...

### **Supplementary claim.-**

*(1) Where any exporter finds that the amount of drawback paid to him is less than what he is entitled to on the basis of the amount or rate of drawback determined by the Central Government or Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, he may prefer a supplementary claim in the form at Annexure III:*

**Provided that the exporter shall prefer such supplementary claim within a period of three months, -**

- (i) where the rate of drawback is determined or revised under rule 3 or rule 4, from the date of publication of such rate in the official Gazette;*
- (ii) where the rate of drawback is determined or revised upward under rule 6 or rule 7, from the date of communicating the said rate to the person concerned;*
- (iii) in all other cases, from the date of payment or settlement of the original drawback claim by the proper officer.*

*Provided further that the aforesaid period of three months may be extended by the Assistant Commissioner of Customs or Deputy Commissioner of Customs for a further period of nine months on being satisfied that the exporter was prevented by sufficient cause from filling his supplementary claim within the aforesaid period of three months.*

**Provided further that-**

- (i) *the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, may extend the aforesaid period for three months by a period of nine months and that the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may further extend the period by a period of six months;*
- (ii) *the Assistant Commissioner of Customs or Deputy Commissioner of Customs or Principal Commissioner or Commissioner of Customs, as the case may be, may on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal;*
- (iii) *an application fee, equivalent to 1% of the FOB value of exports or One thousand rupees whichever is less, shall be payable for applying for grant of extension by the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be and an application fee of 2% of the FOB value or two thousand rupees whichever is less, shall be payable for applying for grant of extension by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.*

(2) *Save as otherwise provided in this rule, no supplementary claim for drawback shall be entertained.*

11. Therefore, to file the supplementary claim, the time limit prescribed under Rule 15 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Rule 16 Customs, Central Excise Duties & Service Tax Drawback Rules, 2017) is three months, which expired on 01-11-2017 in this case. And the supplementary claim was filed on 9-11-2017. Thus, it is evident that the supplementary claim was filed beyond the prescribed time limit and hence becomes time barred ab initio.

12. In the submission dated 18-12-2019 and the submission made during the PH M/s Vippy Industries Ltd. Relied on the iird Proviso of Rule 15/Rule 16 which reads..... *in all other cases, from the date of payment or settlement of the original drawback claim by the proper officer...*, and insisted that their case should not be considered as time barred since, they received drawback amount only on 26-09-2019.

13. I do not find any forceful substance in their argument, since they had filed the drawback claim vide drawback shipping bill No. 7724606 dated 31-07-2017 and were very much aware of the AIR i.e. 0.15% of FOB and since they found it less, they filed the supplementary claim on 9-11-2017, i.e. beyond the stipulated period of three months without *an application for extension and requisite fee, equivalent to 1% of the FOB value of exports or One thousand rupees whichever is less.*

14. M/s Vippy Industries argument that the drawback under AIR was sanctioned to them only on 13-09-2019 and that three months may be counted from this date, is also not tenable for the simple reason that the amount disbursed to them was the same for which they had applied for in their original claim, and for which they were fully aware. There was no change in the amount of Drawback. More specifically, there was no reduction of the Drawback amount on account of any settlement or change in the applicable rate. Spirit of the iird Proviso of Rule 15 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Rule 16 Customs, Central Excise Duties & Service Tax Drawback Rules, 2017) is that where any drawback amount is disbursed in short because of any settlement or reduction of rate, for which the claimant may not be aware till the receiving of drawback, he should be allowed to file the supplementary claim. Even though, for the sake of argument, if I consider their argument for a while, It is a fact they did not apply for supplementary claim within the three months of the disbursal of their original drawback claim or applied for any extension of the filing period alongwith the prescribed fee. Hence, the protection of proviso iii of the Rule 15 of Rules-1995 / Rule-16 of Rules- 2017 , is not available to them.

15. I further find that the claimant has not filed an application for any extension by giving sufficient reason for the delay in filing supplementary claim nor paid required fee prescribed for the condonation of delay by the Assistant Commissioner as per the further proviso (iii) of proviso iii of the Rule 15 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 ( Rule 16 of the Customs, Central Excise Duties & Service Tax Drawback Rules, 2017).

16. Thus, the exporter M/s. Vippy Industries ltd., filed a supplementary claim for differential drawback amount on 09-11-2017 for Shipping Bill No. 7724606 dated 31.07.2017 , whose Let export Order was given on 02-08-2017, beyond the three months period as against the stipulated period of three months under Rule 15 of Rules-1995 / Rule-16 of Rules- 2017. For the delayed period neither they applied for extension nor they paid any requisite fee for the extension and also that after the filing the supplementary claim on 09-11-2017 there has not been any change in the quantum of the amount of Drawback on payment or due to any settlement of the Drawback claim, and that the argument to avail the protection of proviso iird of sub rule-1 of 15 Rule 15 of Rules-1995 / Rule-16 of Rules- 2017, appears to be after thought. Therefore, this supplementary claim of M/s Vippy Industries becomes liable for rejection.

In view of the aforesaid findings, I pass the following order:-

**:ORDER:**

I reject the supplementary claim filed on 09.11.2017 of Rs. 6,46,565/- for the Shipping Bill No. 7724606 dated 31.07.2017 by M/s. Vippy Industries Ltd., (IEC No.1188001469), Registered Office 28, Industrial Area, A.B. Road, Dewas 455001(M.P.) for being time barred.

17. This order is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or Rules made there under of any other law for the time being in force.

*H/19/2/20*

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

**BY RPAD/SPEED POST**

F. No. S/20-10/BRC-SCN/AC/2019-20

Date- 19.02.2020

To,  
M/s. Vippy Industries Ltd., (IEC No.1188001469)  
Registered Office 28, Industrial Area,  
A.B. Road, Dewas 455001(M.P.),

Copy to :-

1. The Deputy/Assistant Commissioner (RRA), Custom House, Kandla.
2. The Deputy/Assistant Commissioner (Adjudication), Customs House Kandla.
- ✓ 3. The Computer System for uploading on website.
4. The Guard File.

