



सीमा शुल्क आयुक्त का कार्यालय,
नवीन सीमा शुल्क भवन, नया कांडला
OFFICE OF THE COMMISSIONER OF CUSTOMS,
NEW CUSTOM HOUSE, NEW KANDLA-370 210 (GUJARAT)
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| A | File No. | F.No S/14-96/Export/Gokul/2019-20 |
| B | Order-in-Original No. | OIO NO. KDL/ADC/GCI/03/2020-21 DIN - 20200571ML00001XDBA3 |
| C | Document Identification Number | |
| D | Passed by | SH. GYANCHAND JAIN, ADDITIONAL COMMISSIONER |
| E | Date of order | 18.05.2020 |
| F | Date of issue | 18.05.2020 |
| G | SCN No. & Date | --- |
| H | Noticee(s)/Co-Noticee(s) | M/s Gokul Overseas, Plot No.349 to 352, 368 to 376, 396 & 436, Sector-IV, Kandla Special Economic Zone, Gandhidham (Kutch)- 370230 |

1. यह अपील आदेश संबन्धित को नि प्रदान शुल्क:किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A (1) के अंतर्गत प्रपत्र सीए- 3 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A (1) (a) of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“सीमा शुल्क आयुक्त (अपील), कांडला
मंजिल वी 7, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
7th Floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad - 380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.
4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 2/- under Court Fee Act it must accompanied by -
(i) उक्त अपील की एक प्रति और
A copy of the appeal, and
(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं.-6 में निर्धारित 2/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 2/- (Rupees Two only) as prescribed under Schedule -1, Item 6 of the Court Fees Act, 1870.
5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.
6. अपील प्रस्तुत करते समय, सीमा शुल्क नियम (अपील), अधिनियम शुल्क सीमा और 1982, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.
7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, आयुक्त (अपील)के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।
An appeal against this order shall lie before the Commissioner (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

1. M/s Gokul Overseas situated at Plot No.349 to 352, 368 to 376, 396 & 436, Sector-IV, Kandla Special Economic Zone, Gandhidham-370230 (hereinafter referred to as The Party/appellant) are the manufacturers of derivatives of Castor Oils and clears its final product to exports from Kandla Special Economic Zone (hereinafter referred to as KASEZ). Vide their letters dated 05-04-2016, 12-05-2016, 09-06-2016, 19-10-2016 to Office of the Development Commissioner, KASEZ, Gandhidham the party applied for Merchandise Exports from India Scheme(MEIS) Duty Credit benefit for exports made between 01-04-2015 to 31-05-2015. The party was granted benefit on some Shipping Bills and benefit on 25 (Twenty Five) Shipping Bills had not been allowed due to non declaration of intent for claiming MEIS benefits in the Shipping Bills. The party had made amendment request of the Shipping Bills from Free Shipping Bills to MEIS Scheme Shipping bills to the Customs, Kandla vide letter dated 22.06.2017. The shipping bills and documents for amendment of shipping bills are submitted vide letter dated 27.09.2017. List of the shipping bills is under mentioned in Table A :

Table - A

| Sr. No. | Shipping Bill Number | Shipping Bill Date | Let Export Order Date |
|---------|----------------------|--------------------|-----------------------|
| 1 | 0004162 | 03-04-2015 | 03-04-2015 |
| 2 | 0004194 | 04-04-2015 | 04-04-2015 |
| 3 | 0004195 | 04-04-2015 | 04-04-2015 |
| 4 | 0004196 | 04-04-2015 | 04-04-2015 |
| 5 | 0004197 | 04-04-2015 | 04-04-2015 |
| 6 | 0004233 | 06-04-2015 | 06-04-2015 |
| 7 | 0004234 | 06-04-2015 | 06-04-2015 |
| 8 | 0004221 | 05-04-2015 | 05-04-2015 |
| 9 | 0004125 | 02-04-2015 | 02-04-2015 |

| | | | |
|----|---------|------------|------------|
| 10 | 0004130 | 02-04-2015 | 02-04-2015 |
| 11 | 0004182 | 03-04-2015 | 03-04-2015 |
| 12 | 0004223 | 05-04-2015 | 05-04-2015 |
| 13 | 0004164 | 03-04-2015 | 03-04-2015 |
| 14 | 0004165 | 03-04-2015 | 03-04-2015 |
| 15 | 0004211 | 04-04-2015 | 04-04-2015 |
| 16 | 0004213 | 04-04-2015 | 04-04-2015 |
| 17 | 0004148 | 02-04-2015 | 02-04-2015 |
| 18 | 0004151 | 02-04-2015 | 02-04-2015 |
| 19 | 0004235 | 06-04-2015 | 06-04-2015 |
| 20 | 0004236 | 06-04-2015 | 06-04-2015 |
| 21 | 0004239 | 06-04-2015 | 06-04-2015 |
| 22 | 0004224 | 05-04-2015 | 05-04-2015 |
| 23 | 0004258 | 07-04-2015 | 07-04-2015 |
| 24 | 0004259 | 07-04-2015 | 07-04-2015 |
| 25 | 0004269 | 07-04-2015 | 07-04-2015 |

2. The application of the party was rejected vide letter F.No. S/14-117/Exp/Gokul/2016-17 dated 01.02.2018 by the Additional Commissioner (Export), Customs House, Kandla, on the grounds that Para 3(a) of Board's Circular No. 36/2010 dated 23.09.2010 provides that the request for conversion is to be made by the exporter within 3 months from the date of Let Export Order (LEO). The Party vide letters dated 21-05-2018, 07-06-2018, 05-09-2018 to the Under Secretary to the Govt. of India requested for acceptance of shipping bills for MEIS benefit in case of no declaration of intent mentioned in Shipping Bills filed prior to 01-06-2015. The Party's request was also rejected by the Under Secretary to the Govt. of India vide letter dated 11-02-2019.
3. Being aggrieved, the party preferred an appeal before the Hon'ble High Court, Gujarat on the following grounds:

- (a) That rejecting the request to extend the benefit of MEIS scheme on totally technical ground of delay is not proper. The condition of declaration of intent in the shipping bill is procedural in nature. Therefore, merely non declaration of intention to avail benefit of MEIS scheme cannot come in way of claiming benefit of the scheme.
- (b) That a period of 3 months time limit as prescribed under condition no. 3(a) of the said Circular No. 36/2010-Cus dated 23.09.2010 was contrary to provision of Section 149 of the Customs Act, 1962, under which the application was made by the party, therefore the time limit was only a procedural requirement and for non-compliance of procedural requirement substantial benefit of conversion cannot be denied.
- (c) That the time limit cannot be fixed by way of a circular. The Board has no power to impose any onerous condition, without it is approved by the legislature.
- (d) That MEIS scheme was introduced only on 1st April 2015 and it was very initial stage for the said scheme, therefore, the petitioner bonafide made a mistake in not declaring the intention to claim the Scheme. For such bonafide mistakes, the petitioner should not be deprived of claiming the scheme benefit if otherwise eligible.
- (e) That they submitted all the relevant documents and therefore, there was no reasons to disallow amendment in Shipping Bills. Since the entire claim of the petitioner is established on the basis of documentary evidence, there is no reason to refuse an amendment.
- (f) Therefore, directions may be issued to allow MEIS Scheme claimed under Five different applications and amendment in the Shipping Bills with a declaration made by them vide letter dated 22.06.2017.

Also directions may be issued or order for quashing and setting aside the letter dated 11.02.2019 issued by the Under Secretary to the Government of India.

4. The Hon'ble High Court, Gujarat in its judgment has held that, "the petition succeeds and is, accordingly, allowed. The impugned letter dated 11-02-2019 of the respondent No.2, Under Secretary, Government of India, is quashed and set aside. The respondents are directed to permit the petitioner to covert the shipping bills in question from free shipping bills to MEIS shipping bills subject to the satisfaction of the competent authority. The respondents are directed to give effects to the order within two months from the date of receipt of order. Rule is made absolute accordingly, with no order as to costs". Hon'ble High Court of Gujarat's Oral Judgment dated 21/01/2020 in relation to R/Special Civil Application No.7500 of 2019 filed by M/s.Gokul Overseas, is received in this office on 18/03/2020. Department has sent proposal to CBIC to file appeal against the said order of the High court in the Hon'ble Supreme Court. However there is no stay on the Order of High Court as on date so the order will have to be implemented.

DISCUSSION AND FINDINGS

5. I have carefully gone through the facts of the case and records in the file. M/s. Gokul Overseas applied for Merchandise Exports from India Scheme(MEIS) Duty Credit benefit for exports made between 01-04-2015 to 31-05-2015. The party was granted benefit on some Shipping Bills and benefit on 25 (Twenty Five) Shipping Bills mentioned in the Table-A at Para-1 had not been allowed due to non declaration of intent for claiming MEIS benefits in the Shipping Bills. The party had

made amendment request from Free Shipping Bills to MEIS Scheme Shipping bills to the Customs, Kandla vide letter dated 22.06.2017. The Shipping Bills, as mentioned in the Table-A at Para-1 above and documents for amendment was submitted vide letter dated 27.09.2017.

6. The application of the party was rejected vide letter F.No. S/14-117/Exp/Gokul/2016-17 dated 01.02.2018 by the Additional Commissioner (Export), Customs House, Kandla, on the grounds that the request for amendment is made by the exporter after 3 months from the date of Let Export Order (LEO). The Party vide letters dated 21-05-2018, 07-06-2018, 05-09-2018 to the Under Secretary to the Govt. of India requested for acceptance of shipping bills for MEIS benefit in case of no declaration of intent mentioned in the Shipping Bills. The Party's request was also rejected by the Under Secretary to the Govt. of India vide letter dated 11-02-2019. Being aggrieved, the party preferred an appeal before the Hon'ble High Court, Gujarat.
7. I find that regarding the limitation of three months from the date of LEO, the Hon'ble High Court of Gujarat vide oral judgment dated 21/01/2020 in relation to R/Special Civil Application No.7500 of 2019 filed by M/s.Gokul Overseas has observed at Para No.37 as follows,

"Thus, except for the fact that the request for conversion of the free shipping bill to MEIS shipping bill has been made beyond the time prescribed in Circular No.36/2010- Customs dated 23.09.2010, no other objection has been raised on behalf of the respondents. In the opinion of this court, having regard to the peculiar facts of the present case, the omission to file 'declaration of intent' when all other relevant material is available, is not fatal to the petitioner's case. As in the case of Kedia (Agencies) Pvt Ltd Vs. Commissioner of Customs (supra), in

the facts of the present case also, in all other respects, that is, as to whether the goods conform to the description in the shipping documents and the value, etc. continues to be ascertainable because the concerned bills, invoices and other shipping documents are available with the customs authorities. The respondents are, therefore, not justified in turning down the request to convert the shipping bills of the petitioner from free to MEIS and thereby depriving the petitioner of the benefits under the MEIS in respect of exports made under such shipping bills.”

In view of the above the limitation of three months cannot be insisted in this case at this stage.

8. Further I find that Hon’ble High Court has also set aside the letter of the Under Secretary dated 11.02.2019. In Para 38 of the order the Hon’ble High Court of Gujarat has observed as follows

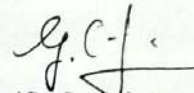
“In the light of the above discussion, the petition succeeds and is, accordingly, allowed. The impugned letter dated 11-02-2019 of the respondent No.2, Under Secretary, Government of India, is hereby quashed and set aside. The respondents are directed to permit the petitioner to covert the shipping bills in question from free shipping bills to MEIS shipping bills subject to the satisfaction of the competent authority. The respondents shall give effects to the order within two months from the date of receipt of order. Rule is made absolute accordingly, with no order as to costs”

9. Further I find that Deputy Commissioner of Customs, Kandla SEZ vide letter F.No.KASEZ/CUS/Tech./14/MEIS/2017-18 dated 07.09.2017 has submitted that the goods has been exported which is evident from the export documents. They are filing regularly their claim of similar goods under MEIS scheme for later periods and it appears that the goods are otherwise eligible for the said scheme.

In view of the above and as there is no stay on the Hon'ble High Court Order as on date, I hereby pass the following order

Order

10. The Amendment requested by the party, regarding insertion of the sentence "we intend to claim rewards under Merchandise Exports from India Scheme (MEIS)" in the Shipping bills mentioned in the Table-A at Para-1 above, is allowed subject to the outcome of any appeal that may be filed by the department before the Hon'ble Supreme Court against the Hon'ble High Court of Gujarat's oral judgment dated 21/01/2020 in the R/Special Civil Application No.7500 of 2019 filed by M/s.Gokul Overseas.



(G. C. Jain)

**Additional Commissioner,
Custom House, Kandla**

F.No S/14-96/Export/Gokul/2019-20
DIN - 20200571ML00001XDBA3

Date 18.05.2020

To,
M/s Gokul Overseas
Plot No.349 to 352, 368 to 376, 396 & 436,
Sector-IV, Kandla Special Economic Zone,
Gandhidham (Kutch)- 370230

By RPAD/Speed Post:

- 1) The Commissioner of Customs, Kandla.
- 2) The Deputy Commissioner of Customs, KASEZ, Kandla
- 3) The Deputy Commissioner (RRA) Customs Kandla.
- 4) The Assistant Commissioner (TRC), CH, Kandla.
- ✓ 5) The Superintendent (EDI), Customs, Kandla with a request to upload the said order on the official website of this Commissionerate.
- 6) Guard File

