



**OFFICE OF THE COMMISSONER OF CUSTOMS
CUSTOM HOUSE: KANDLA
NEW CUSTOMS BLDG, NR. BALAJI TEMPLE
KANDLA, KUTCH, GUJARAT**

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F. No. S/6-1041/Ref/2013

Date of Order: 26/05/2020

Date of Issue: 26/05/2020

Passed by: Dr. Raju Pawar
ASSISTANT COMMISSIONER (REFUND),
CUSTOM HOUSE, KANDLA.

Spd (EDL)
- 286
28-5-2020

ORDER-IN-ORGINAL NO. KDL/AC/RRP/ 08 /Ref/2020-21

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.

Subject:-Refund claim of Rs 3,63,316/- (Rupees Three Lakh Sixty Three Thousand Three Hundred Sixteen Only) filed by M/s. Rajkamal Industrial Private Limited, 401, Dev Arc Corporate, Above Croma, Iscon Cross Road, S.G. Highway, Ahmedabad-380015.

Brief facts of the case:

(1) M/s. Rajkamal Industrial Private Limited, 401, Dev Arc Corporate, Above Croma, Iscon Cross Road, S.G. Highway, Ahmedabad-380015. (hereinafter referred to as "the claimant") have filed a refund claim of **3,63,316/- (Rupees Three Lakh Sixty Three Thousand Three Hundred Sixteen Only)** vide letter dated 01.10.2013 received on 21.10.2013. The claimant has claimed the refund of 4% SAD paid by them at the time of importation. The refund claim is filed on the basis of the exemption as granted vide Notification No.102/2007-Cus dated 14.09.2007.

(2) A deficiency memo dated 25.02.2020 was issued to the claimant for submission of certain requisite documents. Vide letter dated 26.02.2020 received on 03.03.2020 the claimant submitted the certain documents. The claimant has filed a refund claim along with the following documents.

(I) Refund application in prescribed proforma.

(II) E-Payment Receipts of TR-6 Challan evidencing the payment of Custom duties and duplicate copy (in original) of B/E showing the import of quantity 248.250 MT. of Rubber Process Oil, by the claimant as detailed below;

Sr. No.	B/E No. /Date	Des. Of goods imported	Qty. Imported (MTS.)	4% SAD paid	Total Duty Paid	TR-Challan No./ Date
1	7833241/03.09.12	Rubber Process Oil	248.250	375852.20	2324348.00	2004872554/09.11.12
TOTAL			248.250	375852.20	2324348.00	

(III) Copy of sale invoices as evidence of sale of the imported goods to the buyers with an endorsement that "No credit of the SAD duty levied under sub-section 5 of section 3 of the Customs shall be admissible" as required under Para 2(b) of the exemption Notification No. 102/2007. Other details like B/E No, VAT/CST payable is reflected in the sale invoices.

(IV) Worksheet showing the details of import made under above B/E and sales affected thereafter.

(V) Copies of VAT/CST challan and the concerned VAT/CST returns/Forms evidencing total VAT/CST payment for the month of November 2012, December 2012, February 2013, April 2013 & July 2013, as shown in below table

Sr. No	Vat Paid in cash	VAT Paid through adj. of ITC	Total VAT Paid (Rs.)	CST Paid in cash	CST Paid through adj. of ITC	Total CST paid (Rs.)	Period
1	N/A	N/A	N/A	229329	0	229329	Nov-12
2	N/A	N/A	N/A	538491	0	538491	Dec-12
3	1249621	838996	2088617	1242300	0	124230	Feb-13
4	2646531	812848	3459379	N/A	N/A	N/A	Apr-13
5	1332447	962034	2294481	N/A	N/A	N/A	July-13

(VI) Undertaking from the claimant that the 4% SAD has not been passed on by them to buyer/any other person.

(VII) Declaration regarding the appointment of Chartered Accountant Jaimin Shah & Associates, for the financial year 2012-2013 & 2013-2014.

VIII) Copy of Ledger Account of 4% SAD refundable, VAT/CST and certificate issued by the Chartered Accountant showing the amount of SAD receivable under the Head SAD refund receivable.

IX) Declaration regarding filing of single claim in a month of October 2013.

X) C.A. Certificate certifying co-relation between VAT/CST payment and sale invoice and burden of 4% SAD has not passed on to buyer or any other person.

(3) As per Notification No.102/2007-Cus Dated 14.09.2007, the exemption contained in this notification shall be given effect, if the conditions, as stipulated in the said notification are fulfilled. The conditions are that the importer of the said goods shall pay all duties, including the said additional duty of customs leviable thereon, as applicable, at the time of importation of the goods; the importer, while issuing the invoice for sale of the goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under Sub-section (5) of Section 3 of the Customs Tariff Act, 1975 shall be admissible; the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional Customs Officer; the importer shall pay on sale of the said goods appropriate sales tax or value added tax, as the case may be. Further, as per Para 2(e), the importer at the time of claiming of the refund shall, inter alia, provide copies of the documents evidencing the payment of the said additional duty; the invoice of sale of the imported goods in respect of which refund of the said additional duty is claimed and documents evidencing the payment of appropriate sales tax or value added tax as the case may be, by the importer, on sale of such imported goods.

(4) The claimant has subsequently sold 239.970 MT. out of total imported quantity of 248.250 MT. as detailed below.

(1) B/E No.8648829/22.02.2017 (Qty.20.000 MT. of VAM)

Sr. no.	Sale Invoice No. dt.	Name of buyer	Sold Qty (in Mts.)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	RIPL/EX.INV/12-13/324/30.11.2012	SHREE SHYAM CHEMICALS	16.620	0.00	0.00	12964.00
2	RIPL/EX.INV/12-13/325/30.11.2012	SHREE SHYAM CHEMICALS	16.760	0.00	0.00	13073.00
3	RIPL/EX.INV/12-13/326/30.11.2012	SHREE SHYAM CHEMICALS	16.710	0.00	0.00	13034.00
4	RIPL/EX.INV/12-13/327/30.11.2012	GORWARA CHEMICAL INDUSTRIES	16.530	0.00	0.00	13059.00
5	RIPL/RE.INV/12-13/176/20.12.2012	R And J Lubritech	4.000	0.00	0.00	3280.00
6	RIPL/EX.INV/12-13/413/25.12.2012	GORWARA CHEMICAL INDUSTRIES	20.120	0.00	0.00	15895.00
7	RIPL/EX.INV/12-13/488/06.02.2013	CHOWDHARY UDYOG	16.310	86137.00	17227.00	0.00
8	RIPL/EX.INV/12-13/489/06.02.2013	CHOWDHARY UDYOG	20.950	110642.00	22128.00	0.00
9	RIPL/EX.INV/12-13/490/06.02.2013	CHOWDHARY UDYOG	20.850	110114.00	22023.00	0.00
10	RIPL/EX.INV/12-13/491/06.02.2013	CHOWDHARY UDYOG	16.410	86665.00	17333.00	0.00
11	RIPL/RE.INV/12-13/241/23.02.2013	MYSORE DEEP PERFUMERY HOUSE	9.960	0.00	0.00	8964.00
12	RIPL/EX.INV/13-	BAGWAN PETROLEUM	24.850	128909.00	25782.00	0.00

	14/87/30.04.2013					
13	RIPL/EX.INV/13-14/88/30.04.2013	BAGWAN PETROLEUM	23.520	122010.00	24402.00	0.00
14	RIPL/EX.INV/13-14/353/17.07.2013	PANAMA PETROCHEM	16.380	85995.00	17199.00	0.00
Total Sales Qty.			239.970			
Short Sales Qty.			8.280			
Total Import Qty.			248.250	730472.00	146094.00	80269.00
Total Refundable						3,63,316.00

Findings:

(5) I have carefully gone through the refund claim and the documents submitted by the claimant and find that, the claimant has imported 248.250 MT, Rubber Process Oil, and paid duties of customs under E payment receipts and an amount of Rs. 23,24,348/- as 4% SAD vide challan under B/Es as detailed in the table in para (2) (II) above.

(6) The sales invoices are endorsed with the remark "No credit of the Additional duty levied under Sub- section (5) of Section 3 of the Customs Tariff Act, 1975 shall be admissible".

(7) I find that, the claimant has sold 239.970 MT. of Rubber Process Oil, out of total imported quantity of 248.250 MT and therefore, they have short sold 8.280 MT. of the imported goods, as shown in below mentioned table.

Sr. No	B/E No./ Date	Qty. Imported (MT)	Qty. Sold (MT)	Short Sold Qty. (MT)	Total 4 % SAD paid on Total Imported Qty	4 % SAD on short sold Qty	4% SAD claimed as refund
1	7833241/03.09.12	248.250	239.970	8.280	375852.20	12536.20	363316.00
Total		248.250	239.970	8.280	375852.20	12536.20	363316.00

I find that, the claimant has sold quantity of imported goods i.e.239.970 MT. out of total imported quantity 248.250 MT., As per Para-2(d) of Notification No. 102/2007-Cus. Dated 14.09.2007 the importer shall pay on sale of the said goods, appropriate Sales Tax or Value Added Tax, as the case may be and as per Para 4.1 of Circular No. 06/2008-Cus. Dated 28.04.2008, unsold stock would not be eligible for refund. In other words, refund can be granted only for the quantity of imported goods sold on payment of applicable VAT/CST. Accordingly, the claimant is eligible for refund for the sold quantity only, which comes to **Rs. 3,63,316/-** as per Table above and the claimant has also given undertaking to the effect that, they will not file any refund for the short sold quantity.

(8) Board has issued Circular No. 06/2008-Cus dated 28.04.2008, 16/2008-Cus dated 13.10.2008 and 18/2010-Cus dated 08.07.2010, wherein certain procedures are to be adopted for refund of 4% SAD. The procedures are outlined as under.

- (i) The refund claim has to be filed within one year.
- (ii) A single claim against a particular B/E has to be filed.
- (iii) C.A. Certificate certifying co-relation between VAT/CST payment and sale invoice and burden of 4% SAD has not passed on to buyer or any other person.

- (iv) Self certification by the importer with respect to the unjust enrichment.
 (v) Copies of VAT/CST challan/returns.

(9) I find that the refund claim is filed within the prescribed time limit and a single claim has been filed against a particular Bill of Entry. The Chartered Accountant, M/s. Jaimin Shah & Associates, Ahmedabad, vide their certificate dated 16.10.2013 has certified that M/s Rajkamal Industrial Pvt. Ltd., has made the VAT/CST payment which co-relates with the sale invoices. They have further certified that the burden of 4% SAD has not been passed on to buyer or any other person. The importer has given an undertaking that they have not passed on the burden of 4% SAD to buyer or any other person. The claimant has also submitted VAT/CST challans & returns in co-relation to the Chartered Accountant certificate for the said claim. Hence, I am satisfied that there is no unjust enrichment in the present case.

(10) Also, as per **Customs Circular No-18/2010 dated 8.7.2010 Refund of 4% Additional Duty of Customs (4% CVD) in pursuance of Notification No.102/2007-Customs dated 14.9.2007 - Special Drive for clearance of pending 4% SAD refund claims - reg. in para 6 clear mention that** "Some field formations have also raised certain doubts whether the audited Balance Sheet and Profit and Loss Account have to be examined in respect of the current financial year for scrutiny of unjust enrichment aspect. It is stated that a large number of refund claims relating to the current year were held up for want of such verification. In this regard, the issue has been examined by the Board and it has been decided that the field formations shall accept a certificate from Chartered Accountant for the purpose of satisfying the condition that the burden of 4% CVD has not been passed on by the importer to any other person. Further, the importer shall also make a self-declaration along with the refund claim to the effect that he has not passed on the incidence of 4% CVD to any other person. Hence, there is no need for insisting on production of audited Balance Sheet and Profit and Loss Account in these cases. It may also be noted that recently the Board has also notified the list of documents required to be filed by the applicant along with the refund claim (Annexure-II) which is also displayed in the departmental website. Hence, other than these aforesaid documents, no other document would be required in the normal course of granting 4% CVD refund".

(11) Also, All challans are verified the claimant payment particulars / challans through online officially console / node system and same as found in order as mention below table:

Sr. No.	B/E No. /Date	4% SAD paid	TR-Challan No./ Date
1	7833241/03.09.12	375852.20	2004872554/09.11.12
TOTAL		375852.20	

(12) Also, this office has received a letter through Tax Recovery Cell (TRC) vide File No. S/20-02/NOC-Re/Re/18-19 dated 09.03.2020 regarding here is no government dues are pending against M/s. Rajkamal Industrial Private Limited, Ahmedabad

(13) I find that, the claimant has fulfilled all the conditions as laid down in the Notification No. 102/2007 Cus dated 14.09.2007 read with Board Circular No. 06/2008-Cus dated 28.04.2008, 16/2008-Cus dated 13.10.2008 and 18/2010-Cus dated 08.07.2010 and therefore, I find that, the claimant is eligible for the refund of **Rs. 3,63,316/-**.

(14) In view of the foregoing paras, I pass the following order.

::: O R D E R :::

I sanction refund of **Rs 3,63,316/-** (Rupees Three Lakh Sixty Three Thousand Three Hundred Sixteen Only) to M/s. Rajkamal Industrial Private Limited, 401, Dev Arc Corporate, Above Croma, Iscon Cross Road, S.G. Highway, Ahmedabad-380015, in terms of Notification No.102/2007-Cus dated 14.09.2007 as amended Customs Tariff Act, 1975.

Date: 26.05.2020

[Handwritten Signature]
26/05/2020

(R.R.Pawar)

Assistant Commissioner (Refund)
Custom House, Kandla.

F. No. S/6-1041/Ref/2013.

By Regd. Post. A.D./Speed Post/ By Hand

[Handwritten Signature] (EMS)

To,
M/s. Rajkamal Industrial Private Limited,
401, Dev Arc Corporate, above Croma,
Iscon Cross Road, S.G. Highway, Ahmedabad-380015

Copy to:

- 1) The Deputy Commissioner (RRA), Customs House, Kandla.
- 2) The Assistant Commissioner (EDI), Custom House, Kandla for update website.
- 3) Respective Refund file.
- 4) Guard file Refund Section.

