



सीमा शुल्क आयुक्त का कार्यालय .
नवीन सीमा शुल्क सदन, नया कंडला
OFFICE OF THE COMMISSIONER OF CUSTOMS,
NEW CUSTOM HOUSE, NEW KANDLA-370 210 (GUJARAT)
Phone No: 02836-271468/469, Fax No. : 02836-271467.

फा.सं./ F. No. S/6-255/Ref/2011

आदेश की दिनांक / Date of Order: 26.05.2020

जारी करने की दिनांक/ Date of Issue: 26.05.2020

पारित कर्ता/ Passed by: - श्री राजू पवार/ SHREE RAJU PAWAR

सहायक आयुक्त/Assistant Commissioner,

सीमा शुल्क सदन, कांडला/ Customs House, Kandla.

370 (EP-1)
- 266
29-5-2020

आदेश में मूल सं/ ORDER-IN- ORIGINAL NO: KDL/AC/RRP / 05 /Ref/2020-21

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 जाएँ (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 non compliance of the provisions of Section 128 of the Customs Act, 1962.

Sub: Refund claim dated 11.03.2011 for Rs. 3,11,149/- (Rupees Three Lakh Eleven Thousand One Hundred Fourty Nine Only) filed by M/s. R.B. PATEL 14, S.P. Timber Market , Zone-3 , Latibazar , Gitamandir , Ahmedabad Gujarat, India.

Brief facts of the case:

(1) M/s. R.B. PATEL 14, S.P. Timber Market , Zone-3 , Latibazar , Gitamandir , Ahmedabad-380022, Gujarat, India. (hereinafter referred to as "the claimant") have filed a refund claim of Rs.3,11,149/- (Rupees Three Lakh Eleven Thousand One Hundred Forty Nine Only) vide letter dated 11.03.2011 received on 11.03.2011. 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. A deficiency memo was issued to the claimant 23.06.2011, in the response of same. The claimant submitted their reply vide letter dated 27.06.2011. Accordingly, the claim have been taken for processing. The refund claim is filed under Section 27 of the Customs Act,1962.

(2) i) The claimant has filed a refund claim along with following documents.

II) Triplicate copy of in original TR-6 Challans evidencing the payment of all custom duty and Duplicate copy (in Original) of B/Es showing the import of Qty. 422.770 CBM by the claimant as detailed below.

Sr No	B/E No. & Date	TR-6 No. & Date	Imp. Qty (in CBM)	Total 4% SAD Paid	Total Duty Paid (Rs.)
1	338054/01/04.10	20225370/06.04.2010	69.310	57798.50	192732.00
2	338381/05.04.10	20225531/05.04.2010	50.730	42530.70	94607.00
3	339558/09.04.10	20226327/15.04.2010	85.620	50918.80	113266.00
4	340098/1304.10	20226657/16.04.2010	39.410	32244.70	107521.00
5	341052/19.04.10	20227261/21.04.2010	18.240	15290.60	34013.00
6	342840/28.04.10	20228505/29.04.2010	54.200	45441.70	101082.00
7	342841/28.04.10	20228507/29.04.2010	17.730	14868.90	33075.00
8	342740/28.04.10	20228462/29.04.2010	87.530	52054.70	115793.00
Total			422.770	311148.60	792089.00

III) Copies of Sale invoice 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 payable is reflected in the sale Invoices.

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

V) Copies of VAT /CST challan evidencing VAT/CST payment, as shown in below mentioned 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	1576493	0	1576493	36952	0	36952	Apr-2010
2	1632637	0	1632637	43672	0	43672	May-2010
3	1425236	0	1425236	118176	0	118176	Jun-2010

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 M/s. H.PATEL & ASSOCIATES, for the financial year 2009-2010 & 2010-2011.

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 March 2010.

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 imported Qty. 422.770 CBM of Teak Wood Square Logs & Teak Rough Square Logs, as detailed below:

(1) B/E No.338054/01.04/2010, Import Qty. 69.310 CBM .

Sr No	Sale Invoice No. & date		Sold Qty (in CBM)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	TI-05	08.04.10	19.077	52633.00	10527.00	0.00
2	TI-06	09.04.10	12.279	39234.00	7847.00	0.00
3	TI-07	09.04.10	12.083	38608.00	7722.00	0.00
4	TI-11	12.04.10	24.906	68716.00	13743.00	0.00
Total Sales Qty			68.345			
Short Sales Qty			0.965			
Import Qty			69.310	199191.00	39839.00	0.00

(2) B/E No.338381/05.04.2010, Import Qty.50.730 CBM .

Sr No	Sale Invoice No. & date		Sold Qty (in CBM)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	TI-08	10.04.10	18.268	50743.00	10149.00	0.00
2	TI-10	12.04.10	11.332	42029.00	8406.00	0.00
3	TI-31	04.05.10	18.533	48745.00	9749.00	0.00
Total Sales Qty			48.133			
Short Sales Qty			2.597			
Import Qty			50.730	141517.00	28304.00	0.00

(3) B/E No.339558/09.04.2010, Import Qty.85.620 CBM .

Sr No	Sale Invoice No. & date		Sold Qty (in CBM)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	TI-19	16.04.10	77.500	144324.00	28865.00	0.00
Total Sales Qty			77.500			
Short Sales Qty			8.120			
Import Qty			85.620	144324.00	28865.00	0.00

(4) B/E No.340098/13.04.2010, Import Qty.39.410 CBM .

Sr No	Sale Invoice No. & date		Sold Qty (in CBM)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	TI-20	23.04.10	2.380	6314	1263	0.00
2	RI-11	20.05.10	26.399	0.00	0.00	13210.00
3	RI-13	04.06.10	11.327	0.00	0.00	6119.00
Total Sales Qty			39.410			
Short Sales Qty			0.00			
Import Qty			39.410	6314.00	1263.00	19329.00

(5) B/E No.341052/19.04.2010, Import Qty 18.240 CBM .

Sr No	Sale Invoice No. & date	Sold Qty (in CBM)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	TI-29 30.04.10	18.240	50534	10107	0
Total Sales Qty		18.240			
Short Sales Qty		0.00			
Import Qty		18.240	50534	10107	0

(6) B/E No.342840/28.04.2010, Import Qty 54.200 CBM .

Sr No	Sale Invoice No. & date	Sold Qty (in CBM)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	TI-34 05.05.10	8.155	18409.00	3682.00	0.00
2	TI-40 07.05.10	18.400	34204.00	6841.00	0.00
3	TI-41 10.05.10	12.379	33303.00	6661.00	0.00
4	TI-50 19.05.10	14.747	32616.00	6523.00	0.00
Total Sales Qty		53.681			
Short Sales Qty		0.519			
Import Qty		54.200	118532.00	23707.00	0.00

(7) B/E No.342841/28.08.2010, Import Qty 17.730 CBM .

Sr No	Sale Invoice No. & date	Sold Qty (in CBM)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	RI-09 18.05.10	17.499	0.00	0.00	5714.00
Total Sales Qty		17.499			
Short Sales Qty		0.231			
Import Qty		17.730	0.00	0.00	5714.00

(8) B/E No.342740/28.04.2010, Import Qty.87.530 CBM .

Sr No	Sale Invoice No. & date	Sold Qty (in CBM)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	RI-06 07.05.10	17.028	0.00	0.00	6244.00
2	TI-35 05.05.10	18.390	57721.00	11544.00	0.00
3	TI-36 06.05.10	18.248	38427.00	7685.00	0.00
4	TI-39 07.05.10	18.313	44059.00	8801.00	0.00
5	TI-60 15.06.10	14.765	35139.00	7028.00	
Total Sales Qty		86.744			
Short Sales Qty		0.786			
Import Qty		87.530	175346.00	35058.00	6244.00

(5) The said refund claim has been scrutinized in terms of section 27 of the Custom Act, 1962 and it is found that the claim has been received within eligible time limit of one year and all necessary documents as stated above have been furnished.

Findings:

(6) I have carefully gone through the case record submitted by the claimant and find that the claimant has imported Qty.422.770 CBM of Teak Wood Square Logs & Teak Rough Square Logs and paid duties of customs amounting to Rs.7,92,089/- inclusive of 4% SAD amounting to Rs. 3,11,148.60 under B/Es detailed as in para,s' 2 (ii).

(7) As regards to limitation of filing refund claim within one year from the date of payment of duty or from date of filing, I find, in the present case, this refund claim was filed in this office 11.03.2011, which is within stipulated period of one year from the date of duty payment of Bill of entry I find the claim is not hit by time bar. The claim was scrutinized as per provisions of Section 27 of Customs Act, 1962 and was found in order.

(8) The claim is not barred by unjust enrichment since the claimant has submitted a certificate No Nil dated 10.02.2011 of M/s H.PATEL & ASSOCIATES., Chartered Accountant, wherein it is certified that the amount sought as refund has not been passed on by the claimant to any other party, directly or indirectly. As such I find that the claim is not barred by unjust enrichment.

(9) I find that the sale invoices is 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".

(10) I find that the claimant has sold 409.552 CBM out of total imported quantity of 422.770 CBM and hereby they have short sold 13.218 CBM of the imported goods, as shown in table:

Sr. No.	B/E No. & Date	Imp. Qty. in (CMT.)	Sold Qty. in (CMT.)	Short Sold Qty (CMT)	Total 4% Sad Paid	4% SAD on Short Sold	Net Eligible Refund Claim
1	338054/01/04.10	69.310	68.345	0.965	57798.5	804.73	56993.77
2	338381/05.04.10	50.730	48.133	2.597	42530.7	2177.26	40353.44
3	339558/09.04.10	85.620	77.5	8.120	50918.8	4829.02	46089.78
4	340098/1304.10	39.410	39.41	0.000	32244.7	0.00	32244.70
5	341052/19.04.10	18.240	18.24	0.000	15290.6	0.00	15290.60
6	342840/28.04.10	54.200	53.681	0.519	45441.7	435.13	45006.57
7	342841/28.04.10	17.730	17.499	0.231	14868.9	193.72	14675.18
8	342740/28.04.10	87.530	86.744	0.786	52054.7	467.44	51587.26
Total		422.770	409.552	13.218	311148.6	8907.30	302241.30

I find that the claimant has sold quantity of imported goods i.e. 409.552 CBM out of total imported quantity 422.770 CBM, 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 quantity sold only, which comes to **Rs. 3,02,241/-** as per Table above and the claimant has filed refund claim for same amount. The claimant has also given an undertaking that they shall not claim the refund on short sold quantity i.e. 13.218 in future also.

(11) The claimant have been issued deficiency memo 12.09.2018 and in the response of same , the claimant have submitted their reply along with all required documents vide their letter dated 11.03.2011 (received in this office on 11.03.2011) Accordingly the claim have been taken for processing.

(12) Board has issued Circular No.06/2008 dated 28.04.08, 16/2008 and 18/2010, 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.

(13) 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. I find that The Chartered Accountant, M/s. H.PATEL & ASSOCIATES, Ahmedabad , vide their certificate dated 10.02.2011 has certified that M/s R.B.PATEL 14, Sardar Patel Timber Market , Zone-3 Latibazar, Ahmedabad, 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.

(14) I, find that 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 instructed 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”.

(15) Further, this office has received a letter through Tax Recovery Cell (TRC) vide file no. S/6-255/Ref/2011 dated 11.05.2020 regarding there is no government dues are pending against M/s. R. B. Patel, 14, S.P. Timber Market , Zone-3 , Latibazar , Gitamandir , Ahmedabad-380022, Gujarat, India.

(16) Also, this office has verified the claimant payment particulars / challans through online officially console/ node system and same as found in order as mention below table:

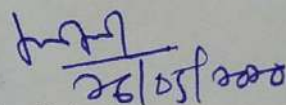
Sr No	B/E No. & Date	TR-6 No. & Date	Total 4% SAD Paid
1	338054/01/04.10	20225370/06.04.2010	57798.50
2	338381/05.04.10	20225531/05.04.2010	42530.70
3	339558/09.04.10	20226327/15.04.2010	50918.80
4	340098/1304.10	20226657/16.04.2010	32244.70
5	341052/19.04.10	20227261/21.04.2010	15290.60
6	342840/28.04.10	20228505/29.04.2010	45441.70
7	342841/28.04.10	20228507/29.04.2010	14868.90
8	342740/28.04.10	20228462/29.04.2010	52054.70
Total			311148.60

(17) In view of the foregoing para, I find that the claimant has fulfilled all the conditions as laid down in the notification No. 102/2007 Cus, dated 14.09.07 read with Board Circular No. 06/2008,16/2008 and 18/2010 and therefore I find that the claimant is eligible for the refund of Rs.3,02,241/- Only.

(18) In view of the above discussion, I pass the following order.

ORDER

I sanction refund of Rs.3,02,241 /- (Rupees Three Lakh Two Thousand Two Hundred Forty One Only) filed by M/s. R.B.PATEL 14, Sardar Patel Timber Market, Zone-3, Latibazar, Ahmedabad Gujarat, in terms of notification no. 102/2007-cus-dated 14.09.2007 as amended, of Customs Tariff Act, 1975.



(Dr. Raju Pawar)

Assistant Commissioner (Refund)
Customs House, Kandla

By Reg. Post

F.No. S/6-255/Ref/2011

Date 26.05.2020