



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)
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फा.सं./ F. No. S/6-13/Ref/18-19

आदेश की दिनांक / Date of Order: 01.07.2020

जारी करने की दिनांक/ Date of Issue: 01.07.2020

DIN No. 20200771ML00006L8598

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

सहायक आयुक्त/Assistant Commissioner,

सीमा शुल्क सदन, कांडला/ Customs House, Kandla..

Spdy (EDF)
308
6-7-2020

आदेश में मूल सं/ ORDER-IN- ORIGINAL NO: KDL/AC/RRP/15/Ref/2020-21

- 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.
- 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.
- 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.
- 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-1, item 6 of the Court Fees Act, 1870.
- 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).
- 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 14.04.2018 received dated 23.04.2018 for Rs. 48,856/- (Rupees Forty Eight Thousand Eight Hundred Fifty Six Only) filed by M/s. Raj Chemicals, Lakhmi Colony, Near Kundali Police Station, Kundali-131028 (Haryana).

Brief facts of the case:

(1) M/s. Raj Chemicals , Lakhmi Colony, Near Kundali Police Station, Kundali-131028 (Haryana), (hereinafter referred to as "the claimant") have filed a refund claim of Rs. **48,856/- (Rupees Forty Eight Thousand Eight Hundred Fifty Six Only)** vide letter dated 14.04.2018 received on 23.04.2018. 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) The claimant has filed a refund claim along with the following documents:

- I) Refund application in prescribed proforma.
- II) E-payment receipt evidencing the payment all Custom duties and duplicate copy (in original) of B/Es showing the import of Qty.21.000 MT. of, Mixed Xylene by the claimant as detailed below:

Sr. No	B/E No. /Date	Des. Of goods imp	Qty. Imp (MT.)	4% SAD paid	Total Duty Paid	TR-Challan No./ Date
1	9442311/ 25.04.17	Mixed Xylene	21.000	49160.50	230917.00	2018137912/ 26.04.17

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 evidencing total VAT/CST payment for the month of April 2017 to June 2017, as shown in below table:

Sr. No	Vat Paid in cash	VAT Paid through adj. of ITC	Total Paid VAT (Rs.)	CST Paid in cash	CST Paid through adj. of ITC	Total Paid CST (Rs.)	Period
1	195252.00	97241.00	292493.00	51608.00	49255.00	100863.00	Apr.,17 to June.,17

VI) Undertaking dated 14.04.2018 of the claimant that the burden of 4% SAD has not been passed on by them to buyer/any other person.

- VII) Declaration regarding the appointment of Chartered Accountant **M/s S A R B Associates., Delhi** for the financial year 2017-2018 & 2018-2019.
- 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 April 2018.
- X) C.A. Certificate dated 16.04.2018 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 20.870 MT. out of total imported quantity of 21.000 MT. to the detailed below.

B/E No.9442311/25.04.2017 (Qty.21.000 MT. of Mixed Xylene)

Sr. No.	Sale Invoice No. & date	Sold Qty (in MT.)	Vat (Rs)	Sur. Vat (Rs.)	CST (Rs)
1	RC/EX/003/17- 18/02.05.17	18.000	58500.00	2925.00	0.00
2	RC/EX/011/17- 18/20.06.17	2.870	0.00	0.00	3444.00
Total Sales Qty.		20.870			
Short Sales Qty.		0.130			
Import Qty.		21.000	58500.00	2925.00	3444.00

Findings:

(5) I have carefully gone through the case records submitted by the claimant and find that the claimant has imported 21.000 MT Mixed Xylene and paid duties of customs amounting to Rs.2,30,917/- inclusive of 4% SAD amounting to Rs. 49,160.50 under B/Es as detailed in para 2 (II).

(6) The sale invoice 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 20.870 MT., out of total imported quantity of 21.000 MT and thereby they have short sold 0.130 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	9442311/25.04.17	21.000	20.870	0.130	49160.50	304.50	48856.00
Total		21.000	20.870	0.130	49160.50	304.50	48856.00

I find that the claimant has sold quantity of imported goods i.e.20.870 MT. out of total imported quantity 21.000 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 quantity sold only, which comes to **Rs.48,856 /-** 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 in future also.

(8) 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.

(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. S A R B & Associates., Delhi vide their certificate dated 16.04.2018 has certified that M/s. Raj Chemicals., has made the VAT/CST payment which correlates 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 correlation to the Chartered Accountant certificate for the said claim. Hence, I am satisfied that there is no unjust enrichment in the present case.

(10) 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”.

(11) Further, this office has received a letter through Tax Recovery Cell (TRC) vide file no. S/20-02/NOC/Ref/Rec/2018-19 dated 27.04.2018 & F. No. S/20-02/TAR/Ref/2020-21 dated 30.06.2020 regarding there is no government dues are pending against M/s. Raj Chemicals , Lakhmi Colony, Near Kundali Police Station, Kundali-131028 (Haryana).

(12) Also, this office has verified the claimant payment particulars / challans through online officially console/ node system and same as found in order.

Sr. No	B/E No. & Date	TR-6 No. & Date	Total 4% SAD Paid
1	9442311/25.04.17	2018137912/26.04.17	49160.50

(13) 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 the claimant is eligible for the refund of **Rs.48,856/-**.

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

ORDER

I, Sanction refund of **Rs.48,856 /-** (Rupees Forty Eight Thousand Eight Hundred Fifty Six Only) filed by M/s. Raj Chemicals , Lakhmi Colony, Near Kundali Police Station, Kundali-131028, in terms of notification no. 102/2007-cus-dated 14.09.2007 as amended Customs Tariff Act, 1975.

[Signature]
01/07/2020
(Dr. Raju Pawar)

Assistant Commissioner (Refund)
Customs House, Kandla

By Reg. Post

F. No. S/6-13/Ref/2018-19

Date 01.07.2020

To,
M/s. Raj Chemicals ,
Lakhmi Colony,
Near Kundali Police Station,
Kundali-131028 (Haryana).



Copy to:

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