



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/6-728/Ref/2010

आदेश की दिनांक / Date of Order: 02/06/2020

जारी करने की दिनांक/ Date of Issue: 02/06/2020

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

सहायक आयुक्त/Assistant Commissioner,

सीमा शुल्क सदन, कंडला/ Customs House, Kandla.

Edt (EDS)

86
4-6-2020

आदेश में मूल सं/ ORDER-IN- ORIGINAL NO: KDL/AC/RRP / 12 /Ref/20-21

1. जिसके लिये यह प्रतिलिपि जारी की जाती है उस व्यक्ति के उपयोग के लिए यह नि: 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 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 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 04.10.2010 for Rs. 1,14,005/- (Rupees One Lakh Fourteen Thousand Five 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 Gujarat, India (hereinafter referred to as "the claimant") have filed a refund claim of Rs. 1,14,005/- (Rupees One Lakh Fourteen Thousand Five Only) vide letter dated 30.09.2010 received on 04.10.2010. 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. The claimant have been issued deficiency memo 31.01.2011 & 12.02.2020 and in the response of same, the claimant have submitted their reply along with all required documents vide their letter dated 15.05.2020 (received in this office on 18.05.2020). Accordingly the claim have been taken for processing. The refund claim is filed under Section 27 of the Customs Act,1962.

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

(I) 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. 150.660 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	310827/ 05.10.09	20206676/ 07.10.2009	66.790	52070.00	173630.00
2	312384/ 13.10.09	20207780/ 14.10.2009	26.870	22191.50	49364.00
3	312383/ 13.10.09	20207777/ 14.10.2009	12.660	10451.60	23249.00
4	314684/ 30.10.09	20209423/ 30.10.2009	44.340	29292.30	65159.00
Total			150.660	114005.40	311402.00

II) 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.

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

IV) Copies of VAT /CST challan evidencing VAT/CST payment, as shown in below mentioned table –

Sr No	Vat paid in cash	CST paid in cash	Period
1	792940.00	105902.00	Oct-2009
2	994664.00	61647.00	Nov-2009
3	983303.00	35409.00	Dec-2009
4	1398605.00	45833.00	Jan-2009

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

VI) Declaration regarding the appointment of Chartered Accountant M/s.H.PATEL & ASSOCIATES, for the financial year 2009-2010 & 2010-2011.

VII) 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.

VIII) Declaration regarding filing of single claim in a month of October-2009.

IX) 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. 150.660 CBM of Teak Wood Square Logs & Teak Rough Square Logs, to the as detailed below.

(1) B/E No.310827/05.10.2009, Import Qty.66.790 CBM .

Sr No	Sale Invoice No. & date		Sold Qty (in CBM)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	TI-159	08.10.09	21.103	58426	11685	0
2	RI-37	10.10.09	20.880	0	0	11597
3	RI-38	12.10.09	22.090	0	0	14057
Total Sales Qty			64.073			
Short Sales Qty			2.717			
Import Qty			66.790	58426	11685	25654

(2) B/E No.312384/13.10.2009, Import Qty.26.870 CBM .

Sr No	Sale Invoice No. & date		Sold Qty (in CBM)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	TI-196	01.01.10	12.776	38191	7638	0
2	TI-209	18.01.10	13.773	32813	6563	0
Total Sales Qty			26.549			
Short Sales Qty			0.321			
Import Qty			26.870	71004	14201	0

(3) B/E No.312383/13.10.2009, Import Qty.12.660 CBM .

Sr No	Sale Invoice No. & date		Sold Qty (in CBM)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	TI-164	31.10.09	12.660	35251	7050	0
Total Sales Qty			12.660			
Short Sales Qty			0.00			
Import Qty			12.660	35251	7050	0

(4) B/E No.314684/30.10.2009, Import Qty.44.340 CBM .

Sr No	Sale Invoice No. & date		Sold Qty (in CBM)	Vat (Rs)	Add. Tax (Rs.)	CST (Rs.)
1	TI-167	04.11.09	44.338	58273	11655	0
Total Sales Qty			44.338			
Short Sales Qty			0.002			
Import Qty			44.340	58273	11655	0

(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.150.660 CBM of Teak Wood Square Logs & Teak Rough Square Logs and paid duties of customs amounting to Rs. 311402 /-inclusive of 4% SAD amounting to Rs.114005.40/- 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 30.09.2010, 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 30.09.2010 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) The sale invoice 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 147.620 CBM out of total imported quantity of 150.660 CBM and hereby they have short sold 3.040 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	310827/ 05.10.09	66.790	64.073	2.717	52070.00	2118.19	49951.81
2	312384/ 13.10.09	26.870	26.549	0.321	22191.50	265.11	21926.39
3	312383/ 13.10.09	12.660	12.660	0.00	10451.60	0.00	10451
4	314684/ 30.10.09	44.340	44.338	0.002	29292.30	1.32	29290.98
Total		150.660	147.620	3.040	114005.40	2384.62	111620.20

I find that the claimant has sold quantity of imported goods i.e. 147.620 CMT out of total imported quantity 150.660 CMT, 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. 1,11,620/-** 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. 3.040 CBM in future also.

(11) The claimant have been issued deficiency memo 31.01.2011 & 12.02.2020 and in the response of same , the claimant have submitted their reply along with all required documents vide their letter dated 15.05.2020 (received in this office on 18.05.2020) 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. The Chartered Accountant, M/s. H.PATEL & ASSOCIATES, AHMEDABAD vide their certificate dated 30.09.2010.has certified that M/s R.B.PATEL 14, S.P. Timber Market , Zone-3 , Latibazar , Gitamandir , Ahmedabad Gujarat, India, 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.

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".

(14) Further, this office has received a letter through Tax Recovery Cell (TRC) vide file no. S/20-02/TAR/Ref/20-21 dated 11.05.2020 regarding there is no government dues are pending against M/s. R. B. Patel, Ahmedabad.

(15) 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	310827/05.10.09	20206676/ 07.10.2009	52070.00
2	312384/13.10.09	20207780/ 14.10.2009	22191.50
3	312383/13.10.09	20207777/ 14.10.2009	10451.60
4	314684/30.10.09	20209423/ 30.10.2009	29292.30
Total			114005.40

(16) 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. 1,11,620/- Only.

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

ORDER

I, Sanction refund of Rs.1,11,620 /- (Rupees One Lakh Eleven Thousand Six Hundred Twenty Only) filed by M/s. R.B.PATEL 14, S.P. Timber Market , Zone-3 , Latibazar , Gitamandir , Ahmedabad Gujarat, India, in terms of notification no. 102/2007-cus-dated 14.09.2007 as amended.

Handwritten signature
02/06/2020

(Dr. Raju Pawar)
Assistant Commissioner (Refund)
Customs House, Kandla

By Reg. Post

F.No. S/6-728/Ref/2010

To,
M/s. R.B.PATEL
14, S.P. Timber Market , Zone-3 ,
Latibazar , Gitamandir ,
Ahmedabad Gujarat, India



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.