



OFFICE OF THE COMMISSIONER OF CUSTOMS: CUSTOM
HOUSE: KANDLA.
NEW CUSTOMS BLDG, NR. BALAJI TEMPLE
KANDLA, KUTCH, GUJARAT
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Website: Kandlacustoms.org

F. No. S/6-31/ Ref/2012

Date of Order: 10.06.2020

Date of Issue : 10.06.2020

DIN-20200671ML00008Y2058

Passed by: DR. RAJU PAWAR
ASSISTANT COMMISSIONER (REFUND)
CUSTOM HOUSE, KANDLA.

SpdA (EDA)
208
12.6.2020

ORDER-IN-ORIGINAL NO. KDL/AC/RRP/ 14 /Ref/2020-2021

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, Mridual 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), Ahmedabad, 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/- (Rupee 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. 5.00 (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. Any person desirous of appealing against this 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 of Rs.4,66,812/- (Rupees Four Lakhs Ninety Four Thousands Six Hundred Fifty Eight Only) filed by M/s Shree Ram Timber Mart, Survey no.241/3, National Highway, Mithi Rohar, Gandhidham - 370240.

Brief facts of the case:

(1) M/s Shree Ram Timber Mart, Survey no.241/3, National Highway, Mithi Rohar, Gandhidham - 370240 (hereinafter referred to as "the claimant") have filed a refund claim of Rs. 4,66,812/- (Rupees Four Lakhs Sixty Six Thousand Eight Hundred Twelve Only) vide letter dated 03.01.2012 received on 05.01.2012. 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 read with CBEC Circular No.6/2008-Customs dated 28.04.2008 and 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.

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

I) Refund application in prescribed proforma.

II) Triplicate copy in original of T.R.6 Challan evidencing the payment of all Custom duties and Duplicate copy (in original) of B/Es showing the import of 561.393 CBM of Timber Logs by the claimant as detailed below:

Sr No	B/E No./Date	TR-6 no./Date	Total Imp. Qty (CBM)	Total 4% SAD Paid	Total Duty Paid
1	2464487/21.12.10	2000349738/29.12.10	56.908	42131.30	140488.00
2	2519823/03.01.11	2000391979/08.01.11	58.905	50397.90	168054.00
3	2567801/11.01.11	2000425821/17.01.11	42.002	38647.30	85969.00
4	2593968/17.01.11	2000445735/21.01.11	39.935	34263.50	114253.00
5	2652415/27.01.11	2000490592/31.01.11	19.479	13206.60	29377.00
6	2689086/01.02.11	2000516991/03.02.11	69.848	64762.50	144061.00
7	2786030/17.02.11	2000594276/21.02.11	19.696	12098.00	40344.00
8	2875240/03.03.11	2000671131/07.03.11	60.678	44378.10	147981.00
9	2875708/03.03.11	2000662639/07.03.11	11.425	10535.50	23436.00
10	2878897/03.03.11	2000673433/08.03.11	47.319	28908.80	96398.00
11	2888520/04.07.11	2000670803/10.03.11	73.771	68027.80	151324.00
12	2996486/18.03.11	2000755050/25.03.11	61.427	59455.10	198256.00
Total			561.393	466812.40	1339941.00

III) Copies of Sale invoice (in original) as evidence of sale of the imported goods to the buyers with an endorsement that "No credit of the ADD 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) Certified true copies of VAT /CST challan evidencing total VAT /CST payment for the month of January 2011 to March 2011, 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	190139.00	0.00	190139.00	42442.00	0.00	42442.00	Jan.,2011
2	117132.00	0.00	117132.00	37277.00	0.00	37277.00	Feb.,2011
3	248393.00	52033.00	300426.00	100615.00	0.00	100615.0	Mar.,2011

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. Natubhai D. Patel, Ahmedabad for the financial year 2010-11 & 2011-12.

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.

(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 entire imported Qty.i.e.562.393 CBM to the buyers as detailed below.

(1) BE No.2464487/21.12.2010, Imp. Qty.56.908 CBM.

Sr no	Sale Invoice No. & date	Name of buyer	Qty (in CBM)	Vat (Rs)	Addl. Vat (Rs.)	CST (Rs.)
1	120/05.02.11	Rina Agro & Timber Products.	15.161	0.00	0.00	7145.00
2	091/07.02.11	Latiwala Traders	14.079	36730.00	7346.00	0.00
3	092/07.02.11	Latiwala Traders	7.796	20390.00	4078.00	0.00
4	121/07.02.11	Duni Chand Nunia Mal	17.727	0.00	0.00	8839.00
5	124.11.02.11	Mahavir Timber Mart	2.145	0.00	0.00	972.00
Total Sales Qty.			56.908	57120.00	11424.00	16956.00

(2) BE No.2519823/03.01.2011, Imp. Qty.58.905 CBM

Sr no	Sale Invoice No. & date	Name of buyer	Qty (in CBM)	Vat (Rs)	Addl. Vat (Rs.)	CST (Rs.)
1	115/08.01.11	Shree Ambika Timber	21.383	0.00	0.00	10478.00
2	083/10.01.11	Umiya Ply & Timber	18.158	33875.00	6775.00	0.00
3	116/10.01.11	Pawan Timber & Plywood	19.364	0.00	0.00	8547.00
Total Sales Qty.			58.905	33875.00	6775.00	19025.00

(3) BE No.2567801/11.01.2011, Imp. Qty.42.002CBM

Sr no	Sale Invoice No. & date	Name of buyer	Qty (in CBM)	Vat (Rs)	Addl. Vat (Rs.)	CST (Rs.)
1	84/21.01.11	Sheena Timbers	3.536	10535.00	2107.00	0.00
2	85/22.01.11	Shree Vishnu Saw Mill	16.637	47243.00	9449.00	0.00
3	86/27.01.11	Sheena Timbers	5.301	15794.00	3159.00	0.00
4	87/29.01.11	Sadguru Krupa Timber Trading Co.	5.877	17642.00	3528.00	0.00
5	88/31.01.11	Sheena Timbers	5.306	15809.00	3162.00	0.00
6	89/31.01.11	Shree Laxminarayan Saw Mill	5.345	17551.00	3510.00	0.00
Total Sales Qty.			42.002	124574.00	24915.00	0.00

(4) BE No.2593968/17.01.2011, Imp. Qty.39.935CBM

Sr no	Sale Invoice No. & date	Name of buyer	Qty (in CBM)	Vat (Rs)	Addl. Vat (Rs.)	CST (Rs.)
1	117/27.01.11	Surinder Singh Chhabra	20.036	0.00	0.00	8932.00
2	118/27.01.11	Surinder Singh Chhabra	19.899	0.00	0.00	8915.00
Total Sales Qty.			39.935	0.00	0.00	17847.00

(5) BE No.2652415/27.01.2011, Imp. Qty.19.479CBM

Sr no	Sale Invoice No. & date	Name of buyer	Qty (in CBM)	Vat (Rs)	Addl. Vat (Rs.)	CST (Rs.)
1	119/31.01.11	Duni Chan Nunia Mal	14.337	0.00	0.00	5570.00
2	090/04.02.11	Sheena Timbers	5.142	11570.00	2314.00	0.00
Total Sales Qty.			19.479	11570.00	2314.00	5570.00

(6) BE No.2689086/01.02.2011, Imp. Qty.69.848CBM

Sr no	Sale Invoice No. & date	Name of buyer	Qty (in CBM)	Vat (Rs)	Addl. Vat (Rs.)	CST (Rs.)
1	122/09.02.11	Duni Chan Nunia Mal	18.286	0.00	0.00	8912.00
2	123/09.02.11	Duni Chan Nunia Mal	17.115	0.00	0.00	8342.00
3	135/26.03.11	Duni Chan Nunia Mal	17.224	0.00	0.00	8366.00
4	136/29.03.11	Bindoo Doors	17.223	0.00	0.00	9017.00
Total Sales Qty.			69.848	0.00	0.00	34637.00

(7) BE No.2786030/17.02.2011, Imp. Qty.19.696CBM

Sr no	Sale Invoice No. & date	Name of buyer	Qty (in CBM)	Vat (Rs)	Addl. Vat (Rs.)	CST (Rs.)
1	093/21.02.11	Sheena Timbers	4.572	10858.00	2172.00	0.00
2	125/22.02.11	Pawan Timber & Plywood	6.624	0.00	0.00	3067.00
3	094/24.02.11	Sheena Timbers	8.500	18062.00	3612.00	0.00
Total Sales Qty.			19.696	28920.00	5784.00	3067.00

(8) BE No.2875240/03.03.2011, Imp. Qty.60.678CBM

Sr no	Sale Invoice No. & date	Name of buyer	Qty (in CBM)	Vat (Rs)	Addl. Vat (Rs.)	CST (Rs.)
1	126/09.03.11	Shree Karni Wooden Industries	20.506	0.00	0.00	9307.00
2	096/09.03.11	Shri Jalaram Wood	20.100	57662.00	11532.00	0.00
3	130/12.03.11	Shree Ambika Timber	14.100	0.00	0.00	6063.00
4	101/23.03.11	Sheena Timbers	5.972	10824.00	2165.00	0.00
Total Sales Qty.			60.678	68486.00	13697.00	15370.00

(9) BE No.2875708/03.03.2011, Imp. Qty.11.425CBM

Sr no	Sale Invoice No. & date	Name of buyer	Qty (in CBM)	Vat (Rs)	Addl. Vat (Rs.)	CST (Rs.)
1	095/05.03.11	Shree Laxminarayan Saw Mill	11.425	37512.00	7502.00	0.00
Total Sales Qty.			11.425	37512.00	7502.00	0.00

(10) BE No.2878897/03.03.2011, Imp. Qty.47.319CBM

Sr No	Sale Invoice No. & date	Name of buyer	Qty (in CBM)	Vat (Rs)	Addl. Vat (Rs.)	CST (Rs.)
1	097/12.03.11	Shankar Vijay Saw Mill	15.010	28707.00	5741.00	0.00
2	099/18.03.11	Chhotalal Vithaldas	17.030	37240.00	7448.00	0.00
3	100/21.03.11	Chhotalal Vithaldas	15.279	33415.00	6683.00	0.00
Total Sales Qty.			47.319	99362.00	19872.00	0.00

(11) BE No.2888520/04.03.2011, Imp. Qty.73.771CBM

Sr No	Sale Invoice No. & date	Name of buyer	Qty (in CBM)	Vat (Rs)	Addl. Vat (Rs.)	CST (Rs.)
1	127/11.03.11	Beliram Gajanand	19.152	0.00	0.00	9469.00
2	128/11.03.11	Beliram Gajanand	18.324	0.00	0.00	9059.00
3	129/11.03.11	Beliram Gajanand	17.982	0.00	0.00	9033.00
4	137/30.03.11	Mahavir Timber Mart	18.313	0.00	0.00	8782.00
Total Sales Qty.			73.771	0.00	0.00	36343.00

(12) BE No.2996486/18.03.2011, Imp. Qty.61.427CBM

Sr No	Sale Invoice No. & date	Name of buyer	Qty (in CBM)	Vat (Rs)	Addl. Vat (Rs.)	CST (Rs.)
1	131/25.03.11	Mahashakti Udhyog	13.841	0.00	0.00	7030.00
2	132/25.03.11	Mahashakti Udhyog	6.789	0.00	0.00	3409.00
3	133/26.03.11	Shree Ambika Timber	20.605	0.00	0.00	10638.00
4	134/26.03.11	Shree Ram Saw Mill	20.192	0.00	0.00	10442.00
Total Sales Qty.			61.427	0.00	0.00	31519.00

(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 561.400 CBM of Teak Timber and paid duties of Customs amounting to Rs. 13,39,941.00 inclusive of 4% SAD amounting to Rs. 4,66,812.40 under B/Es as shown above.

(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 05.01.2012, which is within stipulated period of one year from the date of duty payment of Bill of entry except Sr. No. 1 B/E No. 2464487/21.12.2010 and 4% SAD paid an amount of Rs. 42131.30/- is time barred. In this connection, the claimant has given declaration dated 04.06.2020 and stated that the Bill of Entry No. 2464487 dated 21.12.2010 and payment paid through TR-6 No. 2000349738 dated 29.12.2010 an amount of Rs. 42131.30/- is a time barred and also given the declaration for deduct the above said amount i.e. Rs. 42131.30/- and no objection and not require / waiver of Show Cause Notice. I find that the remaining claim i.e. an amount of Rs. 424681/- 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 17.12.2011 of M/s Natubhai D. Patel, 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. As per 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.

(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". I further find that the claimant has paid the VAT/CST by challan deposit for the month of January 2011 to March 2011. Further, the Para V of the circular no. 16/2008 dated 13.10.2008 clarified that the discharge of ST/VAT liability by importer, through cash or other authorized form of payment to the concerned ST/VAT authority or input tax credit adjustment, could be accepted by

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customs field formation for the purpose of fulfillment of the condition in Para 2 (d) considering sanction of refund of 4% SAD.

(10) I find that the claimant has sold the entire imported qty. i.e. Qty.561.393CBM, therefore is eligible for full refund of Rs.4,66,812/-. But, the claimant has given declaration dated 04.06.2020 and stated that the Bill of Entry No. 2464487 dated 21.12.2010 and payment paid through TR-6 No. 2000349738 dated 29.12.2010 an amount of Rs. 42131.30/- is a time barred and also given the declaration for deduct the above said amount i.e. Rs. 42131.30/- and no objection and not require / waiver of Show Cause Notice. Hence, the claimant has eligible an amount of Rs. 4,24,681/-.

(11) It was noticed during the verification of date of payment of duty, that duty in respect of B/E No. 2464487/21.12.2010 has been paid on 29.12.2010 and refund claim has been submitted on 05.01.2012, therefore refund in respect of same can not be sanctioned, as it is time barred.

In view of above the claim is further reduced by Rs.42,131/- being 4% SAD refundable in respect of B/E No. 2464487/21.12.2010 and thus net eligible refund comes to Rs. 4,24,681/- (Rs.4,66,812.00 – Rs. 42,131.00).

(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 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) Notarized copies of VAT challan & Returns.

(13) I find that the refund claim is filed within the time limit and a single claim has been filed against a particular Bill of Entry. The Chartered Accountant M/s Natubhai D. Patel, vide certificate dated 17.12.2011 has certified that M/s Shree Ram Timber Mart has made the VAT payment which was co-related with the sale Invoices. It was 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. Hence I am satisfied that there is no unjust enrichment in the present case. I also find that the actual VAT/CST payment was made for the month of January 2011 to March 2011.

(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/20-02/Tar/Refund/2020-21 dated 05.06.2020 regarding there is no government dues are pending against M/s Shree Ram Timber Mart, Survey no.241/3, National Highway, Mithi Rohar, Gandhidham - 370240.

(16) 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	2464487/21.12.10	2000349738/29.12.10	42131.30
2	2519823/03.01.11	2000391979/08.01.11	50397.90
3	2567801/11.01.11	2000425821/17.01.11	38647.30
4	2593968/17.01.11	2000445735/21.01.11	34263.50
5	2652415/27.01.11	2000490592/31.01.11	13206.60
6	2689086/01.02.11	2000516991/03.02.11	64762.50
7	2786030/17.02.11	2000594276/21.02.11	12098.00
8	2875240/03.03.11	2000671131/07.03.11	44378.10
9	2875708/03.03.11	2000662639/07.03.11	10535.50
10	2878897/03.03.11	2000673433/08.03.11	28908.80
11	2888520/04.07.11	2000670803/10.03.11	68027.80
12	2996486/18.03.11	2000755050/25.03.11	59455.10
Total			466812.40

(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 I, find that the claimant is eligible for the refund of Rs. 4,24,681/-.

(18) In view of the above discussion, I Pass the following Order.

Order

I sanction refund of Rs. 4,24,681/- (Rupees Four Lakhs Twenty Four Thousands Six Hundred Eighty One Only) filed by M/s Shree Ram Timber Mart, Survey no.241/3, National Highway, Mithi Rohar, Gandhidham - 370240, in terms of notification no. 102/2007-cus-dated 14.09.2007 as amended.

Raju Pawar
10/06/2020
(Dr. Raju Pawar)
Deputy Commissioner (Refund)
Custom House, Kandla.

By Regd. Post
F. No. S/6-33/Ref/2012

Dated: .06.2020

To,
M/s Shree Ram Timber Mart,
Survey no.241/3, National Highway,
Mithi Rohar, Gandhidham - 370240.

- 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).

