



सीमा शुल्क आयुक्त का कार्यालय, सीमा शुल्क सदन, कांडला
नया सीमा शुल्क भवन, बालाजी मंदिर के नजदीक, कांडला, गुजरात
OFFICE OF THE COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, KANDLA.
New Customs Building, Near Balaji Temple
Kandla, GUJARAT

फा.सं./ F. No. S/10-BRC/SCN-24/AC/19-20

आदेश की दिनांक/ Date of Order: 01.07.2020

पारित कर्ता/ Passed by

HEMESH CHHABRA
ASSISTANT COMMISSIONER (BRC)
CUSTOM HOUSE, KANDLA.

30/7/2020
30/7/2020

आदेशमूलसं. -KDL/AC/HC/15/BRC/2020-21

ORDER-IN-ORIGINAL NO. -KDL/AC/HC/15/BRC/2020-21

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 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 noncompliance of the provisions of Section 128 of the Customs Act, 1962.

BRIEF FACTS OF THE CASE:

M/s. AVR Valves Pvt. Ltd., (IEC No. 2490000128), C-1/33, C-1/33, AJI Industrial Estate, Rajkot, Gujarat (hereinafter referred to as the exporter) in the export of Engine Spares: Inlet Exhaust Valves, Engine Valves, from Kandla. The exporter are claiming drawback on the goods exported by them.

2. The exporter had exported Engine Spares: Inlet Exhaust Valves, Engine Valves from Kandla vide DBK Shipping Bills mentioned in the table below and had claimed drawback amount as shown against the respective shipping bill. The drawback amount of Rs. 68,104/- (Rupees Sixty Eight thousand One hundred four only) was sanctioned and paid to them against the following S/Bills.

Sr. No.	S. B No	S.B. Date	Drawback Amt. Paid Rs.	Scroll No. & Date	Invoice Value(Rs.)
1	7650393	28-07-2017	68,104	21413/2017 dated 05-09-2017	34,55,753/-
	Total		68,104		34,55,753/-

3. As per the records available, the exporter had failed to produce the evidence in respect of realization of export proceeds within 180 days from the date of export against these Shipping Bills.

4. As per the provisions of Rule 16 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Now Rule- 17 of the Customs, Central Excise and Service Tax Drawback Rules, 2017), Where an amount of drawback and interest, if any has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub section (1) of Section 142 of the Customs Act, 1962 (52 of 1962).

5. As per the provisions of Rule 16A(1) of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Now Rule- 18(1) of the Customs, Central Excise and Service Tax Drawback Rules, 2017), where an amount of drawback has been paid to an Exporter or a person authorized by him, but the sale proceeds in respect of such export goods have not been realized by or on behalf of the Exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the drawback shall be recovered.

6. As per Rule 16A(2) of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Now Rule- 18(2) of the Customs, Central Excise and Service Tax Drawback Rules, 2017) If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange

Management Act, 1995, or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be shall cause notice to be issued to the exporter for production of evidence of realisation of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within thirty days of the receipt of the said order.

7. As per Rule 16A(3) of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Now Rule-18(3) of the Customs, Central Excise and Service Tax Drawback Rules, 2017) where the exporter fails to repay the amount under sub-rule (2) within said period of thirty days referred to in sub-rule(2), it shall be recovered in the manner laid down in Rule 16 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Now Rule- 17 of the Customs, Central Excise and Service Tax Drawback Rules, 2017).

8. Since the Exporter had failed to produce the evidence in respect of realization of export proceeds against the said S/Bills within 180 days from the respective date(s) of export, a Show Cause Notice was issued to them vide F. No. S/10-BRC/SCN-24/AC/2019-20 dated 20.04.2020 to show cause as to why the drawback amount of Rs. 68,104/- (Rupees Sixty Eight thousand One hundred four only) sanctioned and paid to them should not be recovered from them along with applicable interest as per the provisions of the Rule 16 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Now Rule- 17 of the Customs, Central Excise and Service Tax Drawback Rules, 2017) and Rule 16A of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Now Rule- 18 of the Customs, Central Excise and Service Tax Drawback Rules, 2017) read with Section 75 and 75 A of the Customs Act, 1962 and why penal action should not be initiated under section 117 of Customs Act, 1962.

Defence Reply-

9. In response to the Show Cause Notice bearing F. No. S/10-BRC/SCN-24/AC/2019-20 dated 20.04.2020, the exporter vide their letter dated 18.06.2020 submitted a reply alongwith e-BRCs of the shipping Bill as mentioned in the said Show Cause Notice.

Discussion and Finding-

10. I have carefully gone through the records of the case and reply letter dated 18.06.2020 submitted by the exporter along with documents. On

verification of the E-Bank Realization Certificate submitted by the exporter it is found that they have realized the export proceeds vide following e-BRC:-

Sr. No.	Shipping Bill No. & date	e-BRC No.	Value (\$)	Date of Realisation
1	7650393 dtd 28.07.2017	CORP0000191200026758 dtd 13.06.20	10000.00	18.04.2017
2	7650393 dtd 28.07.2017	CORP0000191200026981 dtd 15.06.20	43485.00	17.07.2017

Thus, I find that the Exporter has realized the export proceeds in full within the stipulated time as per Regulation 9 of FEMA Regulation 2015. Hence, the action stipulated in Rule 16 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Now Rule- 17 of the Customs, Central Excise and Service Tax Drawback Rules, 2017) and Rule 16A of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 (Now Rule- 18 of the Customs, Central Excise and Service Tax Drawback Rules, 2017) is not warranted.

In view of the above discussion, I pass order as under:

ORDER

- (i) I drop the demand of Rs. 68,104/- (Rupees Sixty Eight thousand One hundred four only) raised against M/s. AVR Valves Pvt. Ltd., (IEC No. 2490000128), C-1/33, C-1/33, AJI Industrial Estate, Rajkot, Gujarat, vide Show Cause Notice bearing No. F. No. S/10-BRC/SCN-24/AC/2019-20 dated 20.04.2020 as the exports sale proceeds have already been realized.

(Hemesh Chhabra),
Assistant Commissioner (DBK),
Customs House, Kandla.

F. No. S/10-BRC/SCN-24/AC/19-20

By REGD. POST A.D./SPEED POST

To,

M/s. AVR Valves Pvt. Ltd., (IEC No. 2490000128),
C-1/33, AJI Industrial Estate,
Rajkot, Gujarat.



Copy to:-

1. The Deputy/Assistant Commissioner (RRA), Custom House, Kandla.
2. The Deputy/Assistant Commissioner (Adjudication), Customs House Kandla,
3. The Deputy/Assistant Commissioner (Recovery Cell), Customs House Kandla
4. The Deputy Commissioner (System), Customs House Kandla for upload on Website please.
5. Guard File.