

		<p align="center">OFFICE OF THE COMMISSIONER</p> <p align="center">CUSTOM HOUSE, KANDLA</p> <p align="center">NEAR BALAJI TEMPLE, NEW KANDLA</p> <p align="center">Phone : 02836-271468/469 Fax: 02836-271467</p>
DIN-20251171ML000000A80B		
A	File No.	GEN/ADJ/COMM/118/2024-ADJN-O/o-Commr-Cus-Kandla
B	Order-in-Original No.	KDL-CUSTM-OOO-COM-27-2025-26
C	Passed by	Nitin Saini, Commissioner of Customs, Custom House, Kandla.
D	Date of Order	27.11.2025
E	Date of Issue	27.11.2025
F	SCN No. & Date	CUS/RFD/RD/34/2021-REF-O/o Commr-Cus-Kandla dated 25.01.2024
G	Noticee / Party / Importer / Exporter	M/s. Swiss Singapore India Private Limited

1. This Order-in-Original is granted to the concerned free of charge.
2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

***Customs Excise & ServiceTax AppellateTribunal, West Zonal Bench,
2ndFloor, Bahumali Bhavan Asarwa,
Nr.Girdhar Nagar Bridge,GirdharNagar,Ahmedabad-380004***
3. Appeal shall be filed within three months from the date of communication of this order.
4. Appeal should be accompanied by a fee of Rs.1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/-in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh(Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.

10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs(Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. The appeal should bear Court Fee Stamp of Rs.5/-under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the CourtFees Act, 1870.

6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.

8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in dispute, or penalty wise if penalty alone is in dispute.

BRIEF FACTS OF THE CASE:

M/s Swiss Singapore India Private Limited, Unit No. 204- 205, Rayson Arcade, First floor, Plot No. 139, Sector-8, Gandhidham, Kutch, Gujarat-370201(hereinafter referred as 'said noticee') is engaged in the import of certain materials at Kandla Port. Said claimant vide their letter dated 20.09.2021 (received in refund section on 21.09.2021), filed refund application for Rs.4,00,99,117/- in the prescribed form on the ground of payment of 1% Revenue deposit paid at the time of provisional assessment of Bills of Entry as detailed in Table-A of the SCN.

2. The said Bills of Entry were assessed provisionally for pending SVB case and test report. Accordingly, as per the provision, in the case of provisional assessment where SVB case is pending for acceptance of declared value, the import has to pay 1% revenue deposit at the time of provisional assessment of said Bills of Entry. Subsequently, the SVB case of the said Noticee was finalized by the Deputy Commissioner of Customs SVB, Import-II, Zone-I, Mumbai and accepted declared value for the purpose of assessment. Hence the said noticee had filed the refund claim of 1% revenue deposit.

3. The Adjudicating authority scrutinized said refund claim and noticed certain deficiency which was communicated to the said claimant vide letter F. No.CUS/RFD/MISC/Misc/575/2021-Ref-O/o-Commr-Cus- Kandla dated 30/09/2021 and 07.12.2021. Under the deficiency memo, the said noticee was asked to comply on the following points:-

- i. Instead of Original, Some copy to Bill of Entry Zerox filed have been submitted with the current refund claim of Rs. 4,00,99,117/-.
- ii. Instead of Original, Some copy to challan Zerox filed have been submitted with the current refund claim of Rs. 4,00,99,117/-.

4. The said noticee was further informed that in terms of Para-3 of the Circular No. 59/1995 dated 05.06.1995, if the application is found to be incomplete, the same will be returned to the applicant within ten working days of receipt pointing out the deficiency. Therefore, refund application was returned for resubmission with complete documents as per the provisions of Law.

5. In pursuance of letter F. No. CUS/RFD/MISC/575/2021-Ref-O/o Commr-Cus-Kandla dated 30/09/2021 and 07.12.2021, the said noticee submitted requisite documents and submitted that in case of manual bill of entries original copies were already submitted to the assessment group and they finalized the same vide order having DIN No.20210471ML0000111C2E.

6. Accordingly, adjudicating authority wrote letters dated 30.11.2021 & 03.12.2021 to Deputy/Assistant Commissioner Apprising Group I and II, Customs House, Kandla and asked them as to whether Bills of Entry submitted by the said claimant were finalized or otherwise. Assistant Commissioner Apprising Group-I informed that they have finalized all the Bills of Entry which were earlier assessed provisionally, as detailed in Table-B of the SCN.

7. The Adjudicating authority found that CA Nikhil Sheth & Associates had certified that they have verified the Books of Accounts and other relevant documents & records etc. Based on such verification and undertaking, they certified that the noticee had paid Rs.3,99,45,622/- on account of Customs duty Security Deposit @ 1% at Dindayal Port in the Financial Year 2013-14, 2014-15 and 2015-16.

8. Further, the said CA certified that the same has not been charged to "Expenses" in the profit and loss account of the company and therefore the same is not forming part of the cost of the goods and hence the burden of 1% EDD is not being passed on to the buyer or any other person or firm and the said amount of Rs. 3,99,45,622/- (Rupees Three Core Ninety Nine Lacs Forty Five Thousand Six Hundred and Twenty Two Only) is shown as receivable in the book of accounts of the company as at date 17.09.2021 as recoverable from Customs Authorities, Dindayal Port (Formerly known as Kandla Port),

Gujarat.

9. Further, the Adjudicating authority found that the said noticee had submitted all the document for the purpose of Section 28C and 28D of the Custom Act, 1962. In this regard, The Adjudicating authority found that the said noticee met with the requirement of this point.

10. In view of above discussion, the Adjudicating authority found that the said noticee was eligible for refund of Rs. 3,99,45,622/- since the said importer had imported materials but due to their case was pending at SVB case and Test Report at SVB Branch Mumbai, the Bills of Entry as given in the Table-A of the SCN were assessed provisionally. Subsequently, SVB case and Test Report, were finalized by the Deputy Commissioner of Customs Special Valuation Cell, Mumbai Special Valuation Branch, Ballard Estate, Mumbai accepting declared value for the purpose of assessment. Meanwhile Deputy Commissioner (Gr.I), Customs House, Kandla letter F.No. MBE/Final Assessment/Swiss Singapore/2021 Kandla dated 19.04.2021 issued Final Assessment of manual Bills of Entry in view of the SVB order finalized. Hence the said noticee had filed the refund claim of 1% EDD revenue deposit, whereby it was decided that the declared value is to be accepted as transaction value for the purpose of assessment. Hence Security Deposit paid during the course of provisional assessment is required to be returned to the said noticee.

11. The Assistant Commissioner (TRC), Customs House, Kandla vide letter F. No. GEN/TAR/Misc/400/2021 dated 28.10.2021 informed that no Government dues is pending against M/s. Swiss Singapore India Private Limited.

12. The Cash Section verified the genuineness of the EDD Challan bearing No. TR-6 for Rs.1,70,99,980/- & TR-6 for Rs.2,28,45,642/- Total Rs.3,99,45,622/- credit of payment of said amounts to the Customs account and certified on the copy of the challans vide remarks dated 27.01.2022 that, the original credit verified with the cash records and found correct.

13. Further, the adjudicating authority found that as per Section 27 (1B) (c) of Customs Act 1962, it is clear that where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof. In the instant case, B/E filed by the said claimant was assessed provisionally which was finalized on 20.04.2021, 21.04.2021, 30.03.2021, and the said noticee had filed refund claim vide their letter received in this office on 21.09.2021. Hence, the adjudicating authority found that the said noticee had filed refund claim within time limit as prescribed under Section 27 of Customs Act, 1962.

14. In view of above findings, the adjudicating authority sanctioned the refund of Rs. 3,99,45,622/- to M/s. Swiss Singapore India Private Limited under Section 27(2) of Customs Acts, 1962 vide **OIO No. KDL/AC/TKS/169/Ref/2021-22 dated 31.01.2022.**

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15. On examination of the said Order-in-Original regarding its legality and propriety, it appeared that the said Order-in-Original is not legal, correct and proper and an Appeal before the Commissioner of Customs (Appeal), Ahmedabad has been preferred against the said OIO as the following points have been noticed during the review of said Order-in- Original:

- i. It is found that total 451 Bills of Entry (mentioned in Table A) were provisionally assessed by Deputy/Assistant Commissioner Apprising Group I, Customs House, Kandla for pending SVB case and test report. Out of total 451 Bills of Entry, 353 Bills of Entry were Manual Bills of Entry. Details of which are shown in Table-C of the SCN.
- ii. Further, in para 7 of said Order-in-Original, the adjudicating authority mentioned that 98 Bills of Entry having refund claim of **Rs.1,70,99,980/-** was finalized. Details of such Bills of entry are mentioned in Table B above. Ongoing through, Table-B, it is found that said 98 Bills of Entry are EDI Bills of Entry and same were finalised in system on 20.04.2021, 21.04.2021 and 30.03.2021.
- iii. Further, in para 9 of OIO (due to clerical error, said para mentioned as 7 in OIO), the adjudicating authority found that Deputy Commissioner (Gr.I), Customs House, Kandla vide letter F.No. MBE/Final Assessment/Swiss Singapore/2021 Kandla dated 19.04.2021 has informed to the importer that all manual Bills of Entry have been finalised in view of the SVB order.
- iv. However, going through the letter F. No. MBE/Final Assessment/Swiss Singapore/2021 Kandla dated 19.04.2021 issued by Deputy Commissioner (Gr.I), Customs House, Kandla, it is found that date of final Assessment of 353 Manual Bills of Entry having refund amount of Rs.2,28,45,642/- is not mentioned. Further, Deputy Commissioner (Gr.I), Customs House, Kandla vide letter F No. CUS/RFD/MISC/79/2022-Ref-O/o Commr-Cus-Kandia dated 01.04.2022 (copy enclosed) has submitted that the record pertains to Final assessment of said manual Bills of Entry is not traceable, hence, it is not feasible to find out the exact date of assessment/re- assessment. However, it appears that the final assessment might have been carried out between the period i.e. dated 04.03.2021 (the date on which noticee requested for final assessment of Bill of Entry) to 19.04.2021 (date

on which Deputy Commissioner Group- I intimated to the noticee about final assessment of Bills of Entry).

- v. The relevant provision under Section 27 of the Customs Act, 1962 dealing with the refund of duty are as follows: -

[Section 27. Claim for refund of duty. -

[(1) Any person claiming refund of any duty or interest,-

(a) paid by him; or

(b) borne by him,

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest:

Provided that where an application for refund has been made before the date on which the Finance Bill, 2011 receives the assent of the President, such application shall be deemed to have been made under sub- section (1), as it stood before the date on which the Finance Bill, 2011 receives the assent of the President and the same shall be dealt with in accordance with the provisions of sub-section (2):

Provided further that the limitation of one year shall not apply where any duty or interest has been paid under protest.

[Provided also that where the amount of refund claimed is less than rupees one hundred, the same shall not be refunded.]

Explanation. - For the purposes of this sub-section, "the date of payment of duty or interest" in relation to a person, other than the importer, shall be construed as" the date of purchase of goods" by such person.

(1A) The application under sub-section (1) shall be accompanied by such documentary or other evidence (including the documents referred to in section 28C) as the applicant may furnish to establish that the amount of duty or interest, in relation to which such refund is claimed was collected from, or paid by him and the incidence of such duty or interest, has not been passed on by him to any other person.

(1B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely-

(a) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 25, the limitation of one year shall be computed from the date of issue of such order;

(b) where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any

court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction;

(c) where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.]

vi. *The main provision under Section 27(1) requires a refund claim to be filed within one year from the date of payment of duty. Section 27(1B) (c) states that **where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof.***

vii. As per facts and findings given by the adjudicating authority, date of Final Assessment of 353 Manual Bills of entry is neither discussed in O-in-O nor enquired from the Deputy Commissioner (Import Assessment Group-I), Custom House, Kandla who has finalised the assessment of said manual Bills of Entry. Instead of ascertain or verify the actual date of final assessment in respect of 353 Numbers of said Manual Bills of Entry, the adjudicating authority have processed the refund claim on the basis of assumption presumption that the manual bills of Entry were finally assessed between from 04.03.2021(the date on which noticee requested for final assessment of Bill of Entry) to 19.04.2021(date on which Deputy Commissioner Group-I intimated to the noticee about final assessment of Bills of Entry). Moreover, at the time of filing of the refund claim, not a single copy of any manual Bills of Entry was submitted by the claimant to the adjudicating authority nor asked by adjudicating authority to produce the same even Duplicate / Triplicate/ quadruplicate copy or Xerox copy of such Bills of Entry. Therefore, the adjudicating authority granted the refund without carried out proper verification of the documents particular in respect of eligibility of claim in light of section 27 (1B)(c) of Customs Act, 1962. According to these sub- sections, a claim for refund or an order of refund can be made only in accordance with the provisions of Section 27 which inter alia includes the period of limitation mentioned therein. As per section 27 (1B)(c)of Customs Act, 1962, it is crystal clear that the period of limitation of one year shall be computed from the date of adjustment of duty after the final assessment and there is no scope of assumption presumption in the date of final assessment. However, in the instant case the adjudicating authority has failed to ascertain the actual date of final assessment and also ignored the statutory requirement of Section 27 (1B)(c)of Customs Act, 1962.

viii. The Hon'ble Apex Court in the matter of **UNION OF INDIA Versus KIRLOSKAR PNEUMATIC COMPANY** reported as 1996 (84) E.L.T. 401 (S.C.) clearly held that a claim for refund or an order of refund can be made only in accordance with the provisions of Section 27 which inter alia includes the period of limitation. Moreover, The Hon'ble Apex Court further stated that the Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to Section 27, whether before or after amendment.

ix. In view of the above judgement, the adjudicating authority cannot ignore the statutory provisions laid down in the section 27 (1B)(c) of Customs Act, 1962 which is ignored in the present case.

x. In view of the above discussion and judicial pronouncements, the adjudicating authority has granted erroneous refund of Rs. 2,28,45,642/- in respect of 353 Manual Bills of Entry without ascertaining the date of final assessment (the date of adjustment of duty after the final assessment) which is crucial for computing the period of limitation of one year under Section 27 (1B)(c) of Customs Act, 1962. Therefore, refund sanctioned vide Order-in-Original No. KDL/AC/TKS/169/Ref/2021-22 dated 31.01.2022 by the Assistant Commissioner (Refund), Custom House, Kandla is not legal, correct and proper.

16. Further, vide Review Cum Authorisation Order No. 2/OIO/2022-23 issued from F.No. GEN/REV/OIO/1617/2020-Rev-O/o Commr-Cus-Kandla dated 28.04.2022, Commissioner, Custom House, Kandla directed the Deputy Commissioner of Custom (Refund), Custom House, Kandla to file an appeal before Commissioner of Customs (Appeals), Ahmedabad in respect of Order-in-Original No. KDL/AC/TKS/169/Ref/2021-22 dated 31.01.2022 passed by the Assistant Commissioner(Refund), Custom House, Kandla in respect of M/s Swiss Singapore India Private Limited, Unit No. 204-205, Rayson Arcade, First floor, Plot No. 139, Sector-8, Gandhidham, Kutch, Gujarat-370201.

17. Accordingly, the present protective demand show Cause Notice was issued to the Noticee to safeguard the huge amount of Government revenue refunded to the Noticee by way of above referred Refund Order. Vide the present SCN, M/s Swiss Singapore India Private Limited, Unit No. 204-205, Rayson Arcade, First floor, Plot No. 139, Sector-8, Gandhidham, Kutch, Gujarat-370201, was called upon to show cause to the Commissioner, Custom House, Kandla, as to why –

- i. the Refund Claim of Rs.2,28,45,642/- (Rupees Two Crores Twenty Eight Lakhs Forty Five Thousand Six Hundred Forty Two only) already sanctioned and paid

to you, should not be recovered from you immediately, in event of the final decision of the Hon'ble Commissioner (Appeal), Ahmedabad, in favour of department, under the provisions of Section 28(1)(a) of the Customs Act, 1962; and

- ii. Interest at the applicable rate on the amount mentioned (i) above should not be recovered under Section 28AA (1) of the Customs Act, 1962.

18. Further, as an appeal was filed by the department before the Commissioner (Appeals), Ahmedabad against the Refund Order-In-Original No. KDL/AC/TKS/168/Ref/2021-22, dated 31.01.2022, issued by the Assistant Commissioner (Refund), therefore the present SCN could not be adjudicated till the outcome of the Departmental Appeal filed in this regard. Accordingly, in view of Section 28 (9A) (a) of the Customs Act, 1962, the show cause notice was transferred into callbook on 03.03.2024 after the approval of the Competent Authority and the Noticee was informed in this regard.

19. Further, the appeal filed by this office before the Commissioner (Appeals), Ahmedabad was decided by way of issuance of Order-In-Appeal No. KDL-CUSTM-000-APP-188-23-24, dated 31.01.2024 wherein Commissioner (Appeals), Ahmedabad dismissed the appeal filed by the department which was accepted by the department. Accordingly, the Show Cause Notice, kept in call book was retrieved from the call book and is taken for adjudication.

20. Defence Reply: -

Vide the SCN bearing F. No. CUS/RFD/RD/34/2021-Ref-O/o Commr-Cus-Kandla, dated 25.01.2024, the Noticee was asked to file their defense reply within 30 days from the receipt of the Show Cause Notice, however no submission have been made from them till date.

21. Discussion and Findings: -

21.1 I have carefully gone through the Show Cause Notice in length along with the Order-in-Appeal No. KDL-CUSTM-000-APP-188-23-24, dated 31.01.2024 issued by the Commissioner (Appeals), Ahmedabad.

21.2 I find that the only basis for protective demand of erroneously sanctioned refund in the present case was that the original adjudicating authority [the Assistant Commissioner (Refund), Custom House, Kandla] which passed the Order-in-Original No.

KDL/AC/TKS/169/Ref/2021-22 dated 31.01.2022 sanctioning refund of Rs.2,28,45,642 to the noticee in respect of 353 Manual Bills of Entry did so without ascertaining the date of final assessment (the date of adjustment of duty after the final assessment) which was crucial for computing the period of limitation of one year under Section 27 (1B)(c) of Customs Act, 1962 and therefore the refund sanctioned was not legal, correct and proper. The department accordingly preferred an appeal against the Order-in-Original No. KDL/AC/TKS/169/Ref/2021-22 dated 31.01.2022 before the Commissioner (Appeals), Ahmedabad who vide Order-in-Appeal No. KDL-CUSTM-000-APP-188-23-24, dated 31.01.2024 has dismissed the aforesaid appeal and in Para 18 and 19 held as under: -

"18. The legal provision under Section 27(1) of the Customs Act, 1962 requires a refund claim to be filed within one year from the date of payment of duty. From the provision as prescribed at sub-section (1B) (c) above, it is clear that where any duty is paid provisionally under Section 18 of the Customs Act, 1962, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof. Further, it is settled legal position that the period of limitation for filing an appeal or refund application starts from the communication of the cause of action to an assessee. The respondent had written a letter dated 04.03.2021 to finalise the assessment and in response to that letter, the Deputy Commissioner (Gr.I) vide letter dated 19.04.2021 had confirmed the finalization of the bills of entry. Refund claim was filed vide their letter dtd. 20.05.2021 received in this office on 21.09.2021. Therefore, even if it is presumed that manual Bills of Entry were finalized on 04.03.2021, even then it is filed within one year from the date of passing SVB order. Even otherwise, the Hon'ble Supreme Court has extended the period of limitation since 15.03.2021 by taking cognizance of the difficult situation which the entire country was facing due to COVID pandemic. The Hon'ble Supreme Court has there after extended the period till February, 2022. It is observed that the entire period from passing the order by the SVB, the filing of the refund claim and the sanctioning of the refund claim falls within the time period suspended by the Hon'ble Apex Court for the purpose of limitation.

19. In view of above, I am of the considered view that the appellant has filed refund claim within time limit as prescribed under Section 27 of Customs Act, 1962 and is entitled for refund of Rs.2,28,45,642/- in respect of 353 manually Bills of Entry. The appeal filed by the Department is without merit and is accordingly dismissed."

21.3 The aforesaid Order-in-Appeal No. KDL-CUSTM-000-APP-188-23-24, dated 31.01.2024 has been accepted by the department and therefore matter has attained

finality qua the issue that refund claim was not time barred. As such, the basis of present protective demand does not survive and same has to be dropped.

21.4 Ordered accordingly: -

-:ORDER:-

I drop the proceedings initiated against the Noticee in respect of Show Cause Notice F.No. CUS/RFD/RD/34/2021-Ref-O/o Commr-Cus-Kandla, dated 25.01.2024.

(NITIN SAINI)
COMMISSIONER

F. No. GEN/ADJ/COMM/118/2024-Adjn-O/o Commr-Cus-Kandla

DIN- 20251171ML000000A80B

To:

M/s. Swiss Singapore India Private Limited,
Unit No. 204-205, Rayson Arcade,
First Floor, Plot No. 139, Sector-8,
Gandhidham, Kutch, Gujarat-370201

Copy to: -

- 1) The Chief Commissioner, Customs Zone, Ahmedabad for Review
- 2) The Assistant Commissioner (EDI) for uploading on the website.
- 3) The Assistant Commissioner (TRC) for necessary action.
- 4) Guard File.