



F. No. CUS/RFD/MISC/330/2023-Ref

09-05-2025

DIN- 20250571ML0000444AD3

**SHOW CAUSE NOTICE**

M/s. K.U..Patel, Block No. D-1, Mani Nagar, Nr. Rameshwar Park, Raiya Road, Rajkot-360 007 (hereinafter referred as "the claimant"), imported goods covered under Bill of Entry (in short "BOE") No 8376205 dated 22.04.2022 was filed by the claimant for clearance of 10x20 Containers (192.660 M.T) of goods declared as "Marine Distillate Fuel". On assessment of said BOE, duty of Rs.24,44,510/- was paid by the claimant vide challan No. 2038990267 dated 27.04.2022.

1.2 Acting upon intelligence, SIIB Section, Custom House Kandla, booked a case and the representative samples of the goods were drawn for testing at Custom Laboratory, Kandla & the test report issued by the CRCL, Kandla reported that the tested parameters agrees with Gas Oil as per IS 17789:2022 & not MDF as declared by the claimant i.e mis-declaration of impugned goods were observed & further sample having characteristics of Gas Oil which is a restricted item, accordingly goods were seized and stored in storage installation as permitted by the Department.

1.3 The matter was adjudicated by the adjudicating authority vide Order-in-Original No. KDL/ADC/RHM/07/2022-23 dated 07.09.2022, wherein, interalia permitted for re-export of Cargo on payment of Redemption Fine & Penalty amounting to Rs. 7 lakhs and Rs. 5 lakhs respectively which was paid by the claimant vide challan No. 1386 & 1387 both dtd. 20.10.2022 and the impugned goods under BOE No. 8376205 dtd. 22.04.2022 were re-exported vide Shipping Bill No. 6225902 dtd. 17.12.2022.

1.4 Upon Re-Export of the consignment, the claimant filed refund claim for the duty paid for Import of Goods covered under the Bill of Entry amounting to Rs. 24,44,510/- vide their letter dtd. 31.03.2023 received by Refund Section on 24.04.2023 as reflect from the inward entry stamp No. 4955392, under Section 27 of Customs Act, 1962.

1.5 The Assistant Commissioner, Custom House, Kandla vide his Order-in-Original No. KDL/AC/50/BGV/REF/2023-24 dated 21.06.2023 in his discussions and findings while deciding the eligibility of refund claim with regard to examination of unjust enrichment relied upon the following:

- (i) C.A. Certificate dated 30.03.2023 as discussed above
- (ii) Copy of GSTR-3B return for the month of April-2023 submitted by the claimant.



- (iii) Copy of Electronic credit ledger for the period 01.04.2022 to 30.04.2022.
- (iv) Revised Certificate dtd. 21.06.2023 issued by same C.A Sanjay M. Borad certifying that the claimant M/s. K.U. Patel has neither recovered /passed the customs duty nor debited to profit and loss account and the same still lying as debit balance under current assets in the books of accounts and the same being recoverable as on date.

1.6 Further he again certified that the claimant has availed the input tax credit of IGST paid of Rs. 18,83,893/- in customs duty amount of Rs. 24,44,510/- but the claimant has reversed the same through the input tax credit reversal in GSTR-3B return for the month of May-2023 and hence there is no case of unjust enrichment. Also it was certified by him that the amount of Customs duty of Rs. 24,44,510/- has not been passed on to buyer by the way of clearance of the claimant consignment and hence no unjust enrichment.

- (v) Copy of GSTR-3B for the month of May-2023 showing reversal of IGST credit of imported goods.

(vi) File being cleared from Pre-audit vide their letter subject to certain conditions vide letter F.No. S/7-04/KCH/Pre-Audit/2021-22 dated 07.06.2023 & that the said conditions/verifications /changes as request by the A.C (Audit) being conducted/incorporated in the OIO.

1.7 Sanctioned and disbursed an amount of Rs.24,44,510/- to the claimant by Cash (through Account Payee Cheque).

2. During review of the impugned Refund Order in Original, it is observed that,

1. The adjudicating authority has erred in sanctioning the amount of Rs.18,83,893/- of the IGST component of the custom duty amount for which refund is claimed in the case as the said IGST amount was not eligible for refund for input tax credit of the same was availed by the claimant and the same was not reversed by them as on the date of filing of the subject refund claim; and therefore, the said amount was not eligible for refund on the date of filing of refund claim in the case;
2. The IGST component of the customs duty refund claimed in the case was reversed by the claimant in the GST return for the month of May, 2023 filed on 14.06.2023. By the date on which the said amount of IGST was actually reversed, the refund claim for the said IGST amount was barred by limitation provided under Section 27 of the Act, as the said duty amount was paid by the claimant on 27.04.2022.
3. Further, since the claimant has availed the input tax credit of the IGST amount paid in the case as indisputably admitted by them as per the CA certificate produced along with the claim for refund and the input tax credit so availed was only reversed in the GST return for the month of May, 2023 filed on 14.06.2023, it is clearly evident that as on the date of application of the subject refund claim on 23.04.2023, the claim for refund for the IGST amount paid in the case did not pass the test of unjust enrichment; and
4. The adjudicating authority has erred in relying the provisions of clause (b) of sub-section (1B) of Section 27 of the Act in computing the limitation period applicable in the case as the said clause (b) would be applicable only in cases of any judgement, decree, order or direction of the appellate authority, Appellate Tribunal or any court. In the present case, the order under reference was that of the Additional Commissioner in the capacity of



adjudicating authority and not that of an appellate authority. Hence, the period of limitation in the case is to be calculated, in terms of the general provisions, from the date of payment of the relevant duty.

In view of the above, the impugned order of Assistant Commissioner, Custom House, Kandla is erroneous, factually incorrect and, therefore legally not sustainable to extent of sanctioning the refund of the IGST amount involved in the case.

2 . 2 During Review of the said Refund Order, competent authority issued Review cum Authorization Order No. 03/OIO/2023-24 dated 22.09.2023 directing the Assistant Commissioner of Customs (Refund), Custom House, Kandla to file an appeal before Commissioner of Customs (Appeals), Ahmedabad against the Order in Original No. KDL/AC/50/BGV/Ref/2023-24 dated 22.09.2023 in respect of M/s. K.U..Patel, Block No. D-1, Mani Nagar, Nr. Rameshwar Park, Raiya Road, Rajkot-360 007. Accordingly, Department preferred an appeal before the Hon'able Commissioner (Appeals), Customs, Ahmedabad on the ground.

3. To safeguard the Government Revenue i.e. sanction of erroneous refund of Rs.24,44,510/- vide Order-in-Original No. KDL/AC/50/BGV/Ref/2023-24 dated 21.06.2023, protective demand is to be issued as per the provisions of Section 28 of the Customs Act, 1962 as amended from time to time.

4. In the event of the final decision of the subject matter is in favor of the department, the amount of Rs.24,44,510/- which was refunded to vide Order-in-Original No. KDL/AC/50/BGV/Ref/2023-24 dated 21.06.2023, to M/s. K.U..Patel, Block No. D-1, Mani Nagar, Nr. Rameshwar Park, Raiya Road, Rajkot-360 007, will be recoverable from them as erroneous refund as discussed in the preceding paras.

Considering the limitation prescribed under the provisions for demand of erroneous refund, to safeguard the Government Revenue in future i.e. sanction of erroneous refund of Rs.24,44,510/- vide Order-in-Original No. KDL/AC/50/BGV/Ref/2023-24 dated 21.06.2023, protective demand is to be issued as per the provisions of Section 28 of the Customs Act, 1962 as amended from time to time.

#### 5.1 Provisions for demand of erroneous refund

**Section 28. [Recovery of [duties not levied or not paid or short-levied or short- paid] or erroneously refunded. -**

(1) Where any [duty has not been levied or not paid or short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts,-

(a) the proper officer shall, within [two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied <sup>5</sup>[or paid] or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

#### 5.2 28AA Interest on delayed payment of duty –



(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

6 . Therefore, M/s. K.U..Patel, Block No. D-1, Mani Nagar, Nr. Rameshwar Park, Raiya Road, Rajkot-36007 is now called upon to show cause to the Additional Commissioner (Refund), Custom House, Kandla, as to why-

(i) An amount of Rs. 24,44,510/- (Rupees Twenty Four Lakhs Forty Four thousand Five hundred and Ten only) sanctioned vide Order-in-Original No. KDL/AC/50/BGV/Ref/2023-24 dated 21.06.2023 and paid, should not be recovered immediately in the event of final decision of the subject case, in favor 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 at (i) above should not be Demanded and Recovered as per provision of Section 28AA (1) of the Customs Act, 1962 as amended from time to time.

7. The noticee is also required at the time of showing cause, to produce all the evidences upon which they intend to rely in support of their defense. They should also indicate whether they wishes to be heard in person before the case is adjudicated.

8 . If no cause shown against the action proposed to be taken or he does not appear before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte on merits.

9. The present show cause notice is issued without prejudice to any other action that may be taken under any other provision of Customs Act, 1962 and/or rules made there under and/or under the provisions of any other law for the time being force.

Signed by  
Rakesh Kumar Jain  
Date: 09-05-2025 15:39:43

RAKESH KUMAR JAIN, ADC(RKJ)-CUS-KDL,  
ADC/JC-II-O/o Commissioner-Customs-Kandla

File No: CUS/RFD/MISC/330/2023-Ref

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By Regd. Post. A.D./Speed Post/ By hand

To,  
M/s. K.U..Patel,  
Block No. D-1, Mani Nagar,  
Nr. Rameshwar Park, Raiya Road, Rajkot-36007

Copy to:

1. The Deputy/Assistant Commissioner (RRA), Custom House, Kandla.

2. Guard File.