



F. No. CUS/RFD/SAD/07/2023-Ref  
DIN: 20250571ML0000~~ODEOAE~~

03-06-2025

### SHOW CAUSE NOTICE

M/s Agarwalla Timbers Pvt. Ltd., Survey No. 169, Opp. Gayatri Petrol Pump, National Highway No. 8A, Chudva, Gandhidham – 370 201 (hereinafter referred to as "the noticee") have filed a refund claim of Rs.1,98,34,737/- vide application dated 09.05.2023 (Received on 11.05.2023). in pursuance of decision of the Hon'able High Court of Gujarat in respect of SCA No. C/SCA/15296/2013.

#### **BRIEF FACTS OF THE CASE**

Noticee imported goods and paid 4 % SAD and as per the provision of the Notification No. 102/2007-CUS had filed various refund claims which were sanctioned as under

| OIO NO.                | DATE       | Refund Claim Amount | Refund Sanctioned In Cash | Refund Sanctioned by Way Of Re-credit Scripts Reward Scheme | Denied Due to Short Sale | Unutilized Script Revised Scheme Amount |
|------------------------|------------|---------------------|---------------------------|---|--------------------------|---|
| KDL/AC/NC/857/REF/2013 | 28.06.2013 | 4294389             | 3920446                   | 233934  | 140009                   | 233934                                  |
| KDL/AC/NC/850/REF/2013 | 28.06.2013 | 4349205             | 3692848                   | 486961  | 169396                   | 486961                                  |
| KDL/AC/NC/820/REF/2013 | 26.06.2013 | 7447829             | 102930                    | 7033278   | 311621                   | 7033278                                 |
| KDL/AC/NC/848/REF/2013 | 28.06.2013 | 9298248             | 784505                    | 8123870   | 389873                   | 8123870                                 |
| KDL/AC/NC/877/REF/2013 | 29.06.2013 | 4184310             | 163021                    | 3892091   | 129198                   | 3892091                                 |
| KDL/AC/NC/851/REF/2013 | 28.06.2013 | 4654378             | 804512                    | 3677123   | 172743                   | 64603                                   |
|                        |            | 34228359            | 9468262                   | 23447257  | 1312840                  | 19834737                                |

Noticee was unable to utilize the scrips / licenses as the restriction were imposed on the utilization of re-credited SAD in DEPB scrips in terms of Public Notice No.6 (RE-2013)/2009-14 dated 18.04.2013 issued by DGFT and in pursuance of the said Public Notice, CBIC, has also issued as circular No. 18/2013-Cus Dated 29.04.2013 in consultation with the DGFT. Accordingly, the claimant preferred an appeal and filed Special Civil Application bearing No. C/15296/2013 in the High Court of Gujarat at Ahmedabad.

Hon'able High Court of Gujarat vide order Dated 12.10.2022 ordered that the petitioners are entitled to sanction refund of re-credited DEPB Scrips and / or reward scheme scripts. However, if such scrips are not available today then the respondents are directed to

refund the amount through RTGS in the account of the petitioners within a period 12 weeks from the date of receipt of this order. Further ordered that the refund amount shall carry interest at the rate of 6% as held by the apex court in case of Ranbaxy Laboratories Ltd., from the date of receipt of the application for refund till the date of payment.

After due process of verifying the prevailing provisions of the Customs Act, 1962, as amended from time to time relating to prescribed time limit, unjust enrichment and pre-audit consultation, though department preferred an appeal against the order of the Hon'able High Court of Gujarat at Ahmedabad but as per the provisions of Para 2 (b) of Circular No. 398/31/98-CX Dated 02.06.1998 issued from F. No. 201/04/98-CX, the claim is settled vide Refund OIO No. KDL/AC/42/BGV/2023-24 Dated 07.06.2023 by sanctioning Refund of Rs.19834737/- alongwith Interest of Rs.1,34,81,688/- total amounting to Rs. 3,33,16,425/- as under

**FOR DUTY OF Rs. 1,98,34,737/-**

| OIO NO.                | DATE       | Refund Claim Amount | Refund Sanctioned In Cash | Refund Sanctioned by Way Of Re-credit In Scripts / Reward Scheme | Denied Due to Short Sale | Unutilized Script / Revised Scheme Amount |
|------------------------|------------|---------------------|---------------------------|--|--------------------------|---|
| KDL/AC/NC/857/REF/2013 | 28.06.2013 | 4294389             | 3920446                   | 233934   | 140009                   | 233934                                    |
| KDL/AC/NC/850/REF/2013 | 28.06.2013 | 4349205             | 3692848                   | 486961   | 169396                   | 486961                                    |
| KDL/AC/NC/820/REF/2013 | 26.06.2013 | 7447829             | 102930                    | 7033278  | 311621                   | 7033278                                   |
| KDL/AC/NC/848/REF/2013 | 28.06.2013 | 9298248             | 784505                    | 8123870  | 389873                   | 8123870                                   |
| KDL/AC/NC/877/REF/2013 | 29.06.2013 | 4184310             | 163021                    | 3892091  | 129198                   | 3892091                                   |
| KDL/AC/NC/851/REF/2013 | 28.06.2013 | 4654378             | 804512                    | 3677123  | 172743                   | 64603                                     |
|                        |            | 34228359            | 9468262                   | 23447257   | 1312840                  | 1,98,34,737                               |

**FOR INTEREST**

| Sl. No. | File No.          | Amount of Refund | Date of Receipt of Claim | Date of Payment of Claim | No. of Days | Interest Amount @ 6% PA |
|---------|-------------------|------------------|--------------------------|--------------------------|-------------|-------------------------|
| 01      | S/6-103/REF/2011  | 233934           | 31.01.2011               | 07.06.2023               | 4510        | 1,73,432                |
| 02      | S/6-1027/REF/2011 | 486961           | 30.09.2011               | 07.06.2023               | 4268        | 3,41,647                |
| 03      | S/6-1152/REF/2012 | 7033278          | 21.06.2012               | 07.06.2023               | 4003        | 46,28,090               |
| 04      | S/6-1345/REF/2012 | 8123870          | 30.08.2012               | 07.06.2023               | 3933        | 52,52,249               |
| 05      | S/6-337/REF/2010  | 3892091          | 30.05.2010               | 07.06.2023               | 4756        | 30,42,869               |
| 06      | S/6-1140/REF/2012 | 64603            | 29.03.2012               | 07.06.2023               | 4087        | 43,403                  |
|         |                   |                  |                          |                          |             | 1,34,81,688             |

2.1 As per the Office Memorandum No. 401/16/2012-CUS-III Dated Clarification and further course of action on the Order Dated 12.10.2022 passed by the Hon'able High Court of Gujarat at Ahmedabad is pending with the Board and therefore, the same is not yet reach the finality and Refund is sanctioned.

In case of the final decisions is in favour of the department, the amount so sanctioned becomes erroneous and the same is required to be recover alongwith Interest as per the provisions of Customs Act, 1962, as amended from time to time.

Therefore, to safeguard the Government Revenue i.e. refund claim settled vide Refund OIO No. KDL/AC/42/BGV/2023-24 Dated 07.06.2023 by sanctioning Refund of 4% SAD amounting to Rs.1,98,34,737/- alongwith Interest of Rs.1,34,81,688/- total amounting to Rs.3,33,16,425/-, protective demand is to be issued as per the provisions of Section 28 of the Customs Act, 1962 as amended from time to time.

**3.** In the event of the final decision of the subject matter is in favor of the department, the refund claim settled vide Refund OIO No. KDL/AC/42/BGV/2023-24 Dated 07.06.2023 by sanctioning Refund of 4% SAD amounting to Rs.1,98,34,737/- alongwith Interest of Rs.1,34,81,688/- total amounting to Rs.3,33,16,425/- which was refunded to M/s Agarwalla Timbers Pvt. Ltd., Survey No. 169, Opp. Gayatri Petrol Pump, National Highway No. 8A, Chudva, Gandhidham – 370 201, will be recoverable from them as discussed in the preceding paras.

**4.1** **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;

**4.2** **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.

**5.** Therefore, M/s Agarwalla Timbers Pvt. Ltd., Survey No. 169, Opp. Gayatri Petrol Pump, National Highway No. 8A, Chudva, Gandhidham – 370 201 is now called upon to show cause to the Commissioner, Custom House, Kandla, as to why -

(i) An amount of Rs.1,98,34,737/- alongwith Interest of Rs.1,34,81,688/- total amounting to Rs.3,33,16,425 vide Order-in-Original No. KDL/AC/42/BGV/2023-24 Dated 07.06.2023 and paid to you, 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.

**6.** 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.

**7.** If no cause shown with in 30 days from the receipt of this notice, 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.

**8.** 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.

**M. RAMMOHAN RAO, COMM'R(MRR)-CUS-KDL, O/o Commissioner-Customs-Kandla**  
To,  
M/s Agarwalla Timbers Pvt. Ltd.,  
Survey No. 169, Opp. Gayatri Petrol Pump,  
National Highway No. 8A,  
Chudva, Gandhidham – 370 201

**Copy to:**

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