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|  | OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 <u>Phone No.02838-271165/66/67/68</u> <u>FAX.No.02838-271169/62</u> |  |
| | | |
| A. File No. | : | GEN/ADJ/COMM/112/2025-Adjn-O/o Pr. Commr- Cus-Mundra. |
| B. Order-in-Original No. | : | MUN-CUSTM-000-COM-46-24-25 |
| C. Passed by | : | K. Engineer Pr. Commissioner of Customs, Customs House, AP & SEZ, Mundra. |
| D. Date of order and Date of issue: | : | 12.03.2025 12.03.2025 |
| E. SCN No. & Date | : | SCN waived on Importer's request |
| F. Noticee(s) / Party / Importer | : | M/s J & J INC 12, Gandhi School Road, 2nd Cross, Lottegollahalli, Bangalore, Bengaluru Urban, Karnataka-94 |
| G. DIN | : | 20250371MO000000FDF9 |

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सी ए 3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस,

अहमदाबाद-380 004” “Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ -/ 1000 रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्डपीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची-1, न्यायालय शुल्क अधिनियम, 1870 के मद सं०-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

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 paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

FACTS OF THE CASE IN BRIEF

Whereas, an intelligence was developed by the officers of DRI, LZU that M/s J&J INC (IEC- AIYPM3280C) having registered address at 12, Gandhi School Road, 2nd Cross, Lottegollahalli, Bangalore, Bengaluru Urban, Karnataka-94 imported "Photovoltaic Poly solar Cell 157*157 MM 5BB A Grade, EFF. 18.8% above" vide B/E No. 2918837 dated 17.10.2022 from Malaysia by classifying same under CTH 85414200, by availing the benefit of Customs duty Exempt under Notification No. 46/2011 (Sl No. 1445(I)) dated 01.06.2011. The importer submitted Country of Origin Certificate bearing Ref. No. KL-2022-AI-21-014532 dated 11.10.2022. However it was found that the said COO was not issued to importer and the same was issued to M/s Sohams Foundation Engineering Pvt Ltd (IEC No. 396013970) on 16.12.2022 against the goods imported vide B/E 3877561 dated 23.12.2022.

2. Based on the same, an enquiry was initiated and a summon dated 05.07.2024 was issued to the authorized signatory of M/s J&J Inc to produce certain documents & recording of submissions on 22.07.2024. In response of same, a mail dated 08.07.2024 was received from the importer wherein it was submitted by them that they have sought the desired documents from supplier.

Further, Mrs. Meenakshi K, Marketing Manager of the firm appeared before the investigation team on 22.07.2024 for recording of her statement under provisions of Section 108 of the Customs Act, 1962. During the statement she submitted her inability to produce the desired documents as sought vide Summons dated 05.07.2024. She also submitted that Mrs. Rajeshwari Proprietor of the firm is in position to provide the desired documents and other details pertaining to the import under investigation.

3. Summons dated 22.07.2024 was issued to Mrs. Rajeshwari M., Proprietor of M/s J&J Inc for her appearance on 05.08.2024. On request of the importer, a fresh Summons dated 12.08.2024 for her appearance on 29.08.2024 was issued. In compliance of the same Mrs. Rajeshwari M., Proprietor of the firm appeared before the investigation team and tendered her statement under Section 108 of the Customs Act, 1962 and accepted the duty liability along with applicable interest and penalty.

4. Whereas, importer vide e-mail dated 18.10.2024 provided the TR-6 Challan bearing No. 1298 dated 10.10.2024 for payment of Customs duty along with applicable Interest & Penalty. The importer further submitted that the said case may be closed without issuance of any Notice. The importer also submitted to not to go for any appeal at any forum. The said payment of duty was confirmed from the Administrative Officer, Custom House, Mundra vide their letter F. No. III/(20)/1753/2020 Accts dated 23.10.2024.

5. Kind attention is invited to Section 28(5) of the Customs Act, 1962 which

states that:

"Where any duty has not been levied or not paid or has been short-levied or short paid, or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing. "

In this regard attention is also invited to Board's clarification issued vide F.No. 137/46/2015-Service Tax dated 18.08.2015 wherein it has been held that:

2.1 "In a case involving the extended period of limitation, if an assessee pays the service tax/central excise duty, interest and penalty equal to 15% of the tax/ duty and makes a request in writing that a written SCN may not be issued to them, then in such cases the SCN can be oral and the representation (if he desires) against it also oral. In other words, an assessee can request for an informed waiver of a written SCN. The Supreme Court in the case of Commissioner of Customs, Mumbai versus Virgo Steels reported in 2002(141) E.LT 598 (S. C.) has held that:

"14. From the ratio laid down by the Privy Council and followed by this Court in the above cited judgments, it is clear that even though a provision of law is mandatory in its operation if such provision is one which deals with the individual rights of person concerned and is for his benefit, the said person can always waive such a right.

15. Bearing in mind the above decided principle in law, if we consider the mandatory requirement of issuance of notice under Section 28 of the Act, it will be seen that that requirement is provided by the Statute solely for the benefit of the individual concerned, therefore, he can waive that right. In other words, this Section casts a duty on the Officer to issue notice to the person concerned of the proposed action to be taken. This is not in the nature of a public notice nor any person other than the person against whom the proceedings are initiated has any right for such a notice. Thus, the right of notice being personal to the person concerned the same can be waived by that person.

16 If the above position in law is correct, which we think it is. M/s Virgo Steels, having specifically waived its right for a notice, cannot now be permitted to turn around and contend that the proceedings initiated against them are void for want of notice under Section 28 of the Act, so as to frustrate the statutory duty of the Revenue to demand and collect customs duty which M/s Virgo Steels had intentionally evaded."

Although this decision is in relation to section 28 of the Customs Act, 1962 the principles laid down are equally applicable to SCNs issued under other statutes. Hence, an assessee can waive the requirement of a written SCN.

2.2.....

2.3 *If the grounds on which the department feels that there has been short/non payment of tax/duty are intimated to the assessee orally with its quantification and the assessee indicates in writing that he has been informed about such grounds and he accepts the grounds and the quantification and is waiving the requirement of a written SCN, then a written SCN need not be issued.*

2.4.....

2.5 *There is no bar on an assessee making the payment of tax/duty, interest and reduced penalty of 15% even before the date of receipt of such a letter by the department. Such an assessee cannot be placed on a worse footing than one who pays tax/duty, interest and reduced penalty of 15% within 30 days of the receipt of the SCN/receipt of letter by the department.*

6. As it has been duly clarified in the above referred Board's letter that in a case where the party deposits due duty, interest and penalty and requests for an informed waiver of SCN, the party's request for closure can be considered, Investigating agency forwarded the investigation report for consideration of request of importer for closure of the case without issuance of any notice in terms of Section 28 (6) of the Customs Act, 1962.

7. Waiver of Show Cause Notice

The Importer has sought waiver of Show Cause Notice vide email dated 18.10.2024. They have submitted that the said case may be closed as they have paid duty, interest and penalty. The Importer has also submitted that they will not go for any appeal at any forum.

8. Record of Personal Hearing:

Importer vide email dated 25.02.2025 stated that they don't want any personal hearing in the case.

9. Discussions and Findings:

i I find that Importer M/s J & J INC(IEC-AIYPM3280C) has imported "Photovoltaic Poly solar Cell 157*157 MM 5BB A Grade, EFF. 18.8% above" vide B/E No. 2918837 dated 17.10.2022 from Malaysia by classifying same under CTH 85414200, by availing the benefit of Customs duty Exempt under Notification No. 46/2011 (Sl No. 1445(I)) dated 01.06.2011. The importer submitted Country of Origin Certificate bearing Ref. No. KL-2022-AI-21-0145 dated 11.10.2022 for availing the above said benefit. However, during verification of the said country of

origin certificate, it was found that the said COO was not issued to importer and the same was issued to M/s Sohams Foundation Engineering Pvt Ltd (IEC No. 396013970) on 16.12.2022 which was used against the goods imported vide B/E 3877561 dated 23.12.2022.

ii. On the basis of these facts, investigation was started and summons were issued to the authorized signatory/proprietor of M/s J & J Inc to produce certain documents and recording of submissions on 22.07.2024. In response to the summons dated 12.08.2024, Mrs Rajeshwari M., Proprietor of the firm appeared before investigation team and accepted the duty liability along with interest and penalty in the statement recorded under Section 108 of the Customs Act, 1962.

iii. Further, Importer paid the differential duty (BCD @25%, SWS and difference of IGST) amounting to **Rs. 91,12,802/-** (Rupees Ninety One Lakh Twelve Thousand Eight Hundred and Two Only), Interest amounting to **Rs. 26,21,491/-** (Rupees Twenty Six Lakh Twenty One Thousand Four Hundred Ninety One Only) and penalty @ 15% of differential duty amounting to **Rs. 13,66,920/-** (Rupees Thirteen Lakh Sixty Six Thousand Nine Hundred Twenty Only) and submitted TR-6 Challan bearing No. 1298 dated 10.10.2024 as a proof for payment of the same. The Challan was verified from Administrative officer, Customs House, Mundra. The Importer also requested for closure of the case and also requested not to issue Show Cause Notice.

iv. I find that Section 28 (5) of the Customs Act, 1962, stipulates that **if a notice has been served to a person** under section 28 (4) of the Customs Act, 1962, he can pay duty liability, interest under section 28AA and penalty equal to 15 percent of the duty after accepting his fault. Consequential to the payment and verification the case shall be deemed concluded under section 28 (6) of the Customs Act, 1962.

v. In this case waiver of Show Cause Notice has been sought by Importer after paying the duty, interest and penalty. In this regard, Hon'ble Supreme Court in case of Commissioner of Customs, Mumbai versus Virgo Steels reported in 2002(141) E.LT 598 (S. C.) held that:

"14. From the ratio laid down by the Privy Council and followed by this Court in the above cited judgments, it is clear that even though a provision of law is mandatory in its operation if such provision is one which deals with the individual rights of person concerned and is for his benefit, the said person can always waive such a right.

15. Bearing in mind the above decided principle in law, if we consider the mandatory requirement of issuance of notice under Section 28 of the Act, it will be seen that that requirement is provided by the Statute solely for the

benefit of the individual concerned, therefore, he can waive that right. In other words, this Section casts a duty on the Officer to issue notice to the person concerned of the proposed action to be taken. This is not in the nature of a public notice nor any person other than the person against whom the proceedings are initiated has any right for such a notice. Thus, the right of notice being personal to the person concerned the same can be waived by that person.

16 If the above position in law is correct, which we think it is. M/s Virgo Steels, having specifically waived its right for a notice, cannot now be permitted to turn around and contend that the proceedings initiated against them are void for want of notice under Section 28 of the Act, so as to frustrate the statutory duty of the Revenue to demand and collect customs duty which M/s Virgo Steels had intentionally evaded."

Although this decision is in relation to section 28 of the Customs Act, 1962 the principles laid down are equally applicable to SCNs issued under other statutes. Hence, an assessee can waive the requirement of a written SCN.

vi. Further, Board clarified the issue vide F.No. 137/46/2015-Service Tax dated 18.08.2015 wherein it has been held that:

2.1 "In a case involving the extended period of limitation, **if an assessee pays the service tax/central excise duty, interest and penalty equal to 15% of the tax/duty and makes a request in writing that a written SCN may not be issued to them**, then in such cases the SCN can be oral and the representation (if he desires) against it also oral. In other words, an assessee can request for an informed waiver of a written SCN.

2.3 If the grounds on which the department feels that there has been short/non payment of tax/ duty are intimated to the assessee orally with its quantification and the assessee indicates in writing that he has been informed about such grounds and he accepts the grounds and the quantification and is waiving the requirement of a written SCN, then a written SCN need not be issued.

2.5 There is no bar on an assessee making the payment of tax/ duty, interest and reduced penalty of 15% even before the date of receipt of such a letter by the department. **Such an assessee cannot be placed on a worse footing than one who pays tax/duty, interest and reduced penalty of 15% within 30 days of the receipt of the SCN/receipt of letter by the department.**

vii. In view of the Hon'ble Apex Court judgment in case of Commissioner of Customs, Mumbai versus Virgo Steels reported in 2002(141) E.LT 598 (S. C.) and Board Clarification issued vide F.No. 137/46/2015-Service Tax dated 18.08.2015, I find that the cases where Importer has requested for waiver of Show Cause Notice and has paid the differential duty, interest and penalty in terms of Section 28 (5) of the Customs Act, 1962, the same can be concluded under Section 28 (6) of the

Customs Act, 1962. As discussed in the foregoing paras, in the instant case, Importer has sought waiver of Show Cause Notice and paid the differential duty, interest and penalty as stipulated under Section 28 (5) of the Customs Act, 1962. Accordingly, I find that the case is appropriately fit for closure under Section 28 (6) of the Customs Act, 1962.

10. In view of the above, I pass the following order:

ORDER

10.1 I hereby order for conclusion of the case under sub-section (6) of Section 28 of the Customs Act, 1962 without prejudice to any other action that may be taken under Customs Act, 1962.


(K. Engineer)

Pr. Commissioner of Customs,
Custom House, Mundra.

BY Speed Post A.D / E-mail

To,

- i)** M/s J & J INC (IEC-AIYPM3280C)
12, Gandhi School Road, 2nd Cross,
Lottegollahalli, Bangalore, Bengaluru Urban,
Karnataka-94

Copy to:

1. The Deputy Commissioner of Customs, CCO, Ahmedabad
2. The Additional Director, DRI, Lucknow Zonal Unit
3. The Deputy/ Assistant Commissioner (EDI), Custom House, Mundra.
4. Notice Board.
5. Guard File