



कार्यालय, आयुक्त सीमा शुल्क, नया सीमा शुल्क भवन,
बालाजी मंदिर के पास, कांडला - (गुजरात)
OFFICE OF THE COMMISSIONER OF CUSTOMS: KANDLA
NEW CUSTOMS BLDG., NR. BALAJI TEMPLE, KANDLA-
370210 (GUJARAT)

दूरभाष :02836-271468-469 फैक्स : 02836-271467

F. No. CUS/RFD/MISC/124/2024-Ref
DIN: 20250571ML000000D545

10-05-2025

SHOW CAUSE NOTICE

M/s. DOW Chemical International Pvt. Ltd., 1st Floor, Block B, 02, Goderage Business District, Pirojsha Nagar, LBS Marg, Vikhroli (W), Mumbai (hereinafter referred to as "noticee") have filed a refund claim of Rs. **71,22,016/-** vide letter date 02.02.2024 (Received on 08.02.2024) consequence upon the CESTAT Final Order No. A/12575/2023 dated 08.11.2023. M/s. DOW Chemical International Pvt. Ltd., has claimed the refund of 4% Special Additional duty paid by them at the time of importation. The refund claim is filed on the basis of the exemption as granted vide Notifications No. 102/2007-Cus dated 14-09-2007.

1.2 M/s. DOW Chemical International Pvt. Ltd., has filed a refund claim along with the following documents:

1. Refund Application.
2. Self attested copy of CESTAT Final Order No. A/12575/2023 dated 08.11.2023.
3. Self attested copy of Statement A1, A2, A3 contains details of Sale Invoice of relevant Bill of Entry.
4. Self attested copy of Statement A4-Details of Bill of Entry and SAD Refund claimed.

1.3 **Brief facts of the case** are that, M/s. DOW Chemical International Pvt. Ltd., had filed refund claim in respect of 4% SAD paid against the Bills of Entry No. 7450672 dated 20.11.2014, 7719784 dated 16.12.2014 and 7705214 dated 15.12.2014 on which duties of customs was paid on 24.11.2014, 18.12.2014 and 18.12.2014 respectively, after the expiry of one year on 01.01.2016 from the date of payment of duty against the stipulated time period in terms of Section 27 of Customs Act 1962 read with Notification 102/2007 dated 14.09.2007 & Notification No. 93/2008 dated 01.08.2008. Therefore, a letter dated 21.01.2016 was issued to M/s. DOW Chemical International Pvt. Ltd., informing about the refund claim being time barred. In reply dated 02.03.2016, M/s. DOW Chemical International Pvt. Ltd., contested the issue. The case was adjudicated and the refund claim was rejected vide OIO No. KDL/DC/SUR/095/Ref/2016-17 dated 10.05.2016 issued by the Assistant Commissioner (Refund), Kandla.

1.4 Being aggrieved by the impugned order, M/s. DOW Chemical International Pvt. Ltd., preferred appeal before the Commissioner Appeal, Ahmedabad.

Commissioner Appeal, Ahmedabad vide OIA No. KDL-CUSTM-000-APP-006-

17-18 dated 17.04.2017 rejected the appeal filed by the M/s. DOW Chemical International Pvt. Ltd., holding that all the conditions in the notification no. 102/2007-Cus as amended have to be fulfilled and in the instant case the appellant have not fulfilled the condition 2(c) i.e. filing of refund claim within one year from the payment of duty.

1.5 Being aggrieved by the OIA passed by the Commissioner Appeal, M/s. DOW Chemical International Pvt. Ltd., preferred appeal before CESTAT, Ahmedabad. Hon'ble CESTAT, Ahmedabad vide Final Order No. A/12575/2023 dated 08.11.2023 set aside the impugned order and allowed the appeal considering the appellant's refund claim is not time barred as the same was filed while within 1 year from the date of sale of the goods.

2. Upon, receipt of favorable Order No. A/12575/2023 Dated 08.11.2023 issued by the Hon'able CESTAT, Ahmedabad, M/s. DOW Chemical International Pvt. Ltd., preferred a refund claim of Rs. 71,22,016/- before The Assistant Commissioner (Refund) Custom House, Kandla.

2.1 After considering the case records submitted by M/s. DOW Chemical International Pvt. Ltd., for claiming the refund of the Special Additional Duty paid by them at the time of clearance of imported goods. M/s. DOW Chemical International Pvt. Ltd., had submitted following documents at the time of filling original claim:

1. Refund application in prescribed Performa.
2. Copy of e-payment of bank receipts and duplicate Copy in original of Bill of Entry as detailed in Table below:-

S. No	B.E. NO	Date of B.E.	Qty. of Imp (MT)	Date of Challan	Amount	SAD AMOUNT	REFUND AMOUNT	Description of Goods
1	7705214	15.12.14	1199.980	18.12.14	34832895	6521925	6170626	Voranol 3322 Polyol
2	7450672	20.11.14	700.000	24.11.14	15250333	3153165	556893	Propylene Glycol
3	7719784	16.12.14	400.000	18.12.14	8981969	1857115	394497	Propylene Glycol
TOTAL			2299.980		59065197	11532205	7122016	

2.2 Copy of Sale/Tax invoice no issued as evidence of sale of the imported goods to the buyer with an endorsement that "No credit of the ADD duty levied under sub-section 5 of section 3 of the Custom shall be admissible" as required by para 2 (b) of the exemption notification No. 102/2007. All the details such as Bill of entry number; VAT payable etc. is reflected in the said Tax invoice.

2.3 Notarized Copy of VAT & CST return along with Challan details under table B :-

Sl. No.	PERIOD	VAT PAID IN CASH	VAT CHALLAN NO.	CST PAID IN CASH	CST CHALLAN NO.
1	January 15	7489843	2021536703	4377972	2021536705
2	February 15	6689727	3031558295	5649687	3031558302
3	March 15	8799227	3041581209	7347375	3041581211
	TOTAL	22978797		17375034	

2.4 Undertaking of M/s. DOW Chemical International Pvt. Ltd., that the burden of 4% SCVD has not been recovered or passed on by them from any buyer/any other person.

2.5 Declaration regarding the appointment of Chartered Accountant **M/s. Deloitte Haskins & Sells LLP**, for the financial year 2014-2015 & 2015-2016.

2.6 Certificate dated 05.11.2015 issued by Chartered Accountant **M/s. Deloitte**

Haskins & Sells LLP, certifying the fulfillment of condition of unjust enrichment in respect of refund claim amount Rs. 71,22,016/- (6170626 + 556893 + 394497) and correlating the payment of ST/VAT on the sale of imported goods (in respect of which refund is claimed) with the sale invoices.

2.7 Copy of Ledger Account of VAT and CST and Addl Duties of Custom (Refund) A/c duly attested by the Chartered Accountant and certificate issued by the Chartered Accountant showing the amount of SCVD receivable under the Head "SAD refund receivable".

2.8 Certificate of M/s. DOW Chemical International Pvt. Ltd., that refund claim for B.E. No. "As Per Table A" is a single claim in the month of **January-2016**.

2.9 As per Notification No. 102/2007-Cus. Dated 14-09-2007, the exemption contained in this notification shall be given effect if the condition as stipulated in the said notification is fulfilled. The conditions are the importer of the said goods shall pay all duties, including the said additional duty of customs livable thereon. As applicable, at the time of importation of the goods; the importer, while issuing the invoice for sale of the goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under Sub-section (5) of Section 3 of the Customs Tariff Act, 1975 shall be admissible; the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional customs officer; the importer shall pay on sale of the said goods appropriate sales tax or value added tax, as the case may be. Further, as per para 2 (e), the importer at the time of claiming of the refund shall, inter alia, provide copies of the documents evidencing the payment of the said additional duty; the invoice of sale of the imported goods in respect of which refund of the said additional duty is claimed and documents evidencing the payment of appropriate sales tax or value added tax as the case may be, by importer, on sale of such imported goods.

2.10 Considering the fact that M/s. DOW Chemical International Pvt. Ltd., has subsequently sold 1343.944 MT out of total imported Qty. 2299.980 MT and thereby they have short sold 956.036 MT of the imported goods. The amount of refund is required to be restricted up to the qty. of goods sold. The net eligible amount of refund comes to Rs.71,22,016/- as detail below:-

S. No	B.E. NO	QTY IMPORT (MT)	QTY SOLD (MT)	SHORT QTY. (MT)	4% SAD PAID	REFUND CLAIM
1	7705214	1199.980	1135.344	64.636	6521925	6170626
2	7450672	700.000	123.630	576.370	3153165	556893
3	7719784	400.000	84.970	315.030	1857115	394497
TOTAL		2299.980	1343.944	956.036	11532205	7122016

2.11 The Assistant Commissioner (Refund) Custom House, Kandla; considering the provisions of the Circular No. **984/08/2014-CX** dated 16.09.2014, the said claim is decided vide Order-in-Original No. KDL/AC/18/DSR/2024-25 dated 29.04.2024 and sanctioned the said amount of Rs.71,22,016/- as refund.

3 . Department preferred an appeal against the Impugned Order issued by the Hon'able CESTAT, Ahmedabad and filed Tax Appeal No. 12532 of 2024 before the Hon'able High Court of Gujarat, Ahmedabad against the impugned CESTAT Order No. A/12575/2023 Dated 08.11.2023.

3.2 Since the matter is not yet reached the finality and Refund is sanctioned, in case if the decisions is in favour of the department, the amount so refunded is required to be recovered at relevant time, and in order to avoid limitation of period for demand at relevant time; to safeguard the Government Revenue i.e. sanction of erroneous refund of Rs.71,22,016/- vide Order-in-Original No. KDL/AC/18/DSR/2024-25 dated 29.04.2024, 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.71,22,016/- which was refunded v i d e Order-in-Original No. KDL/AC/18/DSR/REF/2024-25 dated 21.06.2023, to M/s. DOW Chemical International Pvt. Ltd., 1st Floor, Block B, 02, Goderage Business District, Pirojshanagar, LBS Marg, Vikhroli (W), Mumbai, will be recoverable from them as discussed in the preceding paras.

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 ⁵[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. DOW Chemical International Pvt. Ltd., 1st Floor, Block B, 02, Goderage Business District, Pirojshanagar, LBS Marg, Vikhroli (W), Mumbai is now called upon to show cause to the Commissioner, Custom House, Kandla, as to why-

(i) An amount of Rs.71,22,016/- (Rupees Seventy One Lakhs Twenty Two thousand Sixteen only) sanctioned vide Order-in-Original No. KDL/AC/18/DSR/REF/2024-25 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 M/s. DOW Chemical International Pvt. Ltd., 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.

**(M. RAMMOHAN RAO, COMMR(MRR)-
CUS-KDL, O/o Commissioner-Customs-
Kandla)**

File No: CUS/RFD/MISC/124/2024-Ref

10-05-2025

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

To,
M/s. DOW Chemical International Pvt. Ltd.,
1st Floor, Block B, 02, Goderage Business District,
Pirojshanagar, LBS Marg,
Vikhroli (W),
Mumbai

Copy to:

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