



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/SAD/06/2023-Ref

05-06-2025

DIN: 20250671ML0000924199

20250671ML0000924199

SHOW CAUSE NOTICE

M/s POSCO India Processing Centre Pvt. Ltd., 511 B, 5th Floor, Tower-A, Park Centra, Sector-30, NH-8, Gurugram – 122 001, Haryana (India) (hereinafter referred to as "the claimant") has filed application for refund of 4% SAD Dated 13.04.2023 for Rs.4,92,02,591/- (received on 18.04.2023 – inward entry no. 4908530) in pursuance of decision of Hon'able High Court of Gujarat in respect of SCA No. 3286 of 2014.

Claimant filed 4% SAD refund claims for the period November 2013 to February 2014.

As per para 7.3 of Board Circular No. 06/2008 readwith Circular No. 06/2009, refund of 4% SAD paid through DEPB / Reward Scripts, the amount eligible for refund should be re-credited on the relevant DEPB / Scripts; accordingly an amount of Rs.4,92,02,592/- paid at relevant time through script be refunded by way of re-crediting the said in relevant script as shown in table below

OIO NO.	DATE	Refund Claim	Refund Sanctioned in Cash	Refund Sanctioned by way of Re-Credited Scrips / Reward Scheme Scrip	Denied due to short sale
KDL/DC/NC/468/REF/2013	19.11.2013	4692004	5860	4625884	60260
KDL/DC/NC/470/REF/2013	20.11.2013	2955556	0	2954443	1113
KDL/DC/NC/030/REF/2014	16.01.2014	9947732	223670	9717224	6838
KDL/DC/NC/057/REF/2014	29.01.2014	5148083	0	5145906	2177
KDL/DC/NC/056/REF/2014	29.01.2014	9438098	0	9427893	10205
KDL/DC/NC/029/REF/2014	16.01.2014	8248414	785845	7425092	37478
KDL/DC/NC/072/REF/2014	19.02.2014	10197691	259051	9906150	32490
		50627578	1274426	49202592	150561

Whereas, interalia, as per Circular No. 18/2013 Dated 29.04.2013, the last date for utilization of balance in the script was 30.09.2013.

1.2

As the claimant was unable to utilize the available balance in the Scripts /

Licenses, preferred Special Civil Application No. 3286 of 2014 before the Hon'able High Court of Gujarat.

1.3 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 scrips. However, if such scrips are not available then the respondents are directed to refund the amount through RTGS in the account of the petitioners within a period of 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 M/s Ranbaxy Laboratories Ltd., from the date of receipt of the application for refund till the date of payment.

1.4 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 concurrence, though department preferred an appeal against the order of the Hon'able High Court of Gujarat at Ahmedabad but as per provisions of paa 2 (b) of Circular No. 398/31/98-CX dated 02.06.1998 the claim is settled vide Refund order in original No. KDL/AC/48/BGV/2023-24 Dated 09.06.2023 by sanctioning Refund amounting to Rs.4,92,02,592/- alongwith Interest of Rs.3,93,51,333/- total amounting to Rs. 8,85,53,925/- were sanctioned to M/s Posco India Processing Center Pvt. Ltd., Gurugram .

2. Matter referred to the Board and as per the Office Memorandum No. 401/16/2012-CUS-III Dated 16.08.2023 issued by the OSD (Cus.IV), CBIC, New Delhi, 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 order in original No. KDL/AC/48/BGV/2023-24 Dated 09.06.2023 sanctioning Refund amounting to Rs.4,92,02,592/- alongwith Interest of Rs.3,93,51,333/- total amounting to Rs.8,85,53,925/-, protective demand is to be issued as per the provisions of Section 28 (1) 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 amount of refund of 4% of SAD amounting to Rs.4,92,02,592/- alongwith Interest of Rs.3,93,51,333/- total amounting to Rs.8,85,53,925/- sanctioned in cash to M/s Posco India Processing Center Pvt. Ltd., Gurugram vide OIO No. KDL/AC/48/BGV/2023-24 Dated 09.06.2023, will be recoverable from them as erroneous refund alongwith Interest as per provisions of Section 28AA of the Customs Act, 1962, as amended from time to time, as discussed in the preceding paras.

4.1 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 levied⁵[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 POSCO India Processing Centre Pvt. Ltd., 511 B, 5th Floor, Tower-A, Park Centra, Sector-30, NH-8, Gurugram – 122 001, Haryana (India) is now called upon to show cause to the Commissioner, Custom House, Kandla, as to why -

(i) An amount of refund paid in cash towards 4% of SAD amounting to Rs.4,92,02,592/- alongwith Interest of Rs.3,93,51,333/- as per the Order Dated 12.10.2022 of the Hon'able High Court of Gujarat, in SCA No. 3286 of 2014 to M/s Posco India Processing Center Pvt. Ltd., Gurugram vide OIO No. KDL/AC/48/BGV/2023-24 Dated 09.06.2023, should not be recovered immediately in the event of final decision of the subject case, is 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 against the action proposed to be taken within 30 days from receipt of the notice 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, COMMR(MRR)-CUS-KDL, O/o Commissioner-Customs-Kandla

Digitally signed by
M Ram Mohan Rao
Date: 05-06-2025
22:08:05

File No: CUS/RFD/MISC/1084/2023-Ref

05-06-2025

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

To,
M/s POSCO India Processing Centre Pvt. Ltd.,
Plot No. 193, Sector-4, Phase-II, HSIIDC,
Bawali, Rewari,
Haryana

Copy to:

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