



F. No. CUS/RFD/MISC/1084/2023-Ref

13-05-2025

DIN: 20250571ML000061276A

SHOW CAUSE NOTICE

M/s POSCO India Processing Centre Pvt. Ltd., Plot No. 193, Sector-4, Phase-II, HSIIDC, Bawal, Rewari, Haryana formerly known as POSCO India Delhi Steel Processing Center Pvt Ltd (hereinafter referred to as "the claimant") have filed a refund claim of Rs.60,12,195/- vide letter dated 17.11.2023 (Received on 24.11.2023). The said claimant has claimed the refund of Anti-Dumping Duty (ADD) along with Interest paid by them under protest on imports, subsequent to the favorable order issued by Hon'able CESTAT vide their Final order No A/12062/2023 dated 11.10.2023.

BRIEF FACTS OF THE CASE

I find that on the basis of intelligence DRI, Ahmedabad Zonal unit has put on hold the imported goods of M/s POSCO India Delhi Steel Processing Centre Pvt. Ltd., Rewari, Haryana. The importer was indulging in evasion of Anti Dumping Duty on the imported cold rolled stainless steel from Korea by resorting to misdeclaration of grade and size (width) of the cold rolled stainless steel coils in the bill of entry. Accordingly, a SCN No. DRI/AZU/INV-34/2011 dated 13.04.2012 has been issued to the claimant by the Additional Director General of DRI, Ahmedabad Zonal unit. The said SCN was confirmed by the Commissioner of Customs, Kandla vide OIO No. KDL/Commr/42/2012-13 dated 30.11.2012 for payment of Anti Dumping Duty along with interest. Being aggrieved by the said order, the claimant has filed appeal before CESTAT, Ahmedabad. The CESTAT vide Order No. A/10443- 10447/2014 dated 12.02.2014 set aside the OIO and allowed the appeal with consequential relief.

M/s POSCO India Processing Center Private Limited, applied for the refund in pursuance of CESTAT, Ahmedabad Order No. A/10443-10447/2014 dated 12.02.2014, for anti-dumping duty along with interest amount of Rs.58,94,467/- and Rs.1,17,728/- respectively [Total amount Rs. 60,12,195/-].

The said refund claim filed by the company vide letter dated 07.02.2015 (received by this office on 10.02.2015) was rejected by The Assistant Commissioner of Custom (Refund), Office of the Commissioner of Custom, New Custom House, Kandla vide its Order-in -Original No. KDL/AC/PGM/672/Ref/2016-17 dated 20.03.2017 for the reason that **the claim was time-barred in term of Para 4 of the Notification No.05/2012-Custom (N.T.) dated 19.01.2012 which defines the Time limit for filing refund.-**

(1) Every application under these rules shall be filed within three months from the date of publication of notification, issued by the Central Government under sub-section (1) of section 9AA of the Act, in the Official Gazette.

(2) Where such duty becomes refundable as a consequence of judgment, decree, order or direction of the Court, Appellate Tribunal or Authority, the limitation of three months shall be computed from the date of such judgment, decree, order or direction.

Being aggrieved by the above Order of Hon'ble Assistant Commissioner of Custom (Refund), the claimant filed appeal before the Hon'able Commissioner (Appeals), Ahmedabad. Hon'ble Commissioner of Custom (Appeals) vide Original-in Appeal No. KDL-CUST-000-APP-046-I7-18 dated 07.03.2018 uphold the Order passed by Hon'ble Assistant Commissioner of Custom (Refund), Kandla and rejected the appeal.

Being aggrieved by the above Order of Hon'ble Commissioner (Appeals), Ahmedabad, the claimant preferred as appeal before Hon'ble CESTAT, Ahmedabad. Hon'ble CESTAT, Ahmedabad in Customs Appeal No.11453 of 2018-DB vide its Final order No A/12062/2023 dated 11.10.2023 allowed the appeal in favor of the claimant stating that the refund claim filed by the company is governed by Section 27 of the Custom Act, 1962 and set aside the order passed by the Custom.

2. Department has filed appeal against the Order No. A/10443-10447/2014 dated 12.02.2014 of the Hon'able CESTAT, Ahmedabad before Hon'ble Supreme Court along with stay application and condonation of delay. The Hon'ble Supreme Court vide Order dated 10.11.2014 condoned the delay and admitted the petition.

2.2 After getting the claim pre-audited vide letter F.No. S/7-04/KCH/Pre-Audit/2021-22 dated 14.02.2024 the refund was sanctioned to the claimant vide OIO No. KDL/AC/193/DSR/REF/2023-24 Dated 16.02.2024.

3.1 Appeal preferred before the Hon'able Supreme Court of India, by the Department against the CESTAT Order No. A/10443- 10447/2014 dated 12.02.2014 having Diary No. 31710/2014 is still showing pending on the website of the Hon'able Court.

3.2 Further, an Appeal preferred before the Hon'able High Court of Gujarat, by the Department against the CESTAT Final order No A/12062/2023 dated 11.10.2023 having Tax Appeal No. 868 of 2024 is still showing pending on the website of the Hon'able Court.

3 . 3 Since the matter is not yet reached the finality and Refund is sanctioned. To safeguard the Government Revenue i.e. sanction of erroneous refund of anti-dumping duty along with interest amount of Rs.58,94,467/- and Rs.1,17,728/- respectively [Total amount Rs. 60,12,195/-] vide Order-in-Original No. OIO No. KDL/AC/193/DSR/REF/2023-24 Dated 16.02.2024, 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 anti-dumping duty along with interest amount of Rs.58,94,467/- and Rs.1,17,728/- respectively [Total amount Rs. 60,12,195/-] v i d e Order-in-Original No. OIO No. KDL/AC/193/DSR/REF/2023-24 Dated 16.02.2024 which was refunded to M/s POSCO India

Processing Centre Pvt. Ltd., Plot No. 193, Sector-4, Phase-II, HSIIDC, Bawal, Rewari, Haryana formerly known as POSCO India Delhi Steel Processing Center Pvt Ltd, 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 POSCO India Processing Centre Pvt. Ltd., Plot No. 193, Sector-4, Phase-II, HSIIDC, Bawal, Rewari, Haryana formerly known as POSCO India Delhi Steel Processing Center Pvt Ltd is now called upon to show cause to the Commissioner, Custom House, Kandla, as to why -

(i) An amount of Rs.58,94,467/- and Rs.1,17,728/- respectively [Total amount Rs.60,12,195/-] vide Order-in-Original No. OIO No. KDL/AC/193/DSR/REF/2023-24 Dated 16.02.2024 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.

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.

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

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

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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,
Bawal, Rewari,
Haryana

Copy to:

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