


| | |
|---|---|
|  | सीमा शुल्क (निवारक) आयुक्त का कार्यालय, सीमा शुल्क भवन, जामनगर- राजकोट हाइवे, विक्टोरिया ब्रिजके पास, जामनगर) गुजरात – 361001 |
| | Office of the Commissioner of Customs (Preventive), 'SEEMA SHULK BHAVAN', Jamnagar – Rajkot Highway, Near Victoria Bridge, Jamnagar (Gujarat) – 361 001 |
| | Email: commr-custjmr@nic.in; adj-custjmr@nic.in |

दस्तावेज पहचान संख्या/Document Identification Number (DIN) – 20240571MM000000C8A7

SCN No.: COMMR-01/2024-25

Date: 01.05.2024

कारण बताओ नोटिस/ SHOW CAUSE NOTICE
(Issued under the provisions of the Customs Act, 1962)

M/s. GU Crude Carriers Private Limited, 4th Floor, AKDR Tower, Door No. 3/381, Rajiv Gandhi Salai (OMR), Mettukuppam, Chennai – 600097 (hereinafter referred to as "the Noticee / importer / claimant") vide letter No. NIL dated 09.02.2022 (received in the Office of the Deputy Commissioner, Custom House, Pipavav dated 14.02.2022) has filed refund claim for Rs. 94,70,288/- towards claim for refund of Customs Duty in terms of Section 27 of the Customs Act, 1962 (hereinafter referred to as "the Act") against Bill of Entry No. 2339265 dated 13.01.2021 [RUD-1], arising on account of the excess payment of duty made by them in terms of Final Assessment Order No. 02/FAO/GPPL/2021-22 dated 01.12.2021 read with corrigendum dated 11.01.2022 issued by the Deputy Commissioner CH, Pipavav [RUD-2].

2. Whereas it appears that the Noticee purchased one vessel M.V. Advaita i.e. Single Screw Motor Vessel (New building Steel Hull) with IMO Number 9881639 from M/s Global Grace Shipping PTE. Ltd, Singapore. The Noticee through its CHA M/s Divine Shipping Services filed Bill of Entry No. 2339265 dated 13.01.2021 for clearance of this Single Screw Motor Vessel and the same was taken up for assessment by the FAG (Faceless Assessment Group) and the FAG upon scrutiny of documents uploaded through the e-Sanchit observed that only provisional Certificate of Registry is uploaded by the CHA/Importer. Hence, for further verification of end use certificate of the items under import, the Bill of Entry was sent to the PAG (Port Assessment Group) and to ascertain the quantum of items, first check was given by the PAG.

3. Whereas as per the instructions, the examination of vessel was carried out in presence of the authorized representative of CHA, Surveyor and rummaging officer on 18.01.2021. The necessary documents were submitted by the Master of the Vessel to the Boarding Officer at the time of boarding of vessel.

4. Whereas during the course of accomplishing vessel's arrival boarding formalities, the quantity of bunker remaining on board was surveyed and calculated by M/s

Therapeutics Chemical Research Corporation (TCRC), a Govt. approved surveyor in the presence of the Boarding Officer, authorized Agents of the Owner of the said vessel, Chief Engineer and Master of the Vessel and certified the Quantity of the Bunker vide their report dated 18.01.2021 as under:

| Sr.no. | Name of Commodity | Quantity |
|--------|-------------------|-------------|
| 1 | Fuel Oil | 431.338 MTs |
| 2 | Marine Gas Oil | 50.980 MTs |
| 3 | Lube Oil | 37640 Ltrs. |

5. Whereas the importer, vide letter dated 18.01.2021, requested for amendment in the above mentioned Bill of Entry and accordingly, Item No. 2 to Item No. 12 [mentioned in table of paragraph 7 of the FAO – RUD-2] was allowed before clearance of the said vessel for home consumption under Section 46 of the Customs Act, 1962 along with relevant documents viz. copies of MOAs, Survey Report, and other documents. The Bill of Entry was assessed provisionally under Section 18(1) of the Customs Act, 1962 for want of production of documents regarding original MOA, Bill of Sale and Commercial Invoice. The importer paid the import duties of Rs.10,44,89,480/- vide Challan No. 2033544941 dated 20.01.2021 and the out of customs charge of the said vessel was given.

6. Whereas M/s Divine Shipping Services on behalf of the master of M.V. ADVAITA requested to convert the vessel M.V. ADVAITA from foreign run to coastal run at Pipavav Port on 18.01.2021. The Master / Shipping Agent of M.V. ADVAITA had declared details of inventory of bunker & provision at the time of coastal conversion of the vessel, on arrival at Pipavav mentioned in table at para-11 of the FAO [RUD-2]. Therefore, M/s Divine Shipping Services requested to file IGM/EGM and Bill of Entry.

7. Whereas the vessel M.V. ADVAITA was finally reverted from coastal run to foreign run on 29.01.2021 at Pipavav Port, India. Based on details of inventory of the bunker, bonded store and other consumable & provision at the time of conversion of the vessel from foreign run to coastal run and reversion of the vessel from coastal run to foreign run, a final quantity of bunker, bonded store and other consumables & provisions consumed during the coastal run was worked out and final duty payable came to an amount of Rs. 9,49,64,274/-

8. Whereas consequent upon above, the Deputy Commissioner of Customs, Pipavav issued Final Assessment Order No. 02/FAO/GPPL/2021-22 dated 01.12.2021 read with Corrigendum dated 11.01.2022 wherein final duty payable was arrived at Rs. 9,49,64,274/-.

9. Whereas it appears that the importer had filed refund claim vide letter No. NIL dated 09.02.2022 (filed on 14.02.2022) for Rs. 94,70,288/- for refund of Customs Duty in terms of Section 27 of the Customs Act, 1962 against the above Bill of Entry No. 2339265 dated 13.01.2021, towards the excess payment of duty made as per Final Assessment Order No. 02/FAO/GPPL/2021-22 dated 01.12.2021 read with Corrigendum dated 11.01.2022 issued by the Deputy Commissioner CH, Pipavav.

10. Whereas it further appears that the refund claim was scrutinized in light of provisions of Section 27 of the Customs Act, 1962 and in view of the Final Assessment Order No. 02/FAO/GPPL/2021-22 dated 01.12.2021 read with Corrigendum dated 11.01.2022 issued by the Deputy Commissioner of Customs, Pipavav.

11. Whereas it appears that in accordance with the Final Assessment Order No. 02/FAO/GPPL/2021-22 dated 01.12.2021 read with Corrigendum dated 11.01.2022, the Refund claim of **Rs.94,70,288/- (Rupees Ninety Four Lac Seventy Thousand Two Hundred and Eighty Eight only)** was sanctioned vide Order-in-Original No.05/DC/GPPL/REF/2022-23 dated 23.05.2022 by the Deputy Commissioner of Customs, Custom House, Pipavav [RUD-5].

12. Whereas it appears that the Final Assessment Order No. 02/FAO/GPPL/2021-22 dated 01.12.2021 read with Corrigendum dated 11.01.2022 had been examined by the then Principal Commissioner, CCP(HQ), Jamnagar in exercise of powers vested under section 129 D (2) ibid. The then Principal Commissioner, CCP, (HQ), Jamnagar is of the view that the impugned order is not proper in view of the grounds of appeal as mentioned in Review Order and hence an appeal is required to be filed against the impugned order before the Commissioner of Customs (Appeals), Ahmedabad vide Review Order No.04/2021-22 dated 25.02.2022 [RUD-3].

13. Whereas it appears that as per the direction of the Principal Commissioner, CCP, (HQ), Jamnagar, an appeal has been filed on 09.03.2022 against the Final Assessment Order No. 02/FAO/GPPL/2021-22 dated 01.12.2021 read with Corrigendum dated 11.01.2022 passed by the Deputy Commissioner, Customs House, Pipavav before the Commissioner (Appeals), Customs, Ahmedabad vide F. No. VIII/28-03/COMM-APPEAL/GU Crude Carries P. dated 08.03.2022 [RUD-4].

14. Whereas it further appears that the Deputy Commissioner (Audit), Customs (P), Jamnagar has required to issue protective demand to M/s. GU Crude Carries Private Limited in respect of refund claim sanctioned vide Order-in Original No.05/DC/KKK/GPPL/REF/2022-23 dated 23.05.2022, passed by the Deputy Commissioner, Custom House, Pipavav vide their letter CADT/IAD/30/2021-Adt- O/o Commr-Cus-Prev-Jamnagar dated 18.05.2022.

15. Whereas in view of the above, it appears that in case the decision of the appeal filed by the Department comes in favour of revenue, the refund amount of **Rs.94,70,288/- (Rupees Ninety Four Lac Seventy Thousand Two Hundred and Eighty Eight only)** sanctioned and paid to the Noticee would be considered to be erroneously refunded and the same is required to be recovered from the Noticee under Section 28(1) of the Customs Act, 1962 along with appropriate interest under Section 28AA of the Customs Act, 1962.

16. In view of the above, it appears that the demand for recovery of erroneously refunded duty is required to be made under Section 28(1) of the Customs Act, 1962 along with appropriate interest under Section 28AA of the Customs Act, 1962. The said provisions read as under:

- **Section 28 of the Customs Act, 1962 : 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 wilful 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 so levied 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;
- **Section 28AA of the Customs Act, 1962 : Interest on delayed payment of duty.**- (1) Notwithstanding anything contained in any judgement, 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.

17.1 As stipulated under proviso to clause (a) to sub-section (1) of Section 28 of the Customs Act, 1962 read with the Pre-Notice Consultation Regulations, 2018, the Noticee was informed the intention about issuance of the Show Cause Notice on the above grounds by the Commissioner of Customs (Preventive), Jamnagar vide letter F. No. CUS/2949/2022-Adjn. dated 01.09.2023. The Noticee was requested to submit the written submission in this regard and in case they wish to be heard in person, to appear for personal hearing on 21.03.2024 in terms of Regulation 3(2) of the Pre-Notice Consultation Regulations, 2018.

17.2 The Noticee vide their letter reference No. Nil dated 14.09.2023 submitted the reply to the pre-notice consultation. In the submission, the Noticee, inter alia, submitted that they understand that an appeal has been filed by the department against the Final Assessment Order dated 01.12.2021 issued by the Deputy Commissioner of Customs, Pipavav but they are not in receipt of any communication regarding this appeal. The same was therefore provided to the Noticee vide letter F. No. CUS/2949/2022-Adjn. dated 28.02.2024. Personal hearing was held in connection with pre-notice consultation on 21.03.2024 which was attended by Shri Uttamchand Rajpurohit and Shri Girish S., Authorised Representatives, who submitted that the issue is already pending with Commissioner (Appeals) and they requested not to take any adverse decision in the matter till the decision of the Commissioner (Appeals) in the departmental appeal. They also relied upon Circular No. 16/2012-Customs.

18. Now, therefore, the Noticee M/s. GU Crude Carriers Private Limited, 4th Floor, AKDR Tower, Door No. 3/381, Rajiv Gandhi Salai (OMR), Mettukuppam, Chennai – 600097 is hereby called upon to show cause to the Principal Commissioner / Commissioner of Customs (Preventive), Jamnagar having his Office at "Seema Shulk Bhavan", Rajkot-Jamnagar Highway, Near Victoria Bridge, Jamnagar – 361 001, Gujarat (India) within thirty days from the date of receipt of decision by the Commissioner [Appeals], Customs, Ahmedabad in appeal filed by the Department against FAO No. 02/FAO/GPPL/2021-22 dated 01.12.2021 read with Corrigendum dated 11.01.2022 passed by the Deputy Commissioner, Customs House, Pipavav as to why:-

- (i) erroneously sanctioned amount of refund of the customs duty amounting to **Rs.94,70,288/- (Rupees Ninety Four Lac Seventy Thousand Two Hundred and Eighty Eight only)**, sanctioned and paid to the Noticee by the Deputy Commissioner, Customs House, Pipavav should not be demanded and recovered from the Noticee in terms of Section 28(1) of the Customs Act, 1962.
- (ii) interest at the applicable rate on the amount mentioned at (i) above should not be charged and recovered from the Noticee under Section 28AA of the Customs Act, 1962.

19. The above Noticee is further required to note that their written submissions, if any, should reach this Office within 30 (thirty) days from the date of receipt of decision by the Commissioner [Appeals], Customs, Ahmedabad in appeal filed by the Department against FAO No. 02/FAO/GPPL/2021-22 dated 01.12.2021 read with Corrigendum dated 11.01.2022 passed by the Deputy Commissioner, Customs House, Pipavav. If no cause is shown by the Noticee against the action proposed above within the above stipulated period or if they do not appear before the adjudicating authority as

and when the case is posted for hearing, the case is liable to be decided ex-parte on the basis of facts and evidences available on record.

20. The documents relied upon in the present Notice are listed at **Annexure-R** to this Show Cause Notice.

21. The Noticee also has an option under Section 127B of the Customs Act, 1962 to settle the case through Settlement Commission by filing an application, if eligible.

22. This Show Cause Notice is issued without prejudice to any other action that may be taken against the Noticee or any other persons concerned in respect of the aforesaid goods under the Customs Act, 1962 and / or any other law for the time being in force.

23. Department reserves its right to amend, modify or supplement this notice at any time prior to the adjudication of the case.

Encl: - Annexure R as detailed in SCN


[Dhirendra Lal]
Commissioner

F. No. CUS/2949/2022-Adjn-O/o-Commr-Cus-Prev-Jamnagar

Date:01.05.2024

BY REGD. POST A.D.

To,
✓ M/s. GU Crude Carriers Private Limited,
4th Floor, AKDR Tower, Door No. 3/381,
Rajiv Gandhi Salai (OMR),
Mettukuppam, Chennai - 600097.

Copy Submitted to:

- (1) The Deputy / Assistant Commissioner, Customs House, Pipavav.
- (2) Guard File.

**Annexure – R (List of Relied Upon Documents) to the Show Cause Notice No.
COMMR-02/2024-25 dated 01.05.2024**

| Sl. No. | Description | Remarks |
|---------|---|----------------------------|
| 01 | Bill of Entry 2339265 dated 13.01.2021 | Available with the noticee |
| 02 | Final Assessment Order [FAO] No. 02/FAO/GPPL/ 2021-22 dated 01.12.2021 read with Corrigendum dated 11.01.2022 | -do- |
| 03 | Review Order No. 04/2021-22 dated 25.02.2022 | -do- |
| 04 | Appeal Papers filed with the Commissioner [Appeals], Customs, Ahmedabad on 09.03.2022 | -do- |
| 05 | Refund Sanction Order vide OIO No. No.05/DC/ GPPL/ REF/2022-23 dated 23.05.2022 | -do- |