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|  <p>सत्यमेव जयते</p> | <p>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</p> |
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F. No. CUS/RFD/MISC/588/2023-Ref

Dated: 23-04-2025

DIN: 20250471ML0000222C22

SHOW CAUSE NOTICE

M/s Variety Lumbers Pvt. Ltd., Plot No. 402, Sector 05, Gandhidham – 370 201 (hereinafter referred to as '*the claimant*') have filed a refund claim of Rs. 1,55,56,142/- (i.e. 39 Bills of Entry) vide letter Dated NIL received on 17.01.2019. The claimant has claimed the refund of 4% SAD paid by them at the time of importation. The refund claim is filed on the basis of the exemption as granted vide Notification No. 102/2007-CUS Dated 14.09.2007.

Out of these, one Bill of Entry was of Mundra, which was withdrawn by the claimant vide their letter Dated 25.07.2019; therefore, the claim is revised for 38 different Bills of Entry filed at Kandla having total duty involvement of Rs.1,51,90,212/-.

Since the claim was filed on 17.01.2019 i.e. after expiry of one year time as stipulated in the notification. Accordingly, the refund claim in respect of 38 Bills of Entry total amounting to Rs.1,51,90,212/- towards 4% SAD paid at the time of import of wood was rejected by the competent authority vide Order in Original Number KDL/AC/MC/128/REF/2019-20 Dated 31.10.2019.

Being aggrieved the claimant, preferred an appeal before the Hon'able High Court of Gujarat, Ahmedabad by filing SCA.

Hon'able High Court of Gujarat vide Oral Order Dated 05.03.2020

In our opinion, all questions raised before this court, including the aspect of limitation, authority, when the statute provides for an efficacious alternative remedy in a given case, then such remedy has to be exhausted first before taking recourse to any other remedy. This is not the case where alternative remedy shall not operate as a bar as none of the contingencies, namely (i) violation of the principals of natural justice (ii) enforcement of any of the fundamental rights or (iii) where the order or proceedings are wholly without jurisdiction or the vires of an act, has been challenged. Hence, it would be appropriate that the petitioner avails the alternate remedy of challenging the impugned order by filing appeal before the departmental appellate authority.

In view of the above the petition stands disposed of with various direction.

On receipt of disposal of their appeal by the Hon'able High Court vide Oral Order

Dated 05.03.2020, prefer an appeal before the Hon'able Commissioner (Appeals), Customs, Ahmedabad. Hon'able Commissioner (Appeals), which was decided against the Claimant. Therefore preferred an appeal before the Hon'able CESTAT, Ahmedabad.

Hon'able CESTAT, Ahmedabad in their Order No. A/11336/2022 Dated 02.11.2022, interalia, observed in para 10 that,

Further, from the provisions of Section 27(1B) (c), it is clear that refund claim can be filed in consequence of any judgment decree, or direction of the appellate authority within one year. In this case, it is on record that the issue related to refund of SAD was under litigation and attained finality after the decision of Hon'able Supreme Court. Therefore, as per the provisions of Section 27 of the Customs Act, 1962, the limitation for filing the refund claim shall start from the date of decision of Hon'able Supreme Court. In these circumstances, we hold that the refund claim filed by the appellant is within time.

In the present case there is peculiar fact that the appellant was refrained from filing refund claim by a Board's Circular No. 15/2010-CUS dated 29.06.2010.

From the above circular, it is clear that the appellant was not allowed to file refund claim by the government till the issue on merit was settled by the Hon'able Apex Court in the appellant's own case reported at 2018 (360) ELT 790 (SC). In the peculiar fact of this case the period upto the decision of the Hon'able Supreme Court shall be reduced for the purpose of the relevant date as prescribed in Section 27 for computing the period of limitation. Accordingly, in this case the relevant date shall be the date of the Apex Court decisions i.e. 24.04.2018. The appellant admittedly filed the refund claim within one year from the date of the Hon'able Supreme Court judgment. Hence, refund claim was filed well within the stipulated time period of one year from the relevant date in terms of Section 27 of the Customs Act, 1962.

Further Para 11 of the impugned CESTAT Order reads as,

As per our above discussion and finding, we are of the considered view that in the facts of the present case, the refund claim of the appellant is not hit by limitation. Accordingly, we set aside the impugned order and allow the appeal with consequential relief.

Claimant vide their letter Dated 05.11.2022, submitted copy of the impugned Order in Appeal issued by the Hon'able CESTAT, Ahmedabad with a request to sanction of pending 4% SAD total amounting to Rs.1,55,56,142/-; further, claimant vide letter Dated 30.01.2023 submitted copy of ROM order Dated 11.01.2023, regarding period of Claim which was shown as December 2018 to March, 2011, whereas the correct period is December 2008 to March 2011.

The original claim was filed for Sanction of Refund of 4% SAD amounting to Rs.1,55,56,142/- later on it was found to be limited to Rs.1,51,90,219/- for the import from Kandla Port, out of which an amount of Rs.1,50,68,840/- were found to be eligible for sanction as Refund of 4% SAD as per the provisions of the Notification No. 102/2007-CUS. Dated 14.09.2007. And the same was sanctioned to the Claimant vide Order in Original No.

KDL/AC/78/NKC/REF/2023-24 Dated 02.08.2023.

2. During the internal review process of the Order in Appeal issued by the Hon'able CESTAT, Ahmedabad, competent authority observed that the same is not acceptable and accordingly directed to prefer a Tax Appeal against the Order issued by the Hon'able CESTAT, Ahmedabad before Hon'able High Court of Gujarat at Ahmedabad. Accordingly, the department file a R/Tax Appeal No. 557 of 2023 before the Hon'able High Court of Gujarat at Ahmedabad and the same is being admitted and shown as pending (on the website maintained by the Hon'able High Court) and no decisions is yet taken. Therefore, the matter has not yet reach the finality.

3. In the event of the final decision of the subject matter is in favor of the department, the amount of Rs.1,50,68,840/- sanctioned to the Claimant vide Order in Original No. KDL/AC/78/NKC/REF/2023-24 Dated 02.08.2023 becomes erroneous refund and the same is required to be recovered.

Considering the limitation prescribed under the provisions for demand of erroneous refund, to safeguard the Government Revenue in future i.e. sanction of erroneous refund of Rs.1,50,68,840/- vide Order-in-Original No. KDL/AC/78/NKC/Ref/2023-24 dated 02.08.2023, 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.1,50,68,840/- sanctioned as Refund of 4% SAD as per the provisions of the Notification No. 102/2007-CUS. Dated 14.09.2007 to the Claimant vide Order in Original No. KDL/AC/78/NKC/REF/2023-24 Dated 02.08.2023, 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 Variety Lumbers Pvt. Ltd., Plot No. 402, Sector 05, Gandhidham – 370 201 is now called upon to show cause to the Commissioner, Custom House, Kandla, as to why-

(i) An amount of Rs. 1,50,68,840/- (Rupees One Crore Fifty Lacs Sixty Eight Thousand Eight Hundred Forty Only) sanctioned vide Order-in-Original No. KDL/AC/78/NKC/Ref/2023-24 dated 02.08.2023 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/588/2023-Ref

Date: 23-04-2025

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

To,
M/s Variety Lumbers Pvt. Ltd.,
Plot No. 402, Sector 05,
Gandhidham – 370 201

Copy to:

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