


DIN-20200271MO00002R63F5

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62
A. File No.	: F. No. VIII/48-38/Adj./ADC/MCH/2019-20
B. Order-in- Original No.	: MCH/ADC/AK/111/2019-20
C. Passed by	: Shri Ajay Kumar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order /Date of issue	: 07.02.2020/ 07.02.2020
E. Show Cause Notice No. & Date	: VIII/48-567/CRA-LAR-89/Gr-II/MCH/2017-18 Dated.23.08.2019
F. Noticee(s)/Party/ Importer	: M/s Satyam Poly Plast, G-1/41, V.K. I. Area Extn., Badharna, Jaipur-302013.

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

**“ सीमा शुल्क आयुक्त (अपील), कांडला
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद -380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं०-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Subject:- Show Cause Notice F.No. VIII/48-567/CRA-LAR-89/Gr-II/MCH/2017-18 Dated 23.08.2019 issued to M/s Satyam Poly Plast, G-1/41, V.K. I. Area Extn., Badharna, Jaipur-302013.

BRIEF FACTS OF THE CASE

M/s Satyam Poly Plast, G-1/41, V.K.I. Area Extn., Badharna, Jaipur-302013 (holder of IEC No. 1306008735)(PAN No. AASFS7334R) (hereinafter also referred to as "the importer"/ "the Noticee") presented Bill of Entry No. 6457921 dated 23.08.2016 through their Custom Broker M/s SSS Sai Forwarders Pvt. Ltd., at Custom House, Mundra, for clearance of "Re-import Filler Masterbatch (Grade ST Polywhite Stiff)" under Tariff Item 32061190 of first schedule of the Custom Tariff Act, 1975. The said re-imported goods were claimed to be exported under Shipping Bill Nos. 8849997 and 8850002 both dated 07.04.2015.

1.1 The importer claimed benefit provided at serial No. 1 of Notification No. 158/95-Cus dated 14.11.1995, however material re-imported seems not to be re-conditionable as the same were coloring matter, else reprocessing can be done, consequently attracting serial No. 2 of the said notification 158/95-Cus dated 14.11.1995. The serial number 1 of the said notification provides exemption to the goods manufactured in India and parts of such goods whether of Indian or foreign manufacture and re-imported into India for repairs or for reconditioning and when such re-importation takes place within 3 years from the date of exportation. The serial number 2 of the said notification provides exemption to the goods manufactured in India and reimported for reprocessing, refining, re-marking or similar such processes, when the re-importation takes place within one year from the date of exportation.

1.2 In this case, as per nature of the goods (filler master-batch), it appeared that the goods are not re-conditionable and thus the exemption under clause 1 of the said notification is not available. Further, as the subject goods had been re-imported after one year of exportation, the same were not eligible for exemption under clause 2 of the notification. The importer were aware of the fact that the impugned goods were filler master-batch which were not re-conditionable and the claimed exemption under serial number 1 of the said notification was meant only for the goods re-imported for re-conditioning. However, it appears that they willfully, deliberately, by intent to evade duty of Customs suppressed the nature of the goods and claimed and availed the undue exemption. Therefore, it appears that the duty amounting to Rs. 14,23,542/- is liable to be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 and also liable for penal action under Section 114A of the Customs Act, 1962.

2. In view of the above, a Show Cause Notice No. VIII/ 48-567/CRA-LAR-89/Gr-II/MCH/2017-18 dated 23.08.2019 was issued whereby the importers M/s. Satyam Poly Plast, G-1/41, V.K.I. Area Exten., Badharna, Jaipur-302013 were called upon to show cause to the Additional Commissioner of Customs (Import), Custom House, Mundra having office at PUB Building 5B, Adani Port, Mundra, as to why:



- (i) The exemption under Notification No. 158/1995-Cus dated 14.11.1995, claimed and availed in Bill of Entry No. 6457921 dated 23.08.2016 should not be denied and the said Bill of Entry be re-assessed accordingly.
- (ii) The differential Customs duty amounting to Rs. 14,23,542/-, not paid by the importer in respect of Bill of Entry No. 6457921 dated 23.08.2016 by wrongly availing exemption under Notification No. 158/1995-Cus dated 14.11.1995, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA ibid.
- (iii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962.

PERSONAL HEARING

3. The personal hearing in the case matter was fixed on 27.12.2019. The Noticee vide their letter dated 24.12.2019 requested to fix another date of personal hearing. Considering their request, next date of personal hearing was granted on 09.01.2020. Shri Ajit Pratap Rai and Shri Ajit Singh, both authorised representative of the noticee, appeared for personal hearing on 09.01.2020 wherein they submitted the written submissions dated 09.01.2020 from the noticee and reiterated the submissions mentioned therein. They however said that they have re-exported the goods vide Shipping Bill No.1138787 dated 20.09.2016 after processing of the goods. They further stated that they have nothing more to add.

DEFENCE SUBMISSION

4. The Noticee in their written submissions dated 09.01.2020, have, interalia, mainly submitted as under-

4.1 They are manufacturer exporter of master batches of various grades and registered now under GST having their registration number OBAASFS7334RIZZ2 and registered under central excise at the time of re-importation having their registration number AASFS7334RXM001 and their factory situated at G-1/41, V.K.I. Area Extn, Badharana, Jaipur-302013.

4.2 They are regularly exporting their goods under Duty Draw back scheme and Advance Authorization Scheme through Mundra port and various ICDS availing the facility of factory stuffing and self sealing with a volume of around 20-30 TEUS per month with: a good track record of export and have been awarded by a status of Export house.

4.3 They had supplied 100.00 MTS of Filler Master Batches (Grade ST poly white stiff) to their regular Buyer M/s. Plasticsacks CIA Ltd, Ecuador through their two export invoices bearing Nos. as SP/001/15-16 Dated 02.04.2015 under S/Bill No.8849997 Dated 07.04.2015 and SP/002/15-16 Dated 03.04.2015 under S/Bill No.8850002 Dated 07.04.2015 from TCD, Kanakpura, Jaipur.

4.4 The said goods were re-imported vide bill of entry No.6457921 Dated 23.08.2016 at your port under notification No.158/1995(Cus.) dated 14.11.1995.

4.5 The above said goods were got cleared from the port on being submission of an usual undertaking with appropriate bank guarantee in terms of Sl. No. 1 of the notification, and they have re-exported the material within the prescribed time limit of the notification and accordingly the bank guarantee which was executed at the time of re-importation has also been released by your good office.

4.6 They have re-imported their material "Filler Master Batches (Grade ST Polv White Stiff)" which was re- imported for the purpose of Reconditioning and they have recondition the same by absorbing the moisture from the product.

4.7 Their product is based on calcium carbonate (CaCO₃) by approx. 70-75% and it attracts heavy moisture which they have to faced in their resultant export product also.

The moisture problem may be occurs in transportation from the sea mode, and their goods were return for reconditioning purpose only, In recondition process they have to remove the moisture from the material by "SILOS" and after it; the goods will be free from moisture by the reconditioning process, however in reprocessing they have to melt the goods in hopper and have to create the paste again after recreating the paste they have to prepare the granules of it, In the reprocessing process the propriety, gravity and MFI will be changed of the same material which was reprocessed, however in their instant case of re-import there is no change in its propriety, gravity and its MFI as they were only reconditioned our goods and re-export it.

DISCUSSION AND FINDINGS

5. I have carefully gone through the Show Cause Notice dated 23.08.2019, the written submission dated 09.01.2020 filed by the Noticee, as well as the oral submissions made during the course of personal hearing on 09.01.2020 and the available records of the case and I find that the following main issues are involved in the subject Show Cause Notice, which are required to be decided-

- (i) Whether the exemption under Notification No. 158/1995-Cus dated 14.11.1995, claimed and availed in Bill of Entry No. 6457921 dated 23.08.2016 is liable to be denied and the said Bill of Entry are liable for reassessment accordingly.
- (ii) Whether the differential Customs duty amounting to Rs. 14,23,542/-, not paid by the importer in respect of the Bill of Entry No. 6457921 dated 23.08.2016, by wrongly availing exemption under Notification No. 158/1995-Cus dated 14.11.1995, are required to be demanded and recovered from the importer under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA ibid.
- (iii) Whether the importer M/s Satyam Poly Plast is liable for penalty under Section 114A of the Customs Act, 1962.

5.1 I find that the importer M/s Satyam Poly Plast (holder of IEC No. 1306008735) had filed Bill of Entry No. 6457921 dated 23.08.2016, for clearance of "Re-import Filler Master batch (Grade ST Polywhite Stiff)" (CTH 32061190), claiming benefit of exemption under Notification No. 158/95-Cus dated 14.11.1995 (Sr.no.1) for not paying any duty on the re-imported goods. I further find that the importer had claimed that said re-imported goods were exported earlier under Shipping Bill Nos. 8849997 and 8850002 both dated 07.04.2015.

5.2 I find that the dispute in the Show Cause Notice only lies in the non-observance of conditions mentioned in serial number 1 and 2 of Notification No. 158/95-Cus dated 14.11.1995 by the importer. In this context, it would be appropriate to sift through the relevant text of Notification No. 158/95-Cus dated 14.11.1995. The relevant entry at Sr. No. 1 & 2 are reproduced below:

Sr.No. (1)	Description of goods (2)	Conditions (3)
1.	Goods manufactured in India and parts of such goods whether of Indian or foreign manufacture and re-imported into India for repairs or for reconditioning.	1. Such re-importation takes place within 3 years from the date of exportation; 2. Goods are re-exported within six months of the date of re-importation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow; 3. The Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied as regards identity of the goods; 4. The importers at the time of importation executes a bond undertaking to- (a) export the goods after repairs or reconditioning within the period as stipulated; (b) pay, on demand, in the event of his failure to comply with any of the aforesaid conditions, an amount equal to the difference between the duty levied at the time of re-import and the duty leviable on such goods at the time of importation but for the exemption contained herein.
2.	Goods manufactured in India and reimported for (a)reprocessing; or (b)refining; or (c)re-marking; or (d) subject to any process similar to the processes referred to in clause (a) to (c) above.	1. Such reimportation takes place within one year from the date of exportation. 2. Goods are re-exported within six months of the date of re-importation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow; 3. The Assistant Commissioner of Customs or Deputy Commissioner of Customs, is satisfied as regards identity of the goods. 4. The importer executes a bond to the effect - (a) that such reprocessing, refining or remaking or similar processes shall be carried out in any factory under Central Excise control following the procedure laid down under rule 173MM of the Central Excise Rules, 1944 or in a Customs bond under provisions of section 65 of the Customs Act, 1962 (52 of 1962); (b) that he shall maintain a due account of the use

		<p>of the said re-imported goods received in the premises specified in item (a) above and shall produce the said accounts duly certified by the officer of Central Excise or Customs, as the case may be, incharge of the factory or the bonded premises to the effect that the goods tendered for re-import are reprocessed, refined or remade or subjected to any process, as the case may be, from the said re-imported goods;</p> <p>(c) that in case any waste or scrap arising during such operations and the importer agrees to destroy the same before the officer of Central Excise or Customs, as the case may be, or to pay on such waste or scrap the appropriate duties of customs as if such waste or scrap is imported;</p> <p>(d) that he shall pay, on demand, in the event of his failure to comply with any of the aforesaid conditions, an amount equal to the difference between the duty leviable on such goods at the time of importation but for the exemption contained herein.</p> <p>Provided that in case of reprocessing, refining or remaking or similar process, if any loss of imported goods is noticed during such operations, the quantity of such loss shall be exempted from the whole of the duties of customs (basic customs duty and additional customs duty, etc.) subject to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that such loss has occurred during such operations.</p>
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I find that in present notification no. 158/1995-Cus dated 14.11.1995, the exemption is allowed subject to certain conditions, which may be substantial or procedural in nature. I also find that time and again, Courts have held that the conditions detailed in any notification have to be complied scrupulously. The text has to be read as it is written and not in the manner which suits one's needs. From the above texts of present notification, I find that serial no. 1 relates to goods re-imported into India for repairs or for reconditioning. Repair and reconditioning are taken place when products like machines, tools and equipment are concerned; however, reprocessing is taken place when raw materials, basic materials and commodities like colors, dyes or any chemicals are concerned. In the instant case, as per nature of the goods (filler master-batch), I find that the goods are not repairable or re-conditionable as the same are a coloring matter and required to be reprocessed, thus I find that the exemption under serial no. 1 of the said notification is not available to them. Further, I find that the subject goods were re-imported after one year of exportation which violates the vital condition no. 1 of serial no.2 of the notification to be followed in case the importer wants to benefit from the exemption from payment of customs duty, thus I find that the same are also not eligible for exemption under Sr.no. 2 of the said notification. Given these facts, it is crystal clear that the importer has wrongly claimed and availed the undue exemption under Notification No.158/1995-Cus dated 14.11.2015



5.3 As regard proposal in the show cause notice for demand of differential customs duty along with applicable interest, since exemption benefit under Notification No. 158/95-Cus dated 14.11.1995 is not available to the goods covered under Bill of Entry No.6457921 dated 23.08.2016 as concluded in the preceding paragraphs, I hold that the goods are not allowed to be imported under the benefit of exemption from payment of customs duty, as envisaged under Notification No. 158/1995-Cus dated 14.11.1995 and the impugned Bill of Entry is liable to be re-assessed. Accordingly, I hold that the importer M/s Satyam Poly Plast are liable to pay the differential Customs duty of Rs. 14,23,542/- as demanded in the Show Cause Notice under the provisions of Section 28(4) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA of the Customs Act, 1962

5.4 Now, I proceed to consider the proposal of penalty under Section 114A of the Customs Act, 1962 against the importer. I find that demand of differential Customs duty total amounting to Rs.14,23,542/-, has been made under Section 28 (4) of the Customs Act, 1962, which provides for demand of duty not levied or short levied by reason of collusion or willful mis-statement or suppression of facts. Hence as a natural corollary penalty is imposable on the Noticee under Section 114A of the Customs Act, 1962, which provides for penalty equal to duty plus interest in cases *where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts*. In the instant case, the ingredient of wilful mis-statement or suppression of facts by the importer has been clearly established as discussed in the foregoing paras and accordingly, the importer cannot escape his liability for penal action under the provisions of Section 114A of the Act, hence, I find that this is a fit case for imposition of quantum of penalty in terms of Section 114A *ibid*.


6. In view of the forgoing discussions and findings, I pass the following order:-

ORDER

- (i) I reject the importer's claim of exemption under Notification No. 158/1995-Cus dated 14.11.1995 in Bill of Entry No. 6457921 dated 23.08.2016 and order to re-assess the said Bill of Entry accordingly.
- (ii) I confirm and order to recover the differential Customs duty amounting to Rs.14,23,542/- (Rupees Fourteen Lakh Twenty Three Thousand Five Hundred Forty Two only) from the importer M/s. Satyam Poly Plast, G-1/41, V.K.I. Area Exten., Badharna, Jaipur-302013 in respect of Bill of Entry No. 6457921 dated 23.08.2016 for wrongly availing exemption under Notification No. 158/1995-Cus dated 14.11.1995, under Section 28(4) of the Customs Act, 1962.

- (iii) I order to charge and recover interest from the importer M/s. Satyam Poly Plast, G-1/41, V.K.I. Area Extn., Badharna, Jaipur-302013, on the confirmed duty at Sr. No. (ii) above under Section 28AA of the Customs Act, 1962
- (iv) I also impose a penalty of Rs. 14,23,542.00(Rupees Fourteen Lakh Twenty Three Thousand Five Hundred Forty Two only) on the importer M/s. Satyam Poly Plast, G-1/41, V.K.I. Area Extn., Badharna, Jaipur-302013 under Section 114A of the Customs Act, 1962. However, I give an option, under proviso to Section 114A, to the Noticee, to pay 25% of the amount of total penalty imposed at (iv) above, subject to payment of total amount of duty and interest confirmed at (ii) and (iii) above, and the amount of 25% of penalty imposed at (iv) above within 30 days of receipt of this order.

7. This order is issued without prejudice to any other action that may be contemplated against the importer or any other person under the provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

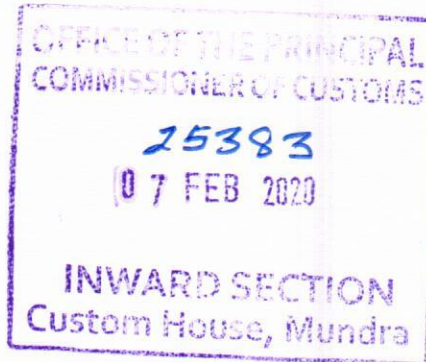

(AJAY KUMAR)
Additional Commissioner
Custom House, Mundra

F. No. VIII/48-38/Adj./ADC/MCH/2019-20

Date: 07.02.2020

BY SPEED POST

To
M/s. Satyam Poly Plast,
G-1/41, V.K. I. Area Extn.,
Badharana, Jaipur-302013



Copy to:

1. The Chief Commissioner (In Situ), Custom House, Mundra.
2. The Deputy/Assistant Commissioner (RRA), Custom House, Mundra.
3. The Deputy/Assistant Commissioner (TRC), Custom House, Mundra.
4. The Deputy/Assistant Commissioner (EDI), Custom House, Mundra.
5. The Deputy/Assistant Commissioner (GR-II), Custom House, Mundra.
6. The Deputy/Assistant Commissioner (Audit), Custom House, Mundra.
7. Guard File