

DIN-20200271MO00004A488E

	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/48-20/Adj./ADC/MCH/2019-20
B. Order-in- Original No.	: MCH/ADC/AK/112/2019-20
C. Passed by	: Shri Ajay Kumar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order /Date of issue	: 10.02.2020/ 10.02.2020
E. Show Cause Notice No. & Date	: VIII/48-378/CERA//Gr-V/MCH/2018-19/Pt.III Dated 04.09.2019
F. Noticee(s)/Party/ Importer	: M/s G. N. Agri and Harvestor, E-37, Near Canara bank, Industrial Area, Jalandhar, Punjab-144004

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.

Sub.-: Show Cause Notice F. No: VIII/48-378/CERA/Gr-V/MCH/2018-19/Pt.III dated 04.09.2019 issued to M/s G.N. Agri and Harvestor, E-37, Near Canara Bank, Industrial Area, Jalandhar, Punjab-144004.

BRIEF FACTS OF THE CASE

M/s G.N. Agri and Harvestor, E-37, Near Canara Bank, Industrial Area, Jalandhar, Punjab-144004 (holder of IEC No. 3017503534)(PAN No. (hereinafter also referred to as "the importer"/ " Noticee") presented Bill of Entry No. 3709159 dated 23.10.2017 for import of used machine and accessories, through Customs Broker M/s Unnati Cargo, detailed in Annexure-A to the Show cause Notice.

1.1 During the course of audit, the Customs Revenue Audit observed that as per Sr. No. 448 of Notification No. 50/2017-Customs dated 30.06.2017, the following goods falling under chapter 84 or any other chapters attracts 2.5% of basic customs duty.

(A) (i) Paddy trans planter; (ii) Laser land leveler; (iii) Reaper-cum-binder; (iv) sugarcane harvester; (v) Straw or fodder balers; (vi) Cotton picker; (vii) Track used for manufacture of track type combine harvestors; (viii) Sugarcane planter; (ix) Root or tuber crop harvesting machines; (x) Rotary tiller/weeder

(B) Parts and components required for manufacture of goods specified at (A)

Otherwise customs tariff head 84335900 will attract 7.5% of basic customs duty.

1.2 The importer had imported " Used Valmet 911.4 Timber Harvester Machine Model 2010, Standard Accessories used Valmet 360.1 Machine Harvester Head and F.O.C. used head as spare part 360.1 Machine Head" and availed the exemption under serial No. 448(A) of Notification No. 50/2017-Customs dated 30.06.2017. However, it appeared that all these three items are different goods other than the goods mentioned in the Sr. No.448(A) of Notification No. 50/2017-Customs dated 30.06.2017.Hence, full rate of basic Customs i.e. 7.5% is to be levied.

1.3 It appeared that the said importer has wrongly availed the exemption notification (i.e. Sr. No. 448(A) of Notification No. 50/2017-Customs dated 30.06.2017) which resulted in short levy of Customs duty amounting to Rs.5,53,267/- (detailed in Annexure-A to the Show Cause Notice). Thus, it appeared that the short paid Customs duty is required to be recovered from them under Section 28(1) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA of the Customs Act, 1962. Further, it appeared that the importer have rendered themselves liable to penalty under Section 117 of the Customs Act, 1962.

2. In view of the above, a Show Cause Notice F.No.VIII/48-378/CERA/Gr.V/MCH/2018 -19/ Pt. III dated 04.09.2019 was issued whereby the importer M/s G.N. Agri and Harvestor, E-37, Near Canara Bank, Industrial Area, Jalandhar, Punjab-144004 were called upon to show cause to the Additional Commissioner of Customs, Custom House, Mundra having his office at 5B, Port User Building, Mundra Port, Mundra (Kutch), as to why:

- (i) Customs duty of Rs.5,53,267 /-(Rupees Five lakh Fifty three thousand Two hundred and Sixty Seven only) (as detailed in Annexure-A to the SCN) leviable on the impugned goods and not paid by the noticee should not be demanded and

recovered under Section 28(1) of the Customs Act, 1962 along with applicable interest at appropriate rate under Section 28AA of the Customs Act,1962..

- (ii) Penalty should not be imposed on them under section 117 of the Customs Act, 1962.

PERSONAL HEARING

3. The personal hearing was granted, in the case matter, on dated 19.12.2019, however no body appeared for the personal hearing on the said date. Further, the personal hearing in the case matter was fixed on dated 09.01.2020 and again on 20.01.2020, however, nobody attended the hearing on either dates.

DISCUSSION AND FINDINGS

4. I have carefully gone through the Show Cause Notice dated 04.09.2019 as well as the available records of the case. I find that in the present case ample opportunities have been given to the Noticee to remain present for personal hearing. They, even after three opportunity of personal hearing, neither attended the hearing on the scheduled dates nor filed any written defence reply. The adjudication process cannot go indefinitely waiting for the Noticee to turn up for personal hearing. Therefore, I find that the principle of Natural Justice, as prescribed in Section 122A of the Customs Act, 1962 has been completed. Hence, I am going to proceed to decide the case on the basis of documentary evidences available with the department. I find that the following main issues are involved in the subject Show Cause Notice, which are required to be decided-

- (i) Whether the Customs duty of Rs.5,53,267/-(Rupees Five lakh Fifty three thousand Two hundred Sixty seven only) (as detailed in Annexure-A to the SCN) leviable on the impugned goods and not paid by the importer is required to be demanded and recovered under Section 28(1) of the Customs Act, 1962 along with applicable interest at appropriate rate under Section 28AA of the Customs Act,1962.
- (ii) Whether the importer is liable for penalty under section 117 of the Customs Act, 1962.

4.1 I find that importer had filed Bill of Entry No.3709159 dated 23.10.2017 for import of used machines and accessories as "Used Valmet 911.4 Timber Harvester Machine Model 2010, Standard Accessories used Valmet 360.1 Machine Harvester Head and F.O.C. used head as spare part 360.1 Machine Head" falling under CTH 84335900 and paid basic customs duty @ 2.5% by availing the benefit of exemption under serial No. 448(A) of Notification No. 50/2017-Customs dated 30.06.2017.

4.2 The Show Cause Notice has proposed that the benefit of exemption under serial No. 448(A) of Notification No. 50/2017-Customs dated 30.06.2017 availed by the importer by paying customs duty @ 2.5% is not available on the impugned goods i.e. Timber Harvester machine and they are required to pay basic customs duty at full rate @ 7.5%. In this context, it would be appropriate to sift through the relevant text under serial No. 448(A) of Notification

No. 50/2017-Customs dated 30.06.2017. The relevant portion under serial no. 448 of aforesaid Notification reads as under-

Sr. No.	Chapter Heading or Sub-Heading or tariff item	or	Description of Goods	Standard Rate	IGST	Con.no.
(1)	(2)		(3)	(4)	(5)	(6)
448	84 or any other chapter		(A)The following goods namely:- (i)Paddy trans planter; (ii)Laser land leveler; (iii) Reaper-cum-binder; (iv) sugarcane harvestor; (v) Straw or fodder balers; (vi) Cotton picker; (vii) Track used for manufacture of track type combine harvestors; (viii) Sugarcane planter; (ix) Root or tuber crop harvesting machines; (x) Rotary tiller/weeder (B) Parts and components required for manufacture of goods specified at (A)	2.5%	-	-
				2.5%	-	9
448A	8407		All goods other than engines of- (i) motor vehicles falling under heading 8702 or 8704; (ii) motor cars falling under heading 8703; or (iii) motor cycles falling under heading 8711	7.5%	-	-

From the above, I find that the Sr. No. 448 of Notification No. 50/2017-Customs dated 30.06.2017, is applicable to the following goods falling under chapter 84 or any other chapter which are attracting 2.5% of basic customs duty, namely;

(A) (i) Paddy trans planter; (ii) Laser land leveler; (iii) Reaper-cum-binder; (iv) sugarcane harvestor; (v) Straw or fodder balers; (vi) Cotton picker; (vii) Track used for manufacture of track type combine harvestors; (viii) Sugarcane planter; (ix) Root or tuber crop harvesting machines; (x) Rotary tiller/weeder

(B) Parts and components required for manufacture of goods specified at (A)

I further find that sr. no. 448A of the said notification relates to goods under tariff heading 8407 and all the above mentioned three items imported vide Bill of Entry No.3709159 dated 23.10.2017 under customs tariff heading 84335900 are different goods other than the goods mentioned in the Sr. No. 448(A) of said Notification dated 30.06.2017, thus I find that the basic Customs duty @ 7.5% (standard rate) are attracted on such impugned goods.

4.3 In view of the above, since exemption under Sr. No. 448(A) of Notification No. 50/2017-Customs dated 30.06.2017 is not available to the said imported goods, I hold that the said exemption is liable to be denied and accordingly, Basic Customs duty @ 7.5% is liable to be charged. Accordingly, I hold that the importer M/s G.N. Agri and Harvestor are required to pay the differential Customs duty of Rs. 5,53,267/- (Rupees Five Lakh Fifty Three Thousand Two Hundred Sixty Seven only) as demanded in the Show Cause Notice under Section 28(1) of the Customs Act, 1962. In context of demand and recovery of Interest at appropriate rate under provision of Section 28AA of the Customs Act, 1962, I find that it is quite clear from wordings of Section 28AA of the Customs Act, 1962, that when the said importer is liable to pay duty in accordance with the provisions of Section 28 ibid, they in addition to such duty are also liable to pay interest as well. The said Section provides for payment of interest automatically along with the duty. As I have already held that differential Customs duty of Rs.5,53,267/-is required to be recovered from them, in view of this, I hold that the importer is also liable to pay interest at appropriate rate on the said amount of Rs.5,53,267/-under the provisions of Section 28AA of the Customs Act,1962.

4.4 As regard proposal in the Show Cause Notice for imposition of penalty on the importer under Section 117 of the Customs Act,1962, I find that Section 117 of the Customs Act,1962 stipulates that any person who contravenes any provisions of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty [four lakh rupees]. I further find that Section 17(1) of the Customs Act, 1962 authorizes any Importer or exporter of the goods to self-assess the duty leviable on the Import or export of goods. In the instant case, I find that the importer has wrongly availed the exemption under Sr. No. 448(A) of Notification No. 50/2017-Customs dated 30.06.2017 was not available to the impugned goods and which resulted in short levy of customs duty of Rs.5,53,267/-. Thus, I find that the importer has contravened the provisions of Section 17(1) of the Customs Act, 1962 and accordingly I hold that the penalty under Section 117 of the Customs Act, 1962 are attracted on the importer M/s G.N. Agri and Harvestor, E-37, Near Canara Bank, Industrial Area, Jalandhar, Punjab-144004.

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

ORDER

- (i) I confirm and order to recover the differential Customs duty amounting to Rs. 5,53,267/- (Rupees Five Lakh Fifty Three Thousand Two Hundred Sixty Seven only) from the importer M/s G.N. Agri and Harvestor, E-37, Near Canara Bank, Industrial Area, Jalandhar, Punjab-144004, under Section 28(1) of the Customs Act, 1962.
- (ii) I order to charge and recover interest from the importer M/s G.N. Agri and Harvestor, E-37, Near Canara Bank, Industrial Area, Jalandhar, Punjab-144004, on the confirmed duty at Sr. No. (ii) above under Section 28AA of the Customs Act, 1962
- (iii) I also impose a penalty of Rs1,00,000.00 (Rupees One Lakh only) on the importer M/s G.N. Agri and Harvestor, E-37, Near Canara Bank, Industrial Area, Jalandhar, Punjab-144004, under Section 117 of the Customs Act, 1962.

6. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under 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/48-20/Adj./ADC/MCH/2019-20

Date: 10.02.2020

BY SPEED POST

To

M/s G.N. Agri and Harvestor,
E-37, Near Canara Bank, Industrial Area,
Jalandhar, Punjab-144004

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-V), Custom House, Mundra.
6. The Deputy/Assistant Commissioner (Audit), Custom House, Mundra.
7. Guard File.

