



OFFICE OF THE 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.	VIII/48-126/Gr.VI/Project/2015-16
B	Order-in-Original No.	MCH/187/MK/DC/Gr.VI/2020-21
C	Passed by	Shri Mukesh Kumar Deputy Commissioner of Customs, Custom House, Mundra
D	Date of Order	29.05.2020
E	Date of Issue	05.06.2020
F	SCN NO. & Date	SCN F.No. VIII/48-126/Gr.VI/Project/2015-16 dated 31.05.2019
G	Noticee / Party / Importer / Exporter	M/s. Polo Ceramics Pvt. Ltd., Plot No.20-A-B-O-N, GIDC, Kadi, Dist.- Mehsana, Gujarat
H	DIN	20200671MO00003L143E

1. यह अपील आदेश संबंधित 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, मृदुलटावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, 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 सं-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, सीमाशुल्क (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: M/s. Polo Ceramics Pvt. Ltd., Plot No.20-A-B-O-N, GIDC, Kadi, Dist.- Mehsana, Gujarat holding IEC Code No. 0893015601 has filed B/E No. 4800914 dated 30.9.2011 under Project Import and failed to comply the conditions

Brief Facts of the Case:-

M/s. Polo Ceramics Pvt. Ltd., Plot No.20-A-B-O-N, GIDC, Kadi, Dist.-Mehsana, Gujarat holding IEC No. 0893015601(hereinafter referred as the importer) had filed a Bill of Entry No. 4800914 dated 30.9.2011 for importation of "Main Body of Press KD4800" by classifying the same under CTH 98010011 and availing concessional rate of duty under Project Import Regulation, 1986.

2. Whereas it appears that the Importer has applied for registration under Project Import Regulation, 1986 at Custom House, Kandla after getting approval letter dated 20.09.2011 issued by the Ministry of Commerce & Industry endorsing the Project Imports for substantial expansion in the capacity of their plant. The competent authority at Kandla Customs registered the project import vide Registration No.22/2011 in Book No. 05/11-12 page no.79. It further appears that the Assistant Commissioner of Customs, Group (V & VI), Custom House, Kandla issued a Release Advice no. 672 for clearance of said item under benefit of 5% rate of duty under Heading No.98010011, as part of the project import. Accordingly, the importer filed Bill of Entry No.4800914 dated 30.9.2011 for clearance of "Main Body of Press KD 4800" valued at Rs.1,63,19,395.16 under CTH 98010011. The Bill of Entry was accordingly assessed provisionally and duty payable was ascertained at Rs.34,17,449/- at concessional rate as per the Project Import Regulations. The importer paid the duty amount of Rs.34,17,449/- vide Challan No.2002120790 dated 10.10.2011.

3. Whereas the goods imported as project import are governed by the Project Imports Regulations, 1986. As per Regulation 7 of Project Imports Regulations, 1986 *"the importer shall within three months from the date of clearance for home consumption of the last consignment of the goods or within such extended period as the proper officer may allow, submit a statement indicating the details of goods imported together with necessary documents as proof regarding the value and quantity of the goods so imported in terms of this regulation and any other documents that may be required by the proper officer for finalization of contract."*

3.1 Whereas as per para 5 of Chapter 5 of CBEC's Customs Manual following documents are required to be submitted for the purpose of finalization of the assessment:

- (i) *A reconciliation statement i.e. statement showing the description, quantity and value of goods imported along with a certificate from a registered Chartered Engineer certifying the installation of each of the imported items of machinery;*
- (ii) Copies of Bills of Entry, invoices, and the final payment certificate is insisted upon only in cases where the contract provides that the

amount of the transaction will be finally settled after completion of the supplies.

4. Whereas it appears that the Assistant Commissioner (Gr.VI), Custom House, Kandla vide its letter F.No. S/42-35/Polo-Project/Gr.VI/2011-12 dated 9.9.2015 requested Customs House Mundra to send the finalized Bills of Entry filed under Project Registration No.22/2011 and also the importer vide its letter dated 10.9.2015 requested to finalise its Bills of Entry and to send the same to the Customs Authorities at Kandla under the said Project Import Registration.

5. Whereas it appears that the importer submitted installation Certificate F.No.V/30-14/Polo/Kadi/2012-13/Certi dated 11.2.2013 issued by the Assistant Commissioner, Central Excise, Kadi Division and a certificate dated 15.12.2012 issued by a Chartered Engineer Babulal A. Ughreja certifying that the machineries, as mentioned in the letter/ Annexure are installed and are in working condition. On going through both the above certificates it was found that the list of machinery installed does not cover the machine "Main Body of Press KD4800" imported under the cover of subject Bill of Entry No. 4800914 dated 30.9.2011. So it appears that the said machine is not installed for the very purpose for which concession has been availed/granted under project import regulation and the differential duty leviable on the said machines is liable to be recovered from the importer, along with interest at appropriate rate.

6. Whereas it appears that on the basis of above observations a show cause notice F.No.VIII/48-126/Gr.VI/Project/2015-16 dated : 31.5.2019 has been issued to the importer calling upon them to show cause to the Deputy Commissioner of Customs, Customs House Mundra as to why

- (i) the classification of goods covered under Bill of Entry No. 4800914 dated 30.9.2011 as detailed in Annexure I to the SCN classified under Custom Tariff Heading 98010011 should not be rejected and why the same should not be re-assessed finally under Customs Tariff Item 84ss649000 under provisions of Section 17 of the Customs Act, 1962;
- (ii) Customs duty of **Rs.4,82,048/-**, (the differential duty as detailed in Annexure-I to the SCN) leviable on the impugned goods and evaded by the importer M/s. Polo Ceramics Pvt. Ltd., Kadi should not be demanded and recovered from them in terms of Section 28(4) of the Customs Act, 1962, along with appropriate rate of interest under Section 28AA of the Customs Act, 1962.
- (iii) the goods, covered under Bill of Entry No. 4800914 dated 30.9.2011 should not be hold liable for confiscation under the provisions of Section 111 (m) and 111(o) of the Customs Act, 1962; and fine in lieu of confiscation should not be imposed upon them under Section 125 of the Customs Act, 1962.

- (iv) Penalty should not be imposed on them under Section 112 (a) and/or 114 A of the Customs Act, 1962.

Defence reply:-

7. M/s. Polo Ceramics Pvt. Ltd., have not submitted any defence reply in respect of the subject show cause notice.

Personal Hearing:-

8. Personal hearings in the matter was fixed on 10.09.2019, 13.09.2019, 16.09.2019, 20.02.2020, 05.03.2020 & 19.03.2020 but neither Importer nor any authorized person appeared for personal hearing in the matter.

Discussions and findings: -

9. I have carefully gone through the Show Cause Notice No. F.No.VIII/48-126/Gr.VI/Project/2015-16 dated 31.5.2019 issued to M/s. Polo Ceramics Pvt. Ltd. I further find that the importer has neither filed any defence reply nor they have appeared for personal hearing to represent their case. As sufficient chances have already been given to the importer to present their case, I proceed to decide the case on the basis of available records.

10. I find that the Importer had applied for registration under Project Import Regulation, 1986 at Custom House, Kandla after getting an approval letter dated 20.09.2011 issued by the Ministry of Commerce & Industry endorsing the Project Imports for substantial expansion in the capacity of their plant, accordingly the project is registered at Kandla Customs vide Registration No.22/2011 in Book No. 05/11-12 at page no.79. I further find that the Assistant Commissioner of Customs, Group (V & VI), Custom House, Kandla had issued a Release Advice no. 672 for importation of "Main Body of Press KD4800" under Project import by the importer, classifying the goods under CTH 98010011 at concessional rate of duty under Project Import Regulation, 1986 and accordingly the Bill of Entry No. 4800914 dated 30.9.2011 filed by the importer was assessed provisionally under benefit of 5% rate of duty under Heading No.98010011, as part of the project import and duty payable was ascertained at Rs.34,17,449/- as per the Project Import Regulations. The importer paid the duty amount so ascertained amounting to Rs.34,17,449/- vide Challan No.2002120790 dated 10.10.2011.

11. I find that the goods imported as project import are governed by Project Imports Regulations, 1986. As per Regulation 7 of Project Imports Regulations, 1986 *"the importer shall within three months from the date of clearance for home consumption of the last consignment of the goods or within such extended period as the proper officer may allow, submit a statement indicating the details of goods imported together with necessary documents as proof regarding the value and quantity of the goods so imported in terms of this regulation and any other documents that may be required by the proper officer for finalization of contract."*

12. I further find that following documents are required to be submitted by the importer for the purpose of finalization of the assessment, as per para 5 of Chapter 5 of CBEC's Customs Manual:

- (i) *A reconciliation statement i.e. statement showing the description, quantity and value of goods imported along with a certificate from a registered Chartered Engineer certifying the installation of each of the imported items of machinery;*
- (ii) Copies of Bills of Entry, invoices, and the final payment certificate is insisted upon only in cases where the contract provides that the amount of the transaction will be finally settled after completion of the supplies.

13. I find that the importer has submitted a letter F.No.V/30-14/Polo/Kadi/2012-13/Ceti dated 11.2.2013 issued by the Assistant Commissioner, Central Excise, Kadi Division and a certificate dated 15.12.2012 issued by Chartered Engineer Babulal A. Ughreja certifying that the machineries mentioned therein are installed and in working condition. On going through the letter issued by the Assistant Commissioner, Central Excise, Kadi Division as well as the installation certificate issued by the Chartered Engineer, I find that the machine "Main Body of Press KD4800" imported vide the subject Bill of Entry No. 4800914 dated 30.9.2011 has not been installed and put in use for the very purpose for which concession has been granted to the importer under the Project Import Regulations.

14. From the above I find that importer is not eligible for concessional rate of duty under project import regulation for the goods covered under the subject Bills of Entry and they are liable to discharge their duty liabilities at full rate of duty. This amount of differential duty is liable to be recovered along with applicable interest at appropriate rate as goods imported by M/s. Polo Ceramics Pvt. Ltd., Kadi, Dist.-Mehsana, are not covered under the terms and conditions of Project Imports Regulations, 1986 and have been mis-declared as Project Import Cargo. I also find that the importer has knowingly and wilfully suppressed the facts regarding installation and intended use of the imported goods purposely to evade payment of duty at full rate and wrongly availed the concession under Project Import Regulations. Therefore, I find that the aforementioned goods, covered under Bills of Entry No. 4800914 dated 30.9.2011 are correctly classifiable under CTH 84649000 and not under the CTH 98010011 and are chargeable to Customs Duty at normal rates. I find that the above acts of wilful suppression and purposeful mis-declaration of the goods for Project Import End use renders the said goods liable for confiscation under Section 111(m) and 110(o) of the Customs Act, 1962. I Find that the differential Customs Duty amounting to Rs.4,82,048/- in respect of the said goods is recoverable from M/s. Polo Ceramics Pvt. Ltd., Kadi under Section 28(4) of the

Customs Act, 1962 along with interest at appropriate rate under Section 28AA of the Customs Act, 1962. . I also find that M/s. Polo Ceramics Pvt. Ltd., Kadi have rendered themselves liable for penalty under Section 114A of the Customs Act, 1962. No penalty u/s 112(a) Customs Act, 1962 is imposed as both the penalties are mutually exclusive.

15. Accordingly I pass the following orders

ORDER:-

- (i) I reject the classification of goods under CTH 98010011 and hold that the goods be classified under CTH 84649000 and the Bills of Entry No. 4800914 dated 30.9.2011 be finally re-assessed under provisions of Section 17 of the Customs Act, 1962, accordingly;
- (ii) I order the confiscation of goods, covered under Bill of Entry No. 4800914 dated 30.9.2011 under the provisions of Section 111 (m) and 111(o) of the Customs Act, 1962. However, I give the importer an option to redeem the confiscated goods on payment of redemption fine of Rs 8,16,000/- (Rs Eight Lakh Sixteen Thousands only) in terms of Section 125 of the Customs Act, 1962.
- (iii) I confirm the demand of differential Customs Duty of Rs.4,82,048/- in terms of Section 28(4) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA of the Customs Act, 1962.
- (iv) I also impose a penalty of Rs. 4,82,048/- (Rs Four Lakh Eighty Two Thousands and Fourty Eight Only) on the importer under Sec 114A of the Customs Act, 1962


05/06/2020

(Mukesh Kumar)
Deputy Commissioner (Gr-V & VI)
Custom House, Mundra.

F.No.VIII/48-126/Gr.VI/Project/2015-16

Dated : 05.06.2020

To,
M/s. Polo Ceramics Pvt. Ltd.,
Plot No.20-A-B-O-N,
GIDC, Kadi, Dist.- Mehsana,
Gujarat

Copy to:

- (1) The Principal Commissioner of Customs, Custom House, Mundra.
- (2) The Assistant / Deputy Commissioner (RRA), Custom House, Mundra.
- (3) The Assistant / Deputy Commissioner (TRC), Custom House, Mundra.
- (4) The Assistant / Deputy Commissioner (EDI), Custom House, Mundra.
- (5) The Deputy Commissioner (Gr.VI), Customs House, Kandla for information please.
- ✓(6) Guard Copy.