



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.	VIII/48-378/CERA/Gr.V/MCH/2018-19
B	Order-in-Original No.	MCH/DC/Gr.V/MK/533/2019-20
C	Passed by	Shri Mukesh Kumar Deputy Commissioner of Customs, Custom House, Mundra
D	Date of Order	08.01.2020
E	Date of Issue	08.01.2020
F	SCN NO. & Date	SCN F.No. VIII/48-378/CERA/Gr.V/MCH/2018-19, dated 06.08.2019
G	Noticee / Party / Importer / Exporter	M/s. Dhyey Ceramic, Survey No. 145 P1, Jetpar Road, Near Decent Ceramic, Pipali- Morbi – Gujarat.

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, मृदुलटावर, टाइम्सऑफ इंडिया के पीछे, आश्रमरोड़, 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/- रुपये 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 accompany by

(i) उ 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. Dhyey Ceramic, Survey No. 145 P1, Jetpar Road, Near Decent Ceramic, Pipali- Morbi – Gujarat. holding IEC Code No 2417506904 had filed Bill of Entry No. 4295014 dated 06.12.2017 and have short paid IGST.

Discussions and findings:-

8. I have carefully gone through the Show Cause Notice No. VIII/48-378/CERA/Gr.V/MCH/18-19 dated 06.08.2019 issued to M/s. Dhyey Ceramic, defence reply dated 22.08.2019 filed by the importer, record of personal hearing dated 21.11.2019 & other materials on record.

9. In this case, Show Cause Notice No: VIII/48-378/CERA/Gr.V/MCH/18-19 dated 06.08.2019 has been issued to M/s. Dhyey Ceramic, for recovery of differential amount of IGST of Rs. 1,22,846/- under Section 28 of the Customs Act, 1962 read with Section 5 of the IGST Act, 2017 alongwith interest under Section 28AA of the Customs Act, 1962 read with Section 50 of the IGST Act, 2017 and proposing for imposition of penalty under Section 114A of the Customs Act, 1962.

10. As the issue pertains to applicability of the correct sr. no. of IGST Notification No.01/2017 dated 28.06.2017 on the imported goods, I proceed to examine the same. I find that the importer has imported the goods "Piston Pump (Source Make Domestic Type) YB-300"

Pump falling under CTH 8413 has been covered under Notification No. 1/2017 - Integrated Tax (Rate) dated 28.06.2017 under different heading The relevant portion of Notification 1/2017-Integrated Tax (rate) dated 28.06.2017 is as under:

(Schedule-III)

S. No.	Chapter / Heading / Subheading / Tariff item	Description of Goods
453	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI

(Schedule-IV)

S. No.	Chapter / Heading / Subheading / Tariff item	Description of Goods
117	8413	Pumps for dispensing fuel or lubricants of the type used in filling stations or garages [8413 11], Fuel, lubricating or cooling medium pumps for internal combustion piston engines [8413 30], concrete pumps [8413 40 00], other rotary positive displacement pumps [8413 60], [other than hand pumps falling under tariff item 8413 11 10]

The importer had imported the goods after classifying their goods under Sr. No. 453 of Schedule-III of IGST Notification no. 01/2017 dated 28.06.2017 and had paid IGST @ 18%.

From the above I find that the goods imported by the Importer are not covered in Sr. no. 453 of the said IGST Notification as the same are correctly covered under sr.no. 117 of the Schedule -IV of the IGST Notification No. 01/2017 dated 28.6.2017 and attract IGST @ 28%. I also find that the importer has agreed that their goods are covered under the above Sr.No. 117 of the Schedule IV of the Notification and paid Duty Rs 1,22,845 vide challan no 231 dated 26.04.2019 and interest of Rs 30,900 vide challan no 1857 dated 20.11.2019/-.

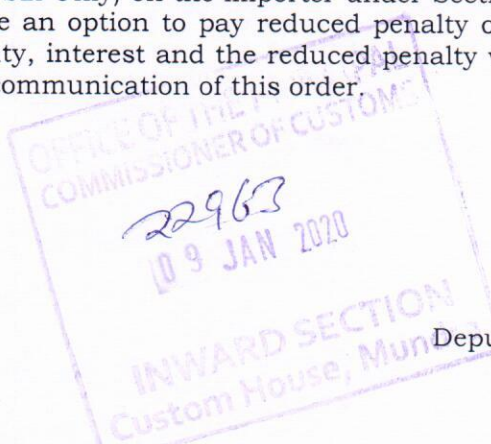
11. I find that the importer has wrongly assessed the goods under Schedule III Sr. No. 453 and availed benefit of lower rate of IGST which resulted in short payment of IGST amounting to Rs. 1,22,846/-. I find that the importer has committed this mistake with malafide intent to evade the payment of IGST @ higher rate at the time of filing the Bill of Entry and therefore I find the short paid IGST is required to be demanded and recovered under Section 28 of Customs Act, 1962 read with Section 5 of the IGST Act, 2017 along with interest at applicable rate under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017. I find that the importer has paid the IGST amount of Rs. 1,22,846/- vide challan no 231 dated 26.04.2019. I find that Importer has paid interest of Rs. 30,900/- vide challan no 1857 dated 20.11.2019 /-after a lapse of more than 30 of issuance of the notice and when the case was taken up for adjudication. So I find that they have rendered themselves

liable for penalty. So I find that penalty is required to be imposed on them under Section 114A of the Customs Act, 1962.

12. Accordingly I pass the following orders

ORDER:-

- A) I confirm and order to recover differential IGST of Rs. 1,22,846/- (Rupees One Lakh Twenty two Thousands Eight Hundred and Fourty Six Only) leviable on imported goods which was short paid by the importer in terms of Section 28 of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017, along with applicable interest under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017.
- B) The amount of Rs 1,22,845/- and the amount of Interest of Rs 30,900/- already paid by the Importer vide challan no 231 dated 26.04.2019 and challan no 1857 dated 20.11.2019 respectively be appropriated against the demands confirmed at Sr. No. A above, of the Order.
- C) I impose a penalty of Rs 1,22,846/- (Rupees One Lakh Twenty two Thousands Eight Hundred and Fourty Six Only) on the importer under Section 114A of the Customs Act, 1962. However, I give an option to pay reduced penalty of amount Rs 30,711/- if the Importer pays the duty, interest and the reduced penalty within a period of thirty days from the date of the communication of this order.



(Handwritten signature)
08/01/2020

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

F.No.VIII/48-378/CERA/Gr.V/MCH/18-19

Dated: 08.01.2020

DIN: 20200171MO00007V03D4

To,
M/s. Dhyey Ceramic,
Survey No. 145 P1, Jetpar Road,
Near Decent Ceramic,
Pipali- Morbi - Gujarat,

(Handwritten signature)
ROLEDI

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) M/s. Patel Handling Agency. (Custom Broker) for information and necessary action.
- (6) Guard file

Brief Facts of the Case:-

1. M/s. Dhyey Ceramic, Survey No. 145 P1, Jetpar Road, Near Decent Ceramic, Pipali-Morbi – Gujarat, holding IEC No. 2417506904 (hereinafter referred as the Importer) had filed Bill of Entry No. 4295014 dated 06.12.2017 for importation of Piston Pump (Source Make Domestic Type) YB-300.

2. During the course of audit Customs Revenue Audit observed that it was noticed from the data analysis of bill of entry that the said importer imported “Piston Pump (Source Make Domestic Type) YB-300” under chapter Heading 84136090 and classified under Sr. No 453 of schedule –III of IGST and paid IGST @18%, However, the items are to be correctly classified under Sr. No 117 of Schedule-IV of IGST and duty to be levied 28% IGST.

3. The import of goods has been defined in the IGST Act, 2017 and Section 5 of IGST Act, 2017 stipulates that “Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act 1962.”

4. Further as per Section 7 of Customs Tariff Act, 1975 any article which has been imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty percent, as is leviable under Section 5 of the IGST Act 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section 8 or sub-section 8A as the case may be.

5. On the basis of the above observations of the Customs Revenue Audit a show cause notice No. VIII/48-378/CERA/Gr.V/MCH/18-19 dated 06.08.2019 was issued to the importer calling upon them to show cause to the Deputy Commissioner of Customs, Customs House Mundra as to why

- (i) Integrated Goods and Service Tax of Rs. 1,22,846/-/- (Rupees One Lakh Twenty two Thousands Eight Hundred and Fourty Six Only) (the differential IGST as detailed in Annexure-A to the SCN) leviable on the impugned goods and short paid by the importer in terms of Section 28 of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017, along with applicable interest under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017 should not be demanded.
- (ii) Penalty should not be imposed under Section 114A of the Customs Act, 1962.

Defence reply:-

6. In reply to the subject show cause notice, M/s. Dhyey Ceramic submitted their reply vide letter dated 22.08.2019 wherein they have stated that they have paid IGST of Rs 1,22,845/- vide manual challan no 231 dated 26.04.2019.

Personal Hearing:-

7. Personal hearings in the matter were fixed on 21.11.2019. Shri Ratilbhai Bachubhai Saradava, Partner, M/s Dhyey Ceramic appeared for personal hearing and submitted challan no 1857 dated 20.11.2019 of interest of Amt Rs 30,900 and requested to take lenient view and drop the proceedings initiated by SCN.