



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/545/2019-20
C	Passed by	Shri Mukesh Kumar Deputy Commissioner of Customs, Custom House, Mundra
D	Date of Order	14.01.2020
E	Date of Issue	14.01.2020
F	SCN NO. & Date	SCN F.No. VIII/48-378/CERA/Gr.V/MCH/2018-19 dated 30.07.2019
G	Noticee / Party / Importer / Exporter	M/s. Amul Boards Pvt Ltd, Survey No. 309,310/2 Village - nani chirai, Bachau, Kutch, Gujarat - 370210

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/- 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) 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. Amul Boards Pvt Ltd, Survey No. 309,310/2 Village - nani chirai, Bachau, Kutch, Gujarat - 370210 holding IEC No. 3798000841 had filed Bills of Entry No. 3672989 dated 18.10.2017 and have short paid IGST.

Brief Facts of the Case:-

1. M/s. Amul Boards Pvt Ltd, Survey No. 309,310/2 Village - nani chirai, Bachau, Kutch, Gujarat - 370210 holding IEC No. 3798000841 (hereinafter referred as the Importer) had filed Bill of Entry No. 3672989 dated 18.10.2017 for importation of Plywood Sanding Machine through Customs Broker M/s. Kashyap Shipping (P) Ltd.
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 Plywood Sanding Machine and classified under Sr. No. 230 of Schedule-I of IGST and paid IGST @ 5% IGST. However, the items are to be correctly classified under Sr. No 355 of Schedule-III of IGST and duty to be levied "18% 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 30.07.2019 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 49,502 /- (Rupees Fourty Nine Thousands Five Hundred and Two 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. Amul Boards Pvt Ltd, did not submitted any reply.

Personal Hearing:-

7. Personal hearings in the matter were fixed on 21.11.2019, 17.12.2019 and 26.12.2019. Importer submitted written reply dated 21.11.2019 received on 17.12.2019 in defense of the SCN no VIII/48-378/CERA/Gr.V/MCH/18-19 dated 30.07.2019. Vide submission dated 21.11.2019, Importer submitted that IGST alongwith interest and penalty has already been paid vide challan no 2023393379 dated 08.08.2018 (Rs 57418/-) and manual challan no 1005 dated 10.08.2018 (Rs 5,850/-) before issuance of show cause notice. Further, Importer submitted that since the duty alongwith interest and penalty has already been paid, show cause notice can

not be issued in terms of provision of section (2) of the Customs Act, 1962 and penalty under section 114A can not be imposed. Importer submitted that as per provision of first proviso to subsection 2 of section 28 of Customs Act, 1962 wherein it is clearly mentioned that where the notice is of the view that the amount of duty alongwith interest payable thereon under section 28AA had been paid in full within thirty days from the date of receipt of show cause notice, no penalty shall be levied and proceeding initiated against such person to whom notice is served under clause (a) of subsection (1) shall be deemed to be concluded. Further, importer submitted that there is no malafide intention of the evasion of the IGST, The short levy of IGST was suo-moto paid by the Importer on 08.08.2018 before issuance of the show cause notice.

Discussions and findings:-

8. I have carefully gone through the Show Cause Notice No. VIII/48-378/CERA/Gr.V/MCH/18-19 dated 30.07.2019 issued to M/s. Amul Boards Pvt Ltd and written submission submitted by the Importer in the present case. I proceed in the case based on available records.

9. In this case, Show Cause Notice No: VIII/48-378/CERA/Gr.V/MCH/18-19 dated 30.07.2019 has been issued to M/s. Amul Boards Pvt Ltd, for recovery of differential amount of IGST of Rs. 49,502/- 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 Plywood Sanding Machine”

I find that as per Notification No.1/2017 dated 28.6.2017, the tariff Sr. No. 230 of Schedule I, 5% IGST is applicable on “Pawan Chakki that is Air Based Atta Chakki” falling under chapter 84. The relevant portion of Notification No. 1/2017-Integrated Tax (Rate) dated 28.6.2017 (Schedule-I) is as under:

Notification No. 1/2017-Integrated Tax (Rate) -(Schedule-I)

S. No.	Chapter / Heading / Subheading / Tariff item	Description of Goods
230	84	“Pawan Chakki that is Air Based Atta Chakki”

Further, I find that as per Notification No.1/2017 dated 28.6.2017, the tariff Sr. No. 355 of Schedule III, 18% IGST is applicable on “Machine-tools (including machines for nailing, stapling, glueing or otherwise assembling) for working wood, cork, bone, hard rubber, hard plastics or similar hard materials” falling under chapter 8465. The relevant portion of Notification No. 1/2017-Integrated Tax (Rate) dated 28.6.2017 (Schedule-III) is stipulated as under:

Notification No. 1/2017-Integrated Tax (Rate) -(Schedule-III)

S. No.	Chapter / Heading / Subheading / Tariff item	Description of Goods
355	8465	“Machine-tools (including machines for nailing, stapling, glueing or otherwise assembling) for working wood, cork, bone, hard rubber, hard plastics or similar hard materials”

I find that I find that the goods imported by the Importer are not covered in Sr. no. 230 Schedule – I as machine imported by the Importer is not “Pawan Chakki that

is Air Based Atta Chakki". I find that goods imported by the Importer are correctly covered under sr.no. 355 of the Schedule -III of the IGST Notification No. 01/2017 dated 28.6.2017 and attract IGST @ 18%.

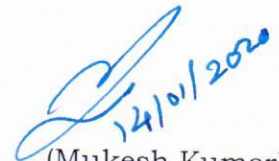
Further, I find that as per written submission dated 21.11.2019, Importer agreed with the audit objection and Bill of Entry was re-assessed on 16.07.2018 under sr.no. 355 of the Schedule -III of the IGST Notification No. 01/2017 dated 28.6.2017 as per importer request and IGST of Amt Rs 49500/- , interest of Amt Rs 468 and Penalty u/s 28(5) of Customs Act, 1962 was paid by the Importer vide challan no 2023393379 dated 08.08.2018 as per re-assessment. Further, Importer paid applicable interest u/s 28AA of Customs Act, 1962 of Amt Rs 5850/- vide manual challan no 1005 dated 10.08.2018.

11. I find that the importer paid duty alongwith applicable interest and penalty before issuance of show cause notice VIII/48-378/CERA/ Gr.V/MCH/18-19 dated 30.07.2019. Hence as per clause (i) of sub-section (6) of section 28 of the Customs Act, 1962, I find no merit in the SCN VIII/48-378/CERA/Gr.V/MCH/18-19 dated 30.07.2019.

12. Accordingly I pass the following orders

ORDER:-

I drop the proceedings initiated against M/s. Amul Boards Pvt Ltd, Survey No. 309,310/2 Village - nani chirai, Bachau, Kutch, Gujarat - 370210 vide Show Cause Notice No . VIII/48-378/CERA/ Gr.V/MCH/18-19 dated 30.07.2019

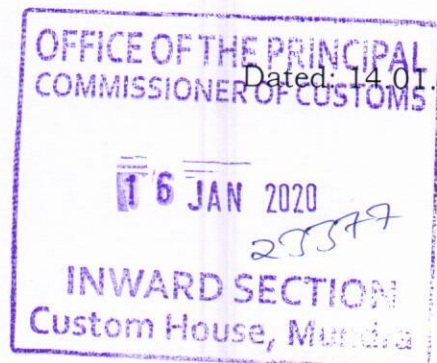


(Mukesh Kumar)
Deputy Commissioner (Gr-V & VI)
Custom House, Mundra.

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

DIN: 20200171MO00008CB1E3

To,
M/s. Amul Boards Pvt Ltd,
Survey No. 309,310/2 Village - nani chirai,
Bachau, Kutch, Gujarat - 370210



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. Kashyap Shipping (P) Ltd, (Custom Broker) for information and necessary action.
- (6) Guard file