



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/48-22/Adj./JC/MP&SEZ/2016-17
B	Order-in-Original No.	MCH/ADC/GPM/089/2017-18
C	Passed by	Shri G. P. Meena Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of Order	06.12.2017
E	Date of Issue	06.12.2017
F	SCN NO. & Date	VIII/48-131/Adj/Imp/Gr.VII/MCH/2015-16 dated 27.10.2016.
G	Noticee / Party / Importer / Exporter	M/s Malhotra Rubbers Ltd, A-1/2/10-11, Site B, Surajpur Industrial Area, Greater Noida : 201305

OFFICE OF THE PRINCIPAL  
COMMISSIONER OF CUSTOMS  
06 DEC 2017  
Custom House, Mundra

- 01 This Order-in-Original is granted to the concerned free of charge.
  - 02 Any person aggrieved by this Order-in-Original may file an appeal under Section 128 of the Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C.A. 1 to :  
**"THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA"**  
having his office at 7<sup>th</sup> floor, Mridul Tower, Near Times of India Building, Ashram Road, Ahmedabad – 380 009.
  - 03 Appeal shall be filed within sixty days from the date of communication of this order.
  - 04 The appeal should bear Court Fee Stamp of Rs.5/- (Rupees five only) under Court Fee Act and it must be accompanied by –
  - 05 A copy of the appeal , and
  - 06 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 Court Fees Act, 1870.
  - 07 An appeal against this order shall lie before the Commissioner (Appeals) 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.
  - 08 Proof payment of duty/interest/line/penalty etc. should be attached with the appeal memo.
  - 09 While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.
- Subject: – SCN No. VIII/48-131/Adj/Imp/Gr.VII/MCH/2015-16 dated 27.10.2016 issued to M/s Malhotra Rubbers Ltd, A-1/2/10-11, Site B, Surajpur Industrial Area, Greater Noida : 201305 .

**Brief facts of the case:**

M/s Malhotra Rubbers Ltd, A-1/2/10-11, Site B, Surajpur Industrial Area, Greater Noida : 201305 (IEC 0592031861) herein after referred as "the importer" for sake of brevity, has imported a total quantity of 244640 Kgs of Natural Rubber falling under CTH No. 40012200 of Customs Tariff Act, 1975 under various Bills of Entry (total 13 listed in the Annexure – I) during the period from **01.05.2013 to 31.08.2016**.

2. Whereas it appears that the importer has filed various Bills of Entry for the above mentioned import of Natural Rubber claiming the exemption benefit under the Notification No. 96/2009-Customs dated 11.09.2009 against Advance Authorisation issued in terms of paragraph 4.1.3 of the Foreign Trade Policy.
3. Whereas it further appears that as per the provisions of Section 3(1) of the Customs Tariff Act, 1975 "any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of value of the imported article:"
4. It also appears that as per the GOI, MOC, SO. 2020€ dated 28.08.2011 Rubber Cess @ Rs. 2/- per Kg. has to be collected as Central excise duty under the provisions of the Rubber Act, 1947. Therefore, the Rubber Cess @ Rs. 2/- per Kg. is leviable on the imported "Natural Rubber" in terms of the provisions under Section 3(1) of the Customs Tariff Act, 1975 read with the GOI, MOC, SO. 2020€ dated 28.08.2011, as additional duty.
5. The Notification No. 96/2009-Cus dated 11.09.2009 provides for exemption to goods imported under Advance Authorisation Scheme, issued in terms of paragraph 4.1.3 of the Foreign Trade Policy, from payment of whole of duty of customs specified in the first schedule to the Customs Tariff Act, 1975 and from whole of the Additional, safeguard duty and anti-dumping duty leviable thereon under Section 3, 8B and 9A of the Customs Tariff Act, 1975.
6. During the course of audit on eligibility on exemption of "Rubber Cess" under Notification No. 96/2009-Cus dated 11.09.2009 was re-examined. It appears that the GOI (Revision Authority) in case of Bombay Burmah Trading Co. vide order No. 487/2009 dated 10.12.2009, held that where any central law providing for levy and collection of any duty of excise, no notification issued under the Central Excise Act or Rules can grant

exemption from such duty of excise unless notification expressly refers to the provisions of the said Central law in the preamble.

7. In view of the above, it appears that the exemption under Notification No. 96/2009-Cus dated 11.09.2009 is not available to the "Rubber Cess", as there is no specific mention of exemption to "Rubber Cess" as the same is collected as Central Excise duty under the provisions of another Central Law, i.e., the Rubber Act, 1947. Accordingly, it appears that the importer was required to pay the "Rubber Cess" @ Rs. 2/- per Kg. on the imported "Natural Rubber".
8. It therefore, appears that during the period from 01.05.2013 to 31.08.2016, the importer had wrongly availed the benefit under Notification No. 96/2009-Cus dated 11.09.2009, and they failed to discharge their duty liability of "Rubber Cess" on the import of "Natural Rubber" imported by them during the above said period. Therefore, the same is required to be recovered from them with applicable interest.
9. Therefore, it appears that the importer during the period from 01.05.2013 to 31.08.2016 has imported total quantity of 426920 Kgs of "Natural Rubber" valued at Rs. 6,27,56,916/- by wrongly claiming the benefit of "Rubber Cess" under Notification No. 96/2009-Cus dated 11.09.2009. As there is no specific exemption to "Rubber Cess" under the said notification, the benefit of exemption is required to be denied to them. Accordingly it appears that the said goods valued at Rs. 6,27,56,916/- are liable for confiscation under Section 111(o) of the Customs Act, 1962 and also the importer has rendered themselves liable for penalty under the provisions of Section 112 (a) of the Customs Act, 1962.
10. It also appears that the "Rubber Cess" @ Rs. 2/- per kg., totally amounting to Rs. 8,53,840/- on the imported "Natural Rubber" total quantity of 426920 Kgs. imported by them during the period 01.05.2013 to 31.08.2016 is required to be recovered from them under the provisions of the Section 28 of the Customs Act, 1962 read with Section 12 of the Rubber Act, 1947 along with interest at the appropriate rate under the provisions of Section 28AA of the Customs Act, 1962.
11. Therefore, Show Cause Notice F.No. VIII/48-131/Adj/Imp/Gr.VII/MCH/2015-16 dated 27.10.2016 was issued to M/s Malhotra Rubbers Ltd., as to why:
- the imported "Natural Rubber" total quantity of 426920kgs. Valued at Rs. 6,27,56,916/- imported by them during the period 01.05.2013 to 31.08.2016 under various Bills of Entry (total 13 listed in the Annexure – I to this Show Cause Notice) should not be confiscated under the provisions of Section 111(o) of the Customs Act, 1962;
  - the "Rubber Cess" @ Rs. 2/- per kg., totally amounting to Rs. 8,53,840/- on the imported "Natural Rubber" total quantity of 426920 kgs. imported by them

- during the period 01.05.2013 to 31.08.2016 under various Bills of Entry ( total 13 listed in the Annexure – I to this Show Cause Notice) should not be recovered from them under the provisions of the Section 28(1) of the Customs Act, 1962 read with Section 12 of the Rubber Act, 1947.
- (c) Interest at the appropriate rate on the amount of Rs. 8,53,840/- should not be recovered from them under the provisions of Section 28AA of the Customs Act, 1962 and
- (d) Penalty should not be imposed on them under the provisions of Section 112 (a) of the Customs Act, 1962.

### 13. Defence Reply and Personal Hearing:

13.1. The importer submitted their written submission vide letter dated 01.12.2016/07.2017 wherein they stated that they are engaged in the manufacturing of tyres and also have two star Export House. They refer the OIA No. CC(A)/CUS/79/2014 passed by the Commissioner of Customs (Appeal), New Customs House, New Delhi wherein quashed the OIO passed by the A.C. Customs, ICD, Tughlakabad, New Delhi. They also rely on Order F.O.No. 55556/2016 dated 29.11.2016 passed by Hon'ble CESTAT wherein CESTAT dismissed the appeal filed by the department on the ground as mentioned herein below:

- a) The Rubber Cess is applicable only on the natural rubber manufactured in India.
- b) Without prejudice to the above, Rubber cess being a duty of Excise can be levied on import of Natural Rubber only by virtue of Section 3(1) of the Customs Tariff Act, which levies customs duty on imported goods which is equivalent to Excise Duty applicable on like goods manufactured in India. In other words, the additional duty is a summation of excise duty but is in the nature of Customs duty. That the Notification clearly exempts additional customs duty under Section 3(1) of the Customs Tariff Act. Thus assuming for a moment that rubber cess is applicable on imported rubber, even then the Respondent is entitled to exemption under Notification 96/2009-CUS.
- c) That there is no dispute that the respondent has not fulfilled the condition of the Exemption notification. Hence, exemption cannot be denied to the Respondent.

13.2. They further vide their letter dated 16.11.2017 refer their earlier defence reply dated 1.12.2016 and stated that the Hon'ble CESTAT has issued the order in their favour vide order No. 55556/2016 against Customs Appeal No. 52860 of 2014 and requested that after going through the communication, if necessity for personal hearing then please fix suitable fresh date in the matter.

### 14. Discussion and findings:

14.1. I have carefully gone through the facts of the case as narrated under the Show cause Notice and the defence put across by the importer vide their letter dated 01.12.2016 and letter dated 16.11.2017. From the records it is revealed that the SCN was issued on the basis of audit objections raised by Customs Receipt Audit (CRA).

**14.2** I find that the issue involved in the instant case is that the importer i.e. M/s Malhotra Rubbers Ltd, has imported a total quantity of 244640 Kgs of Natural Rubber falling under CTH No. 40012200 of Customs Tariff Act, 1975 under 13 Bills of Entry during the period from 01.05.2013 to 31.08.2016 claiming the exemption benefit under the Notification No. 96/2009-Customs dated 11.09.2009 against Advance Authorisation issued in terms of paragraph 4.1.3 of the Foreign Trade Policy and the Notification No. 96/2009-Cus dated 11.09.2009 provides for exemption to goods imported under Advance Authorisation Scheme, issued in terms of paragraph 4.1.3 of the Foreign Trade Policy, from payment of whole of duty of customs specified in the first schedule to the Customs Tariff Act, 1975 and from whole of the Additional, safeguard duty and anti-dumping duty leviable thereon under Section 3, 8B and 9A of the Customs Tariff Act, 1975. The CERA audit has raised the above objection under LAR no. 63/13-14 which has been converted to Local Draft para No. DP/10/13-14 dated 21.07.14 (incorrect grant of exemption from Sugar cess and Rubber cess), then converted in DAP No. 116/2013-14. Subsequently the said DAP was converted into Para 5.1 of Audit report No. 08/2015.

**14.3.** Thus the issue before me is to decide whether the importer had wrongly availed the benefit under Notification No. 96/2009-Cus. dated 11.09.2009 and whether the cess under Section 12 of the Rubber Act, 1947 read with section 3 of the Customs Tariff Act is leviable on imported rubber or otherwise.

**15.1** I have gone through the eligibility on exemption of "Rubber Cess" under Notification No. 96/2009-Cus dated 11.09.2009 and I find that the notification no 96/2009-cus dated 11.09.2009 confers exemption from whole of basic customs duty, additional duty of customs levied under Section 3 of the Customs Act, anti-dumping duty etc. For ease of reverence, preamble of the said Notification No. 96/2009-Cus dated 11.09.2009 is as under:

*" Advance authorisation — Exemption to imports thereunder*

*In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials imported into India against an Advance Authorisation issued in terms of paragraph 4.1.3 of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty, safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B and 9A of the said Customs Tariff Act, subject to the following conditions, namely :"*

**15.2.** From the perusal of the preamble of the Notification No. 96/2009-Cus dated 11.09.2009 , it would be seen that apart from other duties, it exempts whole of the additional customs duty levied under Section 3 of the Customs Tariff Act, 1975. As per

Section 3 of the Customs Tariff Act, the imported goods are leviable to an additional duty which would be equal to the excise duty on like goods manufactured in India.

**15.3** The relevant provisions of Section 3(1) of the Customs Tariff Act, 1975 and Section 12 of the Rubber Act, 1947 under which cess is leviable in imported rubber is as under:

**Section 3(1) of the Customs Tariff Act, 1975**

3. Levy of additional duty equal to excise duty.

*(1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage, of the value of the imported article.*

*Explanation.- In this section, the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty.*

**Section 12 (1) of the Rubber Act, 1947**

12. Imposition of new rubber cess.—*(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be levied as a cess for the purposes of this Act, a duty of excise on all rubber produced in India at such rate, not exceeding [two rupees] per kilogram of rubber so produced, as the Central Government may fix. (2) The duty of excise levied under sub-section (1) shall be collected by the Board in accordance with rules made in this behalf either from the owner of the estate on which the rubber is produced or from the manufacturer by whom (such rubber is used.) (Provided that the Central Government may, if considered necessary in the public interest, by order for reasons to be recorded in writing, exempt or reduce the duty of excise on rubber exported on such terms and conditions as it deems fit: Provided further that the Central Government may, by notification in the Official Gazette, specify zero paise per kilogram as the rate of duty of excise on natural rubber produced in India and procured for export by the exporters of natural rubber for the period from the 1st April, 1961 to the 31st August, 2003.*

**15.4.** On perusal of the Section 3(1) of the Customs Tariff Act, 1975, it would be seen that additional Customs duty is equal to the excise duty whether it is levied under Central Excise Act, 1944 or under any other law for the time being in force. In other words, all such duties which are collected as excise duty on the goods manufactured in India will be collected as additional customs duty in case of goods are imported. The reason is very simple and obvious as it has been made to countervail the excise duty on the imported goods.

**15.5.** It is the excise duty alone which is levied on the rubber produced in India in terms of Section 12 thereof. Therefore, if a person in normal course imports the natural rubber in India, he is liable to pay additional customs duty under Section 3 of the Customs Tariff

Act, 1975 equal to the excise duty levied under the Central Excise Act, 1944 and also the excise duty levied under Section 12 of the Rubber Act, 1947 as both of these duties are in the nature of excise duty levied on the like goods manufactured in India.

16. I find that the CERA audit has raised the above objection under LAR no. 63/13-14 which has been converted to Local Draft para No. DP/10/13-14 dated 21.07.14 (incorrect grant of exemption from Sugar cess and Rubber cess), then converted in DAP No. 116/2013-14. Subsequently the said DAP was converted into Para 5.1 of Audit report No. 08/2015. The department has not accepted the said objection of CERA and contested the same by relying on CBEC letter F.No. 484/30/2013-LC dated 06.06.14 wherein CBEC has given clarification on the issue of levy of Cess on imported natural rubber under Section 3 of the Customs tariff Act, 1975. However, to safe guard Govt. Revenue, department issued SCN. The said Para 5.1 of Audit report No. 08/2015 has been closed by the CERA only after accepting the department views and intimated the same vide letter F.No. CRA/DP-10/2013-14/JS dated 16.09.16. Thus, I find that the benefit of notification No. 96/2009-cus dated 11.09.2009, have been correctly claimed by the importer in respect of exemption of additional duty of customs.

17.1. Further, I find that CBEC vide letter F.No. 484/30/2013-LC dated 06.06.14 addressed to Commissioner of Customs (Exports), Mumbai Zone-II, JNCH Nhava Sheva has clarified the issue of levy of Cess on imported natural rubber under Section 3 of the Customs tariff Act, 1975. The relevant text read as follows:-

- (i) Cess on imported natural rubber shall be levied in the nature of Additional Duty of Customs under Section 3 (1) of the Customs Tariff Act, 1975, and collected by Customs.
- (ii) Imported natural rubber under Advance Authorization scheme is conditionally exempted from Additional duty of Customs under Section 3(1) of the Customs tariff Act, 1975 vide Notification No. 96/2009 dated 11.09.2009 and it would be debited in the bond furnished by the importer under the said notification along with the other duties that are exempted.

17.2. Thus, in view of the above clarification given by CBEC vide letter F.No. 484/30/2013-LC dated 06.06.14, it is evident that imported natural rubber under Advance Authorization scheme is exempted from Additional duty of Customs under Section 3(1) of the Customs tariff Act, 1975 by virtue of Notification No. 96/2009 dated 11.09.2009.

18. I have also gone through OIA Hon'ble Commissioner(A), New Delhi and order passed by Hon'ble CESTAT, New Delhi in their own case on similar issue quoted by the said importer in their defence and find that Hon'ble CESTAT relying on the observations of CESTAT, Chennai in the case of TTK-LIG Limited and dismissed the

appeal filed by the department . I find that the same is on similar issue and squarely applicable in this case and hence I find that, the importer has correctly availed the benefit of notification No. 96/2009-cus dated 11.09.2009.

19. From the facts as discussed herein above and with due regards to the decision of Hon'ble Commissioner(A), New Delhi and Hon'ble CESTAT, New Delhi and closure of Para 5.1 of Audit report No. 08/2015 only after accepting the department views as intimated by CERA vide letter F.No. CRA/DP-10/2013-14/JS dated 16.09.16, I find that an equivalent amount of rubber cess, to be leviable as additional Customs duty is also exempted by virtue of the said notification and the benefit of notification No. 96/2009-cus dated 11.09.2009, have been correctly claimed by the importer in respect of exemption of additional duty of customs. Thus I hold that the demands raised against the importer could not sustain.

20. In view of above, I pass the following order.

**: ORDER :**

I hereby drop the proceedings against M/s Malhotra Rubbers Ltd, A -1/2/10-11, Site B, Surajpur Industrial Area, Greater Noida : 201305 initiated vide Show Cause Notices No. F. No. VIII/48-131/Adj/Imp/Gr.VII/MCH/2015-16 dated. 27.10.2016 issued by the Joint Commissioner, Custom House, Mundra.

*Meena*  
06/12/17

(G.P.Meena)

Additional Commissioner  
Custom House, Mundra

Date: 06 .12.2017

F. No. VIII/48-22/Adj/JC/MP&SEZ/2016-17  
By Registered Post AD

**To,**

M/s Malhotra Rubbers Ltd,  
A-1/2/10-11, Site B,  
Surajpur Industrial Area,  
Greater Noida : 201305.

Copy to :

1. The Deputy Commissioner, Import Group-VII, Custom House, Mundra.
2. The Deputy/Asstt. Commissioner (RRA), Custom House, Mundra.
3. The Deputy/Asstt. Commissioner (Recovery), Custom House, Mundra.
4. The Deputy/Asstt. Commissioner (EDI), Custom House Mundra.
5. Guard File.