



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

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| A | File No. | VIII/48-1894/LAR-59/Gr-V/MCH/18-19 |
| B | Order-in-Original No. | MCH/DC/Gr.V/MK/67/2020-21 |
| C | Passed by | Shri Mukesh Kumar Deputy Commissioner of Customs, Custom House, Mundra |
| D | Date of Order | 01.05.2020 |
| E | Date of Issue | 01.05.2020 |
| F | SCN NO. & Date | SCN F.No. VIII/48-1894/LAR-59/Gr-V/MCH/18-19 dated 22.11.2019 |
| G | Noticee / Party / Importer / Exporter | M/s. Shiven Ceramic LLP, S.No. - 604/P2, 642 P1, Village Ghuntu, Lakhadhirpur road, Morbi - Gujarat - 363642 |
| H | DIN | 20200571MO00000CA810 |

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 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. Shiven Ceramic LLP, S.No. - 604/P2, 642 P1, Village Ghuntu, Lakhadhirpur road, Morbi - Gujarat - 363642, holding IEC No. ADIFS8442F had filed Bills of Entry No. 5099284 dated 06.02.2018 and have short paid IGST.

Brief Facts of the Case:-

1. M/s. Shiven Ceramic LLP, S.No. – 604/P2, 642 P1, Village Ghuntu, Lakhadhipur road, Morbi – Gujarat – 363642, holding IEC No. ADIFS8442F (hereinafter referred as the importer) had filed Bills of Entry No. 5099284 dated 06.02.2018 for importation of Slurry Pumps (Excluding the frequency inverter machinery - for ceramic Industry) through Customs Broker M/s. Nidhi Shipping Private Ltd.

2. During the course of audit Customs Revenue Audit (Para-03, LAR -59/2018-19) observed that it was noticed from the data analysis of bill of entries that the said importer imported “Slurry Pumps (Excluding the frequency inverter machinery - for ceramic Industry)” under chapter Heading 8413 and classified under Sr. No 317A of schedule –III of IGST and paid IGST @18%, However, the items are to be correctly classified under Sr. No 117of 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 Sub section 7 of Section 3 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 F. No. VIII/48-1894/LAR-59/Gr-V/MCH/18-19 dated 22.11.2019 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. 3,56,110/-/- (Rupees Three Lakhs Fifty Six thousands one hundred and ten 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(1) 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 117 of the Customs Act, 1962.

Defence reply:-

6 In reply to the subject show cause notice, M/s. Shiven Ceramic LLP, submitted reply vide letter dated 24.01.2020, wherein they have submitted that the goods imported by them are slurry pumps and are used in the production line of feldspar powder from feldspar chips which is further used in the production of ceramic tiles. They also submitted that their goods are not covered Sr. no 117 of Schedule IV which covers the pumps for dispensing fuel and lubricants.

Personal Hearing:-

7. Personal hearings in the matter were fixed on 20.02.2020. Importer submitted letter dated 08.02.2020 and submitted that considering their reply dated 24.01.2020 kindly close the matter and they do not wish to have any personal hearing in the matter.

Discussions and findings:-

8. I have carefully gone through the Show Cause Notice No. VIII/48-1894/LAR-59/Gr-V/MCH/18-19 dated 22.11.2019 issued to M/s. Shiven Ceramic LLP and their submission dated 21.01.2020, Importer has submitted that slurry pump has been correctly categorized by them in Schedule III having 18% IGST. The slurry pump imported by them is lined up in production line for manufacturing of feldspar powder from feldspar chips. The final product feldspar powder is further used in production of ceramic tiles. Importer also attached the picture of imported slurry pump. Importer further submitted that slurry pump is not used for

dispensing fuel or lubricants at filling station/garages, fuel, lubricating or cooling medium pumps for internal combustion piston engines. Hence slurry pumps do not classify under Schedule IV Sr. no 117.

9. In this case, Show Cause Notice No: VIII/48-1894/LAR-59/Gr-V/MCH/18-19 dated 22.11.2019 has been issued to M/s. Shiven Ceramic LLP, for recovery of differential amount of IGST of Rs.3,56,110/- under Section 28(1) 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 117 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 Piston Pump.

I find that Pump falling under CTH 8413 has been covered under Notification No. 1/2017 – Integrated Tax (Rate) dated 28.06.2017 under four different heading. Serial No. 231 of Schedule I covers hand pump and parts thereof. Serial No 192 of Schedule II covers Power driven pump primarily designed for handling water, namely, centrifugal pumps (horizontal and vertical), deep tube-well turbine pumps, submersible pumps, axial flow and mixed flow vertical pumps. Serial 317A of schedule III covers Concrete pumps [8413 40 00], other rotary positive displacement pumps [8413 60]. Serial No. 117 of Schedule IV covers 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]. In case none of the above category is suitable for any given pump falling under CTH 8413, it falls under residuary serial number 453 of Schedule-III.

The relevant portion of Notification 1/2017-Integrated Tax (rate) dated 28.06.2017 is stipulated as under:

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

| S. No. | Chapter / Heading / Subheading / Tariff item | Description of Goods |
|--------|--|------------------------------|
| 231 | 8413, 8413 91 | Hand pumps and parts thereof |

(Schedule-II)

| S. No. | Chapter / Heading / Subheading / Tariff item | Description of Goods |
|--------|--|--|
| 192 | 8413 | Power driven pumps primarily designed for handling water, namely, centrifugal pumps (horizontal and vertical), deep tube-well turbine pumps, submersible pumps, axial flow and mixed flow vertical pumps |

(Schedule-III)

| S. No. | Chapter / Heading / Subheading / Tariff item | Description of Goods |
|--------|--|---|
| 317A | 8413 | Concrete pumps [8413 40 00], other rotary positive displacement pumps [8413 60] |

(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] |

(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 |
|-----|-------------|--|

The importer had imported the slurry pumps after classifying their goods under Sr. No. 317A of Schedule-III of IGST Notification no. 01/2017 dated 28.06.2017 and had paid IGST @ 18%. I find that it is alleged in the as per show cause notice that slurry pumps 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%. However, I find that the slurry pumps are used in the production line of feldspar powder from feldspar chips in the ceramic industry and are not used 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] . Hence, the the same are not covered under sr.no. 117 of the Schedule -IV of the IGST Notification No. 01/2017 dated 28.6.2017. I find that slurry pumps are correctly covered under Sr. no 317A of Schedule -III of the IGST Notification No. 01/2017 dated 28.6.2017.

11. After considering the all the facts of the case and the submissions of the importer, I hold that the importer has correctly classified and assessed the goods under Schedule III Sr. No. 317A of the IGST Notification No. 01/2017 dated 28.6.2017.

12. Accordingly I pass the following orders

ORDER:-

I drop the proceedings initiated against M/s. Shiven Ceramic LLP, S.No. - 604/P2, 642 P1, Village Ghuntu, Lakhadhirpur road, Morbi - Gujarat - 363642 vide Show Cause Notice No . VIII/48-1894/LAR-59/Gr-V/MCH/18-19 dated 22.11.2019

(Handwritten signature)
05/05/2020

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

F.No. VIII/48-1894/LAR-59/Gr-V/MCH/18-19

Dated: 05.05.2020

To,
M/s. Shiven Ceramic LLP,
S.No. - 604/P2, 642 P1, Village Ghuntu,
Lakhadhirpur road, Morbi - Gujarat - 363642

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

